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## FORWARD

The user of this Precedent Manual should apply case law to the interpretation of the Oklahoma Employment Security Act, Title 40, Chapter 1, of the Oklahoma Statutes, only after first reviewing the purpose and objective of the Act. Care should be taken to insure that no application of the Act results in a violation of this purpose and objective.

The Purpose of the Act is contained in Section 1-201 (1):

*The purpose of the act is to promote employment security by increasing opportunities for placement through the maintenance of a system of public employment offices and to provide through the accumulation of reserves for the payment of compensation to individuals with respect to their unemployment. The Legislature hereby declares its intention to provide for carrying out the purposes of this act in cooperation with the appropriate agencies of other states and of the federal government, as part of a nationwide employment security program, in order to secure for this state and the citizens thereof the grants and privileges available thereunder.*

The Objective of the Act is defined in the declaration of state public policy in Section 1-103 of the Act.

*As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This objective can be furthered by operating free public employment offices in affiliation with nationwide system of employment services, by devising appropriate methods for reducing the volume of unemployment and by the systematic accumulation of funds during periods of employment, thus maintaining purchasing power and limiting the serious social consequences of unemployment. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, under the police power of the state for the establishment and maintenance of free public employment offices and for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.*

That we are to keep this basic objective in mind while construing the subsequent sections of the Act was made clear in *Tynes v. Uniroyal Tire Co.*, 679 P2d 1310 (Okla App 1984). In that decision the court made it clear that in sections of the Act that operate as a forfeiture of benefits, the section “*should be narrowly construed to allow maximum fulfillment of the Act’s basic purpose*” as set forth in Section 1-103. See also 76 Am. Jur. 2d Unemployment Compensation Sec. 52 (1975) as cited by the court in *Tynes*. All disqualifying sections should be construed in the light most favorable to the unemployed.



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## **ELIGIBILITY / REGISTRATION, BENEFIT YEAR AND REPORTING**

Unemployment Insurance benefits are intended to serve as a wage loss insurance against the risk of being involuntarily unemployed. The system does not cover all reasons for unemployment or even all the unemployed at any given time. All states impose certain eligibility requirements that define who is covered and who can receive benefits. Generally, these requirements fall in two categories, monetary and non-monetary eligibility. Several non-monetary requirements designed to determine initial eligibility, provide for fair and efficient administration of the Oklahoma Act, and timely payment of benefits to those deemed unemployed and eligible, are defined in this first section.

### **Section 1-217. Unemployed**

An individual shall be deemed “unemployed” with respect to any week during which he performed no services and with respect to which no wages are payable to him, or with respect to any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount plus One Hundred Dollars (\$100.00); provided that for the purpose of this section only, any vacation leave payments or sick leave payments, which such individual may receive or be entitled to from his employer or former employer, arising by reason of separation from employment, shall be deemed not to be wages as the term wages is used in this section.

### **Section 1-204. Benefit Year**

“Benefit year” with respect to any individual means the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits shall be deemed a valid claim for the purpose of this section if the individual has been paid the wages for insured work required under this act.

### **Section 2-202. Conditions for eligibility**

An unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he satisfies the provisions of this Part 2.

### **Section 2-203 Claim**

- A.** An unemployed individual must file an initial claim for unemployment benefits by calling an Oklahoma Employment Security Commission claims representative in a Commission Call center, by completing the required forms through the Internet Claims service provided by the Commission, or by completing all forms necessary to process an initial claim in a local office of the Commission or any alternate site designated by the Commission to take unemployment benefit claims. The Commission may obtain additional information regarding an individual's claim through any form of telecommunication, writing, or interview. An unemployed individual must file a claim in writing or by telecommunication for benefits with respect to each week in accordance with such rule as the Commission may prescribe.
- B.** With respect to each week, he or she must provide the Commission with a true and correct statement of all material facts relating to: his or her unemployment; ability to work; availability for work; activities or conditions which could restrict the individual from seeking or accepting full-time employment immediately; applications for or receipt of workers' compensation benefits; employment and earnings; and the reporting of other income from retirement, pension, disability, self-employment, education or training allowances.
- C.** No claim will be allowed or paid unless the claimant resides within a state or foreign country with which the State of Oklahoma has entered into a reciprocal or cooperative arrangement pursuant to Part 7 of Article IV of the Employment Security Act of 1980.

### **Section 2-204. Registration employment**

The unemployed individual must register for work at and thereafter continue to report at an employment office in accordance with such rules as the Commission may prescribe, except that the Commission may, by rule, waive or alter either or both the requirements of this section as to individuals attached to regular jobs and as to such other cases or situations involving mass layoffs or individuals in areas not served by an established employment office, with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purpose of this act.

### **Section 2-205.1 Ability to work and acceptance of employment**

(See Section III)

**Section 2-206. Waiting Period**

The unemployed individual must have been unemployed for a waiting period of one (1) week. No week shall be counted as a week of unemployment for the purpose of this section:

- (1) Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;
- (2) If benefits have been paid with respect thereto;
- (3) Unless the individual was eligible for benefits with respect thereto.

As the provision of the Act indicate, a claimant must be unemployed, file a weekly claim for benefits, register for work with the agency as directed, and serve a one week non-payable waiting period before receiving benefits. Sec. 1-204 provides that a claim is good for one year beginning with the first week of a valid claim. There is no statutory provision for backdating a claim.

*Burden of Proof*

The burden rests with the claimant to establish initial eligibility for benefits.

## CANCELLATION OF REGISTRATION

### Case Applications

87 AT 1913

Facts: Claimant became unemployed October 1<sup>st</sup> because of lack of work. He went to the Commission offices on October 2<sup>nd</sup> to register for unemployment. He was registered in a group filing procedure with a large number of other applicants. He later learned that if he waited until the next Monday to register, his second quarter earnings would have been included and his benefits would have been \$60 more. He returned to the Commission and was denied. Claimant made a written request for reconsideration, but was denied.

Held: As a result of a lack of explanation and assistance, the claimant filed before the end of the quarter resulting in a lower weekly benefit amount. The Commission's determination should be modified to show Section 1-204 to be the proper Section of the Act and the Determination reversed.

Result: The Commission was ordered to amend the claim to be effective October 5<sup>th</sup>.

UNEMPLOYED

*Abandoned Self-Employment*

79 BR 1292

Facts: Claimant was a school teacher and was not rehired in the fall term. She moved to Kansas and placed an ad in the local paper advertising her services for piano lessons and piano tuning. She also worked as a substitute teacher. She was not getting any results from the ad and stopped running it, taking students only as they sought her out. At the time of her filing, she had seven students and reported all her income from lessons and substitute teaching.

Held: Claimant made an attempt to be self-employed in some manner for many months. She gave up her efforts prior to filing for benefits.

Result: Benefits allowed.

*Business Open But No Profits*

357 BR 76

Facts: Claimant moved to Oklahoma from California and started his own business. He put all his effort into the business and was just starting to show a profit. He filed for benefits arguing that he paid taxes for fourteen years to support the Trust Fund and he was not making any profit or wages.

Held: Claimant, as an employee, never paid money into the Trust Fund. The employer was taxed to support the trust fund. An individual engaged in a business of his own, no matter if it is making a profit or not, is self-employed, not unemployed.

Result: Benefits denied.

*37 AT 10918 BR*

Facts: Claimant is working full-time in her home in a child-care business that is not making a profit, so she is receiving no wages at this time. She is advertising with a sign in her yard and has made business cards that she carries.

Held: Section 1-217 states that an individual who is engaged in a business of his own, whether or not it is making a profit, is self-employed, not unemployed. Whether the claimant has been paid does not mean that wages were not payable if there had been money to pay them. The claimant is performing a service for which she is entitled to be paid, so she is self-employed, not unemployed.

Result: Benefits disallowed.

*On-Call Workers*

81 BR 379

Facts: Claimant's job was on an on-call basis when work was available. Claimant negotiated an hourly pay raise with the employer. Before receiving the pay raise, claimant was not called for work. The employer said no work was available at the time, so there was no need to call the claimant.

Held: Claimant was not called because there was no work available. Claimant was laid off for lack of work. On call, but not working, is unemployed.

Results: Benefits allowed.

## Operation of Own Business Part-time

*97 AT 5908 BR*

Facts: Claimant was attempting to establish a medical claims consultant business and was soliciting clients through the mail. She has yet to obtain any clients. Claimant spends six hours a week soliciting. She is looking for regular paid employment and makes at least two work search contacts per week.

Held: Claimant is unemployed. Her business start-up has not limited her work search.

Result: Benefits allowed.

*88 AT 8922*

Facts: Claimant was laid off from his full-time job and filed for benefits. The Commission found that he was employed and ineligible for benefits because he operated his own business. Claimant said he operated his business as a part-time sideline occupation while holding full-time jobs for six years. Claimant does not have an ad listing his business in the telephone directory. Claimant is seeking full-time work as an employee.

Held: Claimant's business never interfered with his past or present availability for full-time work. Claimant is unemployed.

Result: Benefits allowed.

## Seasonal Contracts

*84 BR 1544*

Facts: Claimants were professional musicians and signed a contract for the symphony season from September to May. They were paid from September through May. During the season they received a monthly salary. In the off-season, they were not paid and not required to perform. Claimants filed for unemployment in the off-season.

Held: Claimants were considered unemployed since their contract was from September to May and since they received no wages and did not perform.

Result: Benefits allowed.

## Working for Commission Only

*429 BR 75*

**Facts:** Claimant was laid off his job in Oklahoma and moved to Colorado. When he applied for benefits, he was working forty hours a week on a commission basis and had no earnings. After benefits were denied, he reduced his working hours. At his hearing he said he was working only 33-35 hours and had real estate sales in sight in the future.

**Held:** Reducing one's hours after denial of benefits does not make work less than full-time. Whether or not claimant made any money, he was deemed to be employed and ineligible for benefits.

**Result:** Benefits denied.

## Concurrent Full and Part-Time Employment

*01 01886 AT*

**Facts:** The claimant was employed at two places, one full-time and one part-time. She was injured in an auto accident and ceased work at both places. The claimant was released to return to work by her doctor four months later and contacted both employers. She returned for one week to the part-time job. The employer at the full-time job would not allow her to return to work. After learning of this, she quit the part-time job to relocate and attend school, because she could not live on the part-time wages alone.

**Held:** The claimant became unemployed due to the loss of her full-time job, which rendered the part-time job untenable. When a full-time and part-time job are held concurrently, the loss of the full-time job renders the person unemployed. The full-time employer will be deemed the last employer, even though the claimant may have worked some more days for the part-time employer. In this case, the full-time employer was the moving force resulting in claimant's unemployment and is the separating employer. The reason for separation from the part-time employer is moot.

**Result:** Determination vacated and remanded to notify the correct separating employer and to adjudicate claimant's eligibility based upon that separation.

*Temporary Lockout*

*03 AT 12098 BR*

Facts: The claimant was hired by the employer to work as a companion to an elderly woman. On one particular day the claimant was locked out of the elderly woman's house when she became upset at the claimant. The claimant was allowed back into the elderly woman's house two days later. The employer never discharged the claimant and she was paid for the two days she was unable to enter the house.

Held: The claimant was not unemployed and therefore not eligible under Section 1-217.

Result: Benefits denied.

## *Wages and Earnings*

### *03 AT 4436 BR*

**Facts:** The claimant was laid off and received a lump sum severance payment equal to 78 weeks of her salary. The employer was contractually required to make this payment. The claimant was given a choice of receiving the severance payment in one check paid in December or two checks, one in December and one a month later. The claimant decided to take the severance payment in two checks to lessen the impact on her income taxes. However, for some unexplained reason the claimant was given her severance payment in three checks, the last one during the third month.

**Held:** The claimant received a severance payment that met the definition of wages as defined by Section 1-218. OAC Rules 240:10-3-4(b) provides that severance payments deemed to be wages and paid in a lump sum are deductible from unemployment benefits only in the week received. While the claimant's severance payment was paid in a lump sum, it was made in three separate checks and three different weeks. The law did not intend that the claimant be found ineligible for benefits for the full 78 weeks because she opted to receive the lump sum in two checks, while other employees are found ineligible for only one week because they opted to receive it in one check. Appeal Tribunal affirmed.

**Result:** The claimant is disqualified for benefits only during the weeks in which she received each of the three severance checks.

### *03 AT 10918 BR*

**Facts:** Claimant is working full-time in her home in a child-care business that is not making a profit, so she is receiving no wages at this time. She is advertising with a sign in her yard and had made business cards that she carries.

**Held:** Section 1-217 states that an individual who is engaged in a business of his own, whether or not it is making a profit, is self-employed, not unemployed. Whether the claimant has been paid does not mean that wages were not payable if there had been money to pay them. The claimant is performing a service for which she is entitled to be paid, so she is self-employed, not unemployed.

**Result:** Benefits disallowed.

**Cross-reference:** Miscellaneous/ Earnings, Wages and Severance

## CLAIM

### *Case Applications*

*81 AT 5009; 82 BR 932*

**Facts:** Claimant said he went to the local office on August 2 to file a claim for benefits while he was on layoff. He completed some forms. He was told not to mail them if he returned to work the following week. Since he returned to work he destroyed the forms. When he was later laid off, he returned to the office and they were unable to find his claim. Claimant requested that his claim be backdated. The Commission denied. On appeal to the Appeal Tribunal he was also denied because the local office said they had no record of claimant being in the office. Claimant appealed to the Board of Review.

**Held:** Since neither claimant nor the local office were able to present evidence that the claim was filed, the Board found that claimant failed to establish that he had filed.

**Result:** Claimant's request to backdate his claim was denied.

## BACKDATING OF REGISTRATION

### *Case Applications*

*83 AT 2539; 83 BR 702*

Facts: Claimant was laid off and filed a claim effective August 8. She returned to work on August 17<sup>th</sup> and filed her claim for the week ending August 21. She returned to work and was laid off for the entire week ending September 18<sup>th</sup>. She went into the office and tried to reopen her claim, backdating to September 18<sup>th</sup>. Her request to backdate was denied by the Commission. Claimant appealed to the Appeal Tribunal. She admitted she had no excuse for not filing her claim in a timely fashion. The Appeal Tribunal denied.

Held: The Board of Review held that the Commission had no authority to backdate claimant's renewed claim to cover the preceding week since she did not file a claim that week.

Result: Benefits denied for one week ending September 18<sup>th</sup>.

*80 AT 6057; 80 BR 1274*

Facts: Claimant filed for benefits effective September 16<sup>th</sup>. He certified that he was laid off because of a lack of work. He also said he was unable to work full-time because he was receiving Social Security benefits. The Commission found him ineligible for benefits because he was not available for full-time work. He appealed but later withdrew. On March 24<sup>th</sup> of the next year he renewed his claim and said he was available for full-time work. He requested his claim be backdated to November 4<sup>th</sup>. The Commission denied the request because the claimant had not filed the necessary paperwork for those weeks. The Appeal Tribunal affirmed.

Held: The Board of Review held that since the claimant did not file claims for the weeks in question, he was ineligible for benefits beginning September 16<sup>th</sup> to March 22<sup>nd</sup>.

Result: Claim not backdated.

*77 AT 9024; 167 BR 78*

Facts: Claimant filed for benefits with the effective date of September 25<sup>th</sup>. He said he was laid off due to lack of work. He reopened his claim on November 14<sup>th</sup> and attempted to have the claim made effective to the previous week. Claimant said he was laid off November 8<sup>th</sup> and spent two days at the union office looking for a job. On November 11<sup>th</sup> claimant went to file his claim, but the office was closed. The Commission denied the claim saying that they had no authority to backdate a claim. The Appeal Tribunal affirmed.

Held: The Board of Review held that claimant had a half-day and then two full days to file his claim but did not. Affirmed.

Result: Benefits denied for week in question.

*77 AT 6953; 1368 BR 77*

Facts: Claimant filed for benefits August 29, 1976. He did not file claims for several weeks, letting his claim become inactive. He reported to the local office in Huntsville, Alabama on August 22, 1977 and requested permission to file back claims for the weeks of July 30, August 6, August 13, and August 20, 1977. Claimant said he had misplaced the forms. The Commission denied the request to backdate. The Appeal Tribunal held that the claimant should get the week of August 20<sup>th</sup> since the claim was filed August 22<sup>nd</sup>.

Held: The Board of Review held that claims cannot be backdated under Oklahoma law. The backdated claims were not filed in a timely manner. The Appeal Tribunal was affirmed.

Result: Request to backdate denied.

## FAILURE TO FILE CLAIMS IN ACCORDANCE WITH AGENCY POLICY

### *Case Applications*

#### *90 AT 04563 BR*

Facts: Claimant filed for benefits. She was given a medical statement to have her doctor complete and return to the local office. She took the statement to her doctor, but was unable to return it because the doctor had not completed it. The Commission said she failed to file her claim in accordance with policy and denied benefits.

Held: Claimant had no control over the doctor's failure to complete the form. The Appeal Tribunal reversed and allowed benefits. The Commission appealed to the Board of Review which affirmed the Appeal Tribunal.

Result: Benefits allowed.

#### *80 AT 10879; 81 BR 332*

Facts: Claimant was laid off for two weeks and went to California for personal reasons. While there he tried to file for the two weeks he was off, but was told by the California employment office to wait until he returned to Oklahoma. When he returned he was not allowed to file a claim for the two weeks.

Held: Claimant received erroneous advice from the California employment office. Reversed.

Result: Benefits allowed.

#### *80 AT 7921; 80 BR 1681*

Facts: Claimant was scheduled to report to the local office on June 2<sup>nd</sup> to file a claim for the week ending May 31<sup>st</sup>. He attended a family reunion and did not return until late on June 1<sup>st</sup>. He called the local office on June 2<sup>nd</sup> and advised that he would not be in. He was advised he could report within a seven-day period from the scheduled date to file a timely appeal. Claimant reported on June 3<sup>rd</sup>, but did not stay to file his claim. He returned June 4<sup>th</sup> and filed his claim. Both the Commission and the Appeal Tribunal determined that claimant did not establish good cause for his failure to report and denied benefits.

Held: Claimant had ample opportunity to file his claim within the time period provided. Since he failed to comply with those regulations, benefits were denied.

Result: Benefits denied.

## ELIGIBILITY / WAGES

The monetary eligibility provisions of the Act measure a worker's attachment to the work force by looking at employment history and wage earnings. It is that attachment to the work force that establishes the worker's claim to protection from the conditions UI benefits were designed to insure against. Monetary eligibility provisions draw attention to the insurance aspect of UI and the earned right to those benefits as insurance against the hazards created by unemployment.

All states use a one year "base period" to measure employment history and earnings. In Oklahoma the base period is the first four of the last five completed calendar quarters that immediately precede the quarter in which the claim is filed. (Sec. 1-202.) In July 2006 the Act was amended to allow that base period to be extended for those claimants lacking sufficient qualifying wages due to a job-related injury for which the worker received total temporary disability payment through Workers Compensation. (Sec. 1-202.1.) In such cases the base period is "extended" one quarter at a time until eligibility is achieved. Section 1-202.2 of the Act allows for an alternative base period using the most recent four completed calendar quarters. This alternative is only allowed when the UI Trust fund balance is not below the amount required to initiate a conditional factor in the computation of employer tax rates. When it is available, it allows eligibility based on more recent earnings so workers with employment history interrupted by reasons other than injury covered by TTD or with a more irregular employment history are more likely to be eligible.

The wage requirement for UI eligibility in Oklahoma is set out in Sec. 2-207.A. of the Act.

### **Section 2-207. Wage requirement during base period**

**A.** The unemployed individual, during the individual's base period, shall have been paid wages for insured work of not less than:

1. One Thousand Five Hundred Dollars (\$1,500.00); and
2. One and one-half (1 ½) times the amount of wages during that quarter of the individual's base period in which such wages are highest.

Notwithstanding the preceding provision, an individual with base period wages equal to or more than the highest annual amount of taxable wages that applies to any calendar year in which the claim for unemployment benefits was filed shall be eligible for benefits.

- B.1.** If an individual lacks sufficient base period wages under subsection A of this section to establish a claim for benefits, any wages paid in the individual's alternative base period shall be considered as the individual's base period wages.
- 2.** If the Commission has not received wage information from the individual's employer for the most recent calendar quarter of the alternative base period, the Commission shall accept an affidavit from the individual supported by wage information such as check stubs, deposit slips, or other supporting documentation to determine wages paid.
- 3.** A determination of benefits based on an alternative base period shall be adjusted when the quarterly wage report is received from the employer, if the wage information in the report differs from that reported by the individual.
- 4.** If alternative base period wages are established by affidavit of the individual, the employer to which the wages are attributed will have the right to protest the wages reported. If a protest is made, the employer must provide documentary evidence of wages paid to the individual. The Commission will determine the wages paid based on the preponderance of the evidence presented by each party.
- 5.** Provided, no wages used to establish a claim under an alternative base period shall be subsequently used to establish a second benefit year.
- 6.** Provided, in any calendar year in which the balance in the Unemployment Compensation Fund is below the amount required to initiate conditional factors pursuant to the provisions of Section 3-113 of this title, this subsection shall not apply and no alternative base period shall be available.

### *Discussion*

Adjudication of monetary eligibility requires a careful review of definitions in the Act relating to employer liability, Sec. 1-208; covered employment, Sec. 1-210; wages paid, Sec. 1-219; and taxable wages, Sec.1-223. Clues to which of these other issues might also need to be considered are gathered by reviewing the basis for the claimant's appeal and the basis for the denial of wages printed as a message attached to the determination by the Commission.

Wages earned in Federal service qualify individuals for benefits under the same terms and conditions as other unemployed workers. Active service in the military qualifies as federal service only as defined by the federal statutes. If the ex-service person was discharged or released under honorable conditions and after serving his first full term of active service or before completion of the first term of service and under certain conditions, the service is considered federal service under the law and earnings can then be used to determine monetary eligibility as above. (Title 5 U.S.C. Sec. 8521(A), as amended by Sec. 301(b), Compensation Act of 1991)

Another group of workers otherwise eligible under the same terms and conditions are school employees with an important and sometimes confusing exception described below.

## EDUCATIONAL EMPLOYEES BETWEEN AND WITHIN TERMS

Generally, the between and within terms denial provisions of Section 2-209 of the Act apply to professional and non-professional employees of educational institutions, educational service agencies, and certain other entities, like some Headstart Programs, if they have a contract or reasonable assurance of employment in the next term, year, or remainder of the term. These provisions deny benefits “[b]ased on such services...”. Base period wages earned from employment not covered by the between and within terms denial provisions may be used to establish monetary eligibility for benefits.

Section 2-209 is found in Part 2 of Article 2 of the Act under the heading “Eligibility”. Properly administered, the between and within terms denial requires the removal of school wages from the claimant’s monetary determination for the duration of the between terms denial period only. If the claim is not filed in a period between terms, years, or during an established and customary vacation or Holiday recess; Section 2-209 does not apply. If the claim produces a monetary determination showing no school wages; Section 2-209 does not apply even if the claim is in a between or within terms period. Again, the practical result of applying Section 2-209 is to prevent the receipt of benefits “[b]ased on such services...” described in Section 2-209, generally from schools.

If a claim is filed in a period between or within terms and there are school wages, there must be reasonable assurance of work in the next year, term or period before the school wages can be denied. The term “reasonable assurance” is critical here. In part, the justification to deny eligibility to unemployed workers because they are school employees between terms is based on the reasoning that those workers are less harmed by or need less protection from the economic insecurity, hazards and burdens resulting from unemployment described in Section 1-103 of the Act than other people in the same situation. It is their “reasonable assurance” of returning to work that gives them the relief benefits are intended to provide. This exception to equal treatment [26 U.S.C. Sec. 3304(a)(6)(A)] makes it even more important that when the provisions of Section 2-209 are applied, one remembers that unemployment insurance is social insurance and exemption from the remedies described in the Act should be narrowly interpreted. *U.S. v. Silk*, 331 U.S. 704 (1947). Denials should not be based on assumptions, but on substantial and verified evidence.

Reasonable assurance is defined by Commission Rule 10-3-21 to mean a written, verbal, or implied agreement of continued service in the next year, term, or period of instruction. While a written agreement is preferable, an implied agreement can meet the standard, but any implied agreement should be supported by substantial evidence and should be verified. A *bona fide* offer must be made by someone with the authority to make the offer. Any offer made by someone without such authority, or which merely provides for the possibility of continued work is not *bona fide*. Finally, reasonable assurance only exists if the offered work is substantially the same as the previous work.

Even an accepted offer of continued employment, but under terms and conditions substantially less than the previous work would not meet the standard required. An attempt to verify the details of any offer should always be made. Whatever proof is offered should be sufficient enough that a “reasonable” person would count on it.

Once it is determined the between and within terms denial applies, it only means that school wages cannot be used to determine eligibility. A new monetary determination without school wages must be issued. If there are sufficient wages to qualify without the school wages, the claimant is eligible even during the period between or within terms. At the end of that period, the wages must be replaced, since the wages are excluded for the period between or within terms only.

### *Burden of Proof*

The claimant bears the burden to offer proof of missing wages or wages declared not covered. The issue of “federal service” for ex-service members is governed by the Federal determination that characterizes the separation. The characterization of the service and the determination that the service does or does not qualify as federal service is not within the jurisdiction of the Appeal Tribunal.

In cases involving reasonable assurance, the school or educational service agency carries the burden of proof.

## 2-209 REASONABLE ASSURANCE

### Case Law

OESC V. Bd. Of Rev. of OESC, Riverside Indian School, et al. (Ok. Ct App. Div. 2, 5-17-1994) (unpublished)

**Facts:** The District Court of Caddo County affirmed the Board of Review's award of unemployment benefits to the claimants. The claimants are employees of Riverside Indian School, which prior to 1987 remained open year-round, with employment on a year-round basis. Beginning in 1987, due to funding cuts, the school closed during the summer months and employees were furloughed during that period. In the spring of 1992, the employer mailed a letter to the claimants stating that due to lack of funds the employees would be placed in a non-work status and specifying beginning and ending dates for that status, which ended with the start of the fall semester. In June, the claimants applied for unemployment benefits and were denied by the Commission based upon the decision that the claimants had reasonable assurance they would be reemployed in the fall. The claimants appealed and the Appeal Tribunal reversed and allowed benefits, finding that no reasonable assurance existed. The Board of Review affirmed, as did the District Court.

**Held:** The ruling of the trial court was not supported by substantial evidence. The letter mailed to the claimants conveyed a reasonable assurance of returning to work after the specified end date of their furlough. The claimant's testimony also indicated that they did, in fact, return to work that fall. Testimony also indicated that the claimants had been furloughed every summer for several years prior to that year and every year they returned to work at the end of the summer. The only evidence presented to support the claimant's contention was that they were non-contract employees and their work was dependent on the availability of funds to pay them. There was no testimony that the funding for Riverside Indian School was in jeopardy or uncertain for that fall. Since all future employment depends on an employer's ability to pay employees, it is an insufficient reason to establish that a lack of reasonable assurance exists. Funding dependency does not support a finding of substantial evidence. The claimant's had reasonable assurance of returning to work for the fall term and are not entitled to benefits.

**Result:** Reversed. Benefits denied.

## Case Applications

*06-AT-08520-UCFE-BR*

**Facts:** The claimant was employed as a home living assistant for two consecutive school years. She was laid off when the school year ended. No offer of a job for the next school term was made and she was told only that she could reapply for work when school resumed. She was given no information to indicate she would be rehired. The Appeal Tribunal reversed the Commission's Determination disallowing benefits stating that the claimant did not have a history of returning to work for each new term for several years. She had only returned for one consecutive term, and contrary to the case cited by the Commission, she had been given no verbal or written notice telling her she would return or when. The Appeal Tribunal found that there was no reasonable assurance of returning to work and allowed benefits. The Commission appealed.

**Held:** The Board of Review distinguished the *Riverside Indian School* case cited by the Commission by the two elements cited by the *Riverside* court. The claimants in that case had reasonable assurance based upon two elements, more specifically: (1) they had a history of returning to work for several years, whereas the claimant has only worked for two school years; and, (2) those claimant had been given a letter advising them that they were being placed in "non-work" status for a specified period with a definite ending date, whereas the claimant in this case had no verbal or written notice that she would be returning to work. She was told only that she could reapply after school started. No reasonable assurance of reemployment existed. The Decision of the Appeal Tribunal was affirmed.

**Result:** Benefits allowed.

*03-AT-11430-BR*

Facts: The claimant received a letter from the school district in April advising him that his contract would not be renewed for the following year. He applied for benefits and was allowed. He received benefits for several weeks, but then received a new determination denying benefits effective the end of June because the claimant had reasonable assurance of reemployment during the next school term. He called the school and was advised that a teacher resigned and the claimant could be considered for rehire if another more senior teacher refused the position. The other teacher verbally told the claimant he was not going to take the position because he thought he had another position in another district. However, he had the ability to change his mind any time before the school board met in mid-July.

Held: The claimant did not have reasonable assurance of rehire since another employee had to first turn down the position for the claimant to be rehired. The claimant should have been allowed benefits until the time he was offered a contract in mid-July.

Result: Benefits allowed.

*01-AT-6828-UCFE-BR*

History: The claimant appealed the Commission's Determination finding she had reasonable assurance of returning to employment for school and disqualifying her for benefits under Section 2-209. The Appeal Tribunal reversed and allowed.

Facts: The claimant testified that whether she is rehired as a temporary clerk for the next term is based on enrollment. The school does not know what the enrollment will be, so they cannot offer her a job for the next year.

Held: Affirmed. The claimant does not have reasonable assurance of a job for the next school term.

Result: Benefits allowed.

## ABLE AND AVAILABLE

The most basic requirement of continuing eligibility for unemployment insurance benefits is that the claimant be “able and available” for work. The applicable provision of the Act defining that eligibility requirement is:

*Section 2-205.1. The unemployed individual must be able to perform work duties in keeping with his education, training and experience. He must also be available to seek and accept work at any time and may not be engaged in any activity that would normally restrict his seeking or accepting employment in keeping with his education, training and experience.*

*The fact that an individual is enrolled in school shall not, in and of itself, render an individual ineligible for unemployment benefits. Such individual who is involuntarily unemployed and otherwise eligible for benefits who offers to quit school, adjust class hours or change shifts in order to secure employment shall be entitled to benefits.*

### *Definition*

Whether expressly stated or by implication, the entire history of the unemployment insurance system indicates that unemployment benefits are intended to compensate unemployed workers who are able to work. During the inception of the program in 1935 Congress clearly tied the benefits to ability and availability to work by stressing the difference between these benefits from other types of benefits; emphasizing that unemployment benefits are for those involuntarily unemployed, (*S. Rep. 628, 74<sup>th</sup> Cong. 1<sup>st</sup> Sess. 1935 Page 11*) and by requiring unemployment benefits to be paid through the public employment system. (*FUTA 26 U.S.C. 3304(a)(1) and SSA 42 U.S.C. 503(a)(2)*)

Eligibility under the Oklahoma statute simply requires that a claimant be able to perform work duties in keeping with his or her work experience, or in keeping with the duties of work that claimant’s education or training would reasonably prepare them for. While the difference between ability and availability may be hard to differentiate, whether a claimant is able to work is basically a determination about a claimant’s physical or mental condition. Since monetary eligibility is based on recent employment and a claimant must have been able to work to have qualifying wages, this issue usually relates to a recent or temporary health restriction. When a claimant is restricted from some duties, but is able to perform others in keeping with their experience, they are able to work. A careful review of a claimant’s entire work history is required followed by a review of all education and training to determine what other types of work the claimant has performed, been trained to perform and is able to do.

Since 1981 the following definition of availability to work offered by the Board of Review has been relied on:

*No definite rule can be stated as to what precise facts can constitute availability, and no clear line can be drawn between availability and unavailability, although availability requirements are generally satisfied when an individual is willing, able and ready to accept suitable work, which he does not have a good cause to refuse.*

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If no definite rule could be stated in 1981, that task is even more difficult in today's economy. Non-traditional employment, structural changes in the economy caused by a dramatic shift toward a service economy, and a resulting pressure on workers to be life-time learners retraining for the future, all emphasize the Board of Review's observation in 1981 that the precise facts that define availability do not exist. The adjudicator of a claimant's eligibility on this issue must take into account all the facts related to the claimant's availability to work to determine if activities a claimant is involved with or other limitations, whether self imposed for personal reasons or external ones such as a lack of transportation, are reasonable or are so restrictive that the claimant cannot be considered available to seek and accept work. Finally, the adjudicator must determine if the restriction of ability or availability is temporary or indefinite and should explore with the claimant ways to remove restrictions if possible.

The statute specifically directs that school attendance does not make a claimant ineligible provided the claimant is willing to withdraw from school or rearrange class schedules or work shifts in order to secure and be available for work. Further, at Section 2-108, the Act allows those engaged in training approved by the Commission a waiver from the availability for work requirement.

#### *Burden of Proof*

Able and available is an eligibility issue. The burden of proof rests with the claimant to establish his or her eligibility for benefits by a preponderance of the substantial evidence presented.

## ABLE TO ACCEPT EMPLOYMENT

*Copeland v. Oklahoma Employment Security Commission, 172 P2d 420 (Okla. 1946)*

**History:** Board of Review denied claim for benefits; claimant appealed. District Court, Lincoln County, affirmed; claimant appealed. Supreme Court affirmed.

**Facts:**

1. Claimant resided in Meeker, Oklahoma; he was 63 years old.
2. There was no opportunity for employment in said town or its immediate vicinity. The nearest labor market was in Chandler or Shawnee, approximately 16 miles from Meeker, or Oklahoma City, approximately 45 miles from Meeker.
3. Claimant contacted the labor union in Oklahoma City, and there were jobs available, but he was unable to secure transportation; claimant had no transportation of his own; claimant had never driven an automobile. There was no transportation available to Chandler or Shawnee.
4. There was transportation available to the Douglas plant, but claimant was not qualified to work there because of age requirements.

**Further History:** The OESC initially paid claimant and then issued a re-determination finding that he was no longer eligible for benefits because he refused a job referral in Norman, Oklahoma, due to transportation problems. The Board of Review and District Court affirmed; the Supreme Court sent the case back to the Board of Review for the taking of additional evidence; the Board of Review found that “viewing all the conditions revealed by the evidence, it is our finding...that claimant was not available for work”. The Board reaffirmed its order denying the claim, and certified the additional findings and its order back to the Supreme Court.

**Issue:** If a claimant is unable to provide transportation for himself, even through no fault of his own, is he still available for work within the meaning of the Act.

**Holding:** When the burden is cast upon an employed person to provide himself with transportation to and from available employment, and such person is unable to provide such transportation for himself, even through no fault of his own, he is not available for work within the meaning of the Oklahoma Employment Security Act.

**Note:** Read case for discussion of burden of proof, judicial review, duty to furnish transportation, and taking notice of the needs of claimant.

*Pregnancy*

*Case Applications*

*83 BRD 15727 (Illinois)*

**Facts:** Claimant was no longer able to physically perform her regular job duties in a factory because of her pregnancy. She was placed on medical leave, whereupon she began searching for office work.

**Held:** Given the medical restriction on the claimant's ability to perform factory work, the work search was reasonable. She was able to work, available to work, and actively seeking work during the period under review.

**Result:** Benefits allowed.

## *Medical/Health Restrictions*

### *Case Applications*

#### *81-BR UCFE 1558*

**Facts:** Claimant had a serious health problem, which was not job-related. He was under the care of several doctors, which affected his work attendance. The claimant was given several opportunities to present statements from his doctors to establish whether he was able to return to work in his occupational classification. He did not submit any doctors' forms.

**Held:** There was no medical evidence that claimant was physically able to work.

**Result:** Benefits denied.

#### *03-AT-10393-BR*

**Facts:** The claimant had shoulder surgery. When she was released to return to work, she had a ten-pound lifting restriction. Part of her duties before surgery was to unload trucks and do stocking. The claimant was unable to return to that position with the ten-pound weight restriction, so she was transferred to a cashier's position. After working in that position for two months, she developed shoulder problems because she was required to lift some items over ten pounds as part of that job. There were no other positions available, so the claimant quit. She still has a ten-pound weight restriction. She is seeking work as a cashier or a hostess. The claimant was denied and the Appeal Tribunal affirmed the Commission.

**Held:** The claimant could perform the duties of a cashier or hostess at a gas station, restaurant or other places that don't require lifting items over ten pounds. She is able and available for work.

**Result:** Reversed and benefits allowed.

*Work-related Injury*

*Case Applications*

*90 AT 5532-BR*

Facts: Claimant was a paramedic. She injured a wrist and was off work for a short time. She returned, then, took off to have surgery on her wrist. She returned to work but was laid off. She began drawing unemployment benefits but then had to have additional surgery on the wrist, which required it to be in a cast for ten weeks. Claimant worked as a “street” paramedic, but continued to search for related work without lifting. The Commission required claimant to get a doctor’s statement. The doctor said the claimant was not able to perform her usual duties.

Held: The claimant could perform other jobs such as a dispatcher, chauffeur, etc., that do not require heavy lifting.

Result: Benefits allowed.

AVAILABLE TO ACCEPT EMPLOYMENT

*Approved Training*

*Case Applications*

*76 AT UCX 250; 1189 BR 77*

Facts: Claimant filed for benefits after being discharged from the military. He moved to Tennessee and began going to school. The Commission held he was not eligible for benefits because he was attending school full-time and was therefore not available for work. The Appeal Tribunal affirmed and denied benefits.

Held: The school to which claimant was going was approved training in Tennessee, and further, the claimant was under the impression that vo-tech training was approved training. While not all, vocational training is approved training, in this instance the vo-tech training was approved.

Result: Benefits allowed.

*Cross-reference: Section 2-108 re Relief from Search for Work, Section VI.*

## AVAILABILITY

### *Child Care*

#### *Case Applications*

*702 BR 75*

**Facts:** Claimant listed several prospective employers in an effort to find employment within fifteen miles of her home. She had two boys, ten and thirteen, living at home and would not accept employment requiring her to be at work before 8 a.m., but could work anytime after that, including evenings.

**Held:** Claimant did not place unreasonable restrictions as to her location of employment, beginning wages or working hours.

**Result:** Benefits allowed.

## *Farming*

### *Case Applications*

*79 BR 13455*

**Facts:** Claimant was a sheet metal worker and was laid off due to lack of work and the employer's decision to cut down operating systems. The claimant filed for benefits. Claimant said he was hired full-time and family interests did not interfere with his desire to work full-time. He farmed on weekends only. He worked for his employer for seven years and was allowed to take off ten days each summer for wheat harvest.

**Held:** Claimant's part-time farming activities did not make him self-employed. Claimant was available for work.

**Result:** Benefits allowed.

Cross-reference: Section 1-217, Unemployed.

III-30-(B)

*Restrictions, Miscellaneous*

*Case Applications*

*92-AT 04724*

Facts: Claimant was laid off for lack of work from his part-time job. When he applied for benefits he placed a monetary limitation on his availability for full-time employment. He was found ineligible for benefits. He appealed. He stated he was receiving disability and must not earn in excess of \$500 or his disability would be affected.

Held: Claimant worked part-time for many years within the limits of his disability. Benefits cannot be denied because he is disabled and desirous of maintaining a cap on salary to remain within the salary limit set forth by the Social Security Administration.

Result: Benefits allowed.

*1046 AT 60; 118 BR 60*

Facts: Claimant had been asked by an employer to work full-time. She stated she was unable to work full-time due to an eye condition. Claimant made no contacts or applications for employment.

Held: Claimant was unavailable or unable to work.

Result: Benefits denied for as long as the condition exists.

*Students*

Case Applications

*89 AT 9533 BR*

Facts: Claimant enrolled in slot machine school Monday through Friday from 7:30 a.m. to 12:30 p.m. He was actively seeking employment and stated he could change his school hours to 5:30 to 10:30 p.m., if employment was found. The commission denied benefits, because he was attending school during working hours. The Appeal Tribunal held that since the school allowed the claimant to change to evening hours, if necessary, claimant was not restricting himself. Benefits were allowed. The Commission appealed to the Board of Review.

Held: The Board of Review affirmed.

Result: Benefits allowed.

*89 AT 960*

Facts: The claimant applied for benefits after she was laid off due to lack of work. She had been taking classes during the day. The commission denied benefits because the claimant was attending classes during the workday. Claimant appealed. Claimant stated that she was looking for a job at any hour, and if it interfered with her classes she would take evening classes. The Appeal Tribunal denied benefits.

Held: Any student who was involuntarily unemployed and who offered to quit school, adjust class hours or switch shifts to secure employment is entitled to benefits. Remanded to the Appeal Tribunal. The Appeal Tribunal found claimant's school attendance did not stop her from seeking work, but again denied benefits because the claimant was attending class during the day. The Board of Review reversed stating that benefits cannot be denied if the student is willing to change their classes for work.

Result: Benefits allowed.

*89 AT 112 BR*

Facts: The Commission denied benefits to claimant because he was enrolled in two three-hour classes each week, one of which began at 4:30 p.m. Claimant appealed stating that he could rely on others' notes for the first thirty minutes of that class. The classes were toward a master's degree which was career-related. The Appeal Tribunal reversed to allow benefits. Thirty minutes was not a barrier to finding work.

Held: The Board of Review affirmed the Appeal Tribunal.

Result: Benefits allowed.

98-AT-8007-BR

History: The claimant appealed the Commission's Determination finding the claimant unavailable for work and denying benefits under Section 2-205A. The Appeal Tribunal reversed and allowed.

Facts: The claimant was employed for five years when he voluntarily quit to enter Officer Candidate School. He attends school during hours he would normally be working. He testified he would be willing to quit school to accept a full-time job.

Held: Reversed. The Board of Review did not believe the claimant's assertion he would quit school to obtain work, because he quit full-time work to go to school. He could have kept his job.

Result: Benefits denied.

00-AT-3566-BR

Facts: The claimant completed a Statement/School Attendance form at the local office stating he would not be willing to withdraw from or rearrange his classes to accept full-time employment. He had worked temporary and part-time jobs. He has been registered with a temporary staffing agency for temporary jobs during that review year. He has worked as an assembly worker and currently works as a part-time security guard from 11 p.m. to 7 a.m. He stated he is willing to work from 5 p.m. to 1:30 a.m. on weekdays and at any time on weekends. He was not working when he filed for benefits. He has been able and available during hours he is not attending school and has accepted some part-time jobs. The Appeal Tribunal disqualified the claimant for the time period in which the claimant said he was not willing to change his school schedule.

Held: Claimant's work restrictions did not and do not prevent him from accepting full-time employment in field for which he had experience.

Result: Reversed and benefits allowed.

01-AT-6427-BR

**History:** In June the claimant appealed the Commission's Determination finding the claimant was enrolled in school activities and disqualified for benefits under Section 2-205A. The Appeal Tribunal affirmed.

**Facts:** The claimant is enrolled in school for the fall semester, which begins in mid August. She is willing to accept work, but if hired, would quit when school begins. She is enrolled in classes from 9 a.m. to 5 p.m. on Monday, Wednesday, and Friday, and from 8 a.m. to 5 p.m. on Tuesday and Thursday. She is not willing to change school hours to accept full-time employment. The Appeal Tribunal held that although the claimant is not presently attending classes, she would quit work to attend school and is not, therefore, available for work.

**Held:** Reversed. The claimant was available for work at the time she filed her claim and will continue to be available until she begins classes. At that time, if the claimant has not obtained employment or if she had obtained employment and resigns to attend school, then a new determination should be issued. Future unavailability will not disqualify an individual, if at the time of the claim the individual is available for work.

**Result:** Benefits allowed.

01-AT-6956-BR

**History:** In July, the claimant appealed the Commission's Determination finding the claimant was enrolled in school activities and was disqualified for benefits under Section 2-205A. The Appeal Tribunal reversed and allowed.

**Facts:** The claimant is not presently in school, but will attend school beginning the end of August. The claimant is found to be currently available for work.

**Held:** When the claimant filed his claim for benefits, he was available for full-time work. The fact that he is enrolled in college has no effect on his availability for employment at this time. If or when he begins attending college, the Commission may issue a new determination. Benefits may not be denied for current weeks based on speculation about events, which may or may not occur in the future. Affirmed.

**Result:** Benefits allowed.

ABLE AND AVAILABLE

*Temporary Job Does Not Prohibit Availability*

97-AT-06218

Facts: The claimant received a full release from her physician and immediately informed the Commission she was available for full-time employment. She also told the Commission she had a part-time job on Saturdays. The claimant had training and experience as a health care worker and was available for two of three shifts generally available in that filed. The claimant said she was willing to quit her part-time job to obtain full-time employment.

Held: The claimant was able and available to seek and accept work immediately. Part-time temporary work does not prevent the claimant from being able and available.

Result: Claimant allowed.

## *Transportation*

### *Case Law*

#### *Copeland v. OESC, 172 P2d 420 (Okla 1946)*

Facts: Claimant was disallowed benefits after he refused a job and later a referral which were too far from his home. He did not own nor had he ever driven a car. This made him unable to accept work outside his town.

Held: When an individual is unable to provide transportation to work even through no fault of his own, he is not available for work and not eligible for benefits.

Result: Benefits denied.

#### 171 BR 76

Facts: Claimant's truck broke down for one week and she was unable to search for work.

Held: Claimant was not available for work that week and not eligible for benefits.

Result: Benefits denied.

Cross-reference: See Refusal of Referral.

## *Wages*

### *Case Applications*

*3817 AT 75; 552 BR 75*

**Facts:** When claimant filed for benefits and registered for work, she said she would not consider less than \$600 per month since she had a child to support. She had seven years experience in this line of work, but was earning \$550 per month in her last job. She said she would rather have part-time work since she was planning to go to school in September, but that she would accept full-time work until then. The Commission denied because the claimant was not available to work because of the wage restriction. The Appeal Tribunal affirmed. Claimant informed the Board of Review that she would accept \$600 per month. Claimant did not appear at the hearing.

**Held:** There is no evidence that claimant made a sincere and reasonable effort to find full-time work during her five month unemployed period. Claimant chose not to appear to substantiate her contentions that she has been in the bona fide active labor market without any undue restrictions as to salary or working hours.

**Result:** Benefits denied until the claimant could prove she has returned to the active labor market.

## SECTION IV - VOLUNTARILY LEAVING EMPLOYMENT

IV-1,2      [Definition of Voluntary Quit/Burden of Proof](#)

IV-3      [Precedential Case Law](#)

3      [Aero Design & Engineering](#)

4      [Blankenship](#)

5      [R & R Engineering](#)

6      [Glen](#)

7      [Standridge](#)

8      [Uniroyal](#)

9      [OESC v. Bd of Rev](#)

10      [Pruitt](#)

12      [Wright v. Edwards](#)

14      [City of Boerne v. Flores](#)

## VOLUNTARY QUIT

The applicable provision of the Act governing disqualification for leaving work voluntarily without good cause connected to the work is as follows:

*Section 2-404. An individual shall be disqualified for benefits for leaving his last work voluntarily without good cause connected to the work, if so found by the Commission. Disqualification under this subsection shall continue for the full period of unemployment next ensuing after he has left his work voluntarily without good cause connected to the work and until such individual has become reemployed and has earned wages equal to or in excess of ten times his weekly benefit amount. Good cause shall include but not be limited to unfair treatment of the employee or the creating of unusually difficult working conditions by the employer.*

### *Definition*

Perhaps a more apt title for this section would be “involuntary quit”. This section is intended to apply to those persons who have been forced to quit their job through no fault of their own, either through affirmative actions by or condoned by the employer or through circumstances. In that sense the circumstances of the employment have given the employee very little choice but to quit and is therefore, involuntary. Qualification for benefits depends on the finding of “good cause”, which is essentially a finding that the employee had a just and reasonable cause to quit his job. However, to avoid confusion over the meaning of good cause, the Legislature set out the definition in the following section of the Act:

*Section 2-405. Good cause for voluntarily leaving work under Section 2-404 of this title may include, among other factors, the following: 1. A job working condition that had changed to such a degree it was so harmful, detrimental, or adverse to the individual’s health, safety, or morals, that leaving such work was justified; 2. If the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a layoff, has elected to be separated and the employer has consented thereto; 3. If the claimant was separated from employment with the employer because a physician diagnosed or treated a medically verifiable illness or medical condition of the claimant or the minor child of the claimant, and the physician found that it was medically*

*necessary for the claimant to stop working or change occupations; or 4. If the spouse of the claimant was transferred or obtained employment in another city or state, and the family is required to move to the location of that job that is outside of commuting distance from the prior employment of the claimant, and the claimant separates from employment in order to move to the new employment location of the spouse. As used in this paragraph, "commuting distance" means a radius of fifty (50) miles from the prior work location of the claimant.*

The circumstances leading to the employee's decision to quit must fall within this definition or they cannot be considered sufficient to qualify the individual for unemployment.

There are instances in which an employee may feel they need to quit to pursue educational or other opportunities or even other good and admirable reasons, but unless they fall within the above described definition they are considered to be a good personal reason but not good cause for determining unemployment benefits because the Legislature has expressly stated what they intended to fall with the definition.

#### *Burden of Proof*

As the employee or claimant is the person with the most knowledge of the reasons for quitting his job, the burden of proof falls on him to establish good cause for quitting the employment. The claimant must prove the existence of good cause by a preponderance of the evidence. Preponderance of the evidence has been defined to mean that after weighing all the evidence the examiner determines that it is "more likely that not" that good cause exists.

## VOLUNTARY QUIT

*Aero Design & Engineering Co. v. Bd. of Review, 356 P2d 344 (Okla. 1960)*

**History:** District Court of Oklahoma County sustained right of employees to benefits, employer appealed to Supreme Court; Supreme Court reversed and denied benefits.

**Facts:**

1. On November 29, 1955, a large number of the employees of Aero ceased work and left the plant in protest over the failure of the UAW union and Aero to negotiate a labor contract.
2. At the time Aero made it known that those employees desiring to continue work could do so.
3. A considerable number of employees who ceased work and went on strike made claim for unemployment benefits.

**Issue:** Is an individual who voluntarily ceases work due to a labor strike entitled to unemployment benefits.

**Holding:** The Court quoted their holding in the Mid Continent case, 141 P2d 69, "...an individual who ceases work by reason of a labor dispute or strike against his employer is ineligible for benefits under the Oklahoma Unemployment Compensation law of 1936, so long as he participates in such dispute and remains out of employment by reason thereof." Reversed and benefits denied.

**Note:** The case contains a discussion of the history and intent of the Act

**CROSS-REF:** LABOR DISPUTE.

## VOLUNTARY QUIT

*Blankenship v. Bd. of Review, et al., 486 P2d 718 (Okla. 1971)*

**History:** Board of Review found that claimants were not entitled to unemployment benefits because they were unemployed through their own fault; claimants appealed; District Court of Okmulgee County affirmed findings and conclusions of the Board of Review; claimants appealed to the Supreme Court; Supreme Court affirmed.

**Facts:**

1. Blankenship and others sought unemployment benefits under the OESC Act.
2. The claimants voluntarily ceased work because of a labor dispute at employer's; they voluntarily remained out of work.

**Issue:** Did the claimants voluntarily or involuntarily cease work due to a labor dispute.

**Holding:** The burden was on the claimants to establish that their failure to return to work was involuntary. Claimants failed to discharged their burden of establishing that their failure to cross the picket lines and return to their work was involuntary, or through no fault of their own.

**Court's Analysis:** The Court stated that it is not necessary for a non-striking employee to experience actual violence or bodily harm in attempting to cross a picket line for his refusal to be involuntary. If employee has a genuine fear that there is a reasonable probability of violence or bodily harm, his refusal to cross a picket line will be deemed involuntary. If an employee refuses to cross a picket line because of his conscience and his desire to abide by union policies, his refusal will be deemed to be involuntary; they will be deemed to have participated in the labor dispute.

**Dicta:** Claimant's argument that there would have been no work available had they returned to work was described by the Court as a conclusion, and was not considered in the Court's holding, since claimants did not attempt to return to work to ascertain what work was available.

CROSS-REF: LABOR DISPUTE

## VOLUNTARY QUIT

*R & R Engineering Co. v. OESC, Bd of Review and Gilbert V. Farris, 737 P2d 118 (Okla. 1987)*

History: Board of Review allowed benefits; employer appealed to District Court; District Court of Rogers County affirmed; employer appealed to Supreme Court.

Facts:

1. Farris voluntarily resigned after being informed that he would receive a 16 2/3% reduction in pay due to poor economic conditions.
2. All of the employees of R & R received cuts in pay. Farris was the only one who resigned as a result of the pay reductions.
3. Other employees had larger reductions in their pay.

Issue: What is the correct standard of review for administrative decision.

Holding: Commission's findings that employee had resigned for "good cause" and thus would not be disqualified for benefits would be presumed correct, and not disturbed on appeal, whether based on determination that reduction in pay was substantial or on other factors involved.

Note: Court discusses "other factors". ALSO SEE, 75 ALR3d 449, 470, for a review of "substantial" pay reduction.

CROSS-REF: CHANGE IN CONDITION

## VOLUNTARY QUIT

*Glen v. OESC, 782 P2d 150 (Okla. App. 1989)*

**History:** Board of Review held that OESC employee had not quit for “good cause”, employee appealed; District Court of Ottawa County reversed; OESC appealed to Supreme Court; court of appeals Division No. 2 affirmed the District Court decision to reverse the denial of unemployment benefits.

**Facts:**

1. Glen served as a Manager I with the OESC. She had worked there approximately sixteen years and had served as assistant manager. Her responsibilities included supervision of other employees including Ronald Radford.
2. Glen and Radford both applied for the open position of Manager III. Glen had received high evaluations on job performance and had a master’s degree plus thirty hours toward an advanced degree; Radford’s inadequate job performance had been discussed with him by Glen, as his supervisor, and Radford had only two years of college.
3. Despite these differences in qualifications, Radford was hired as Manager III. Glen was placed in the position of being supervised by a person she had previously supervised. Further, she learned that Radford’s previous position would not be filled so her work load would be substantially greater.
4. Subsequently, Glen experienced severe health problems, diagnosed by her treating physician and psychiatrist as “severe reactive depression “, directly related to not being promoted at her place of employment when qualified to do the work. Both doctors advised her to quit her job.
5. Glen attempted to return to work, but she found the job conditions untenable and tendered her resignation.

**Issue:** Is it necessary to file a grievance in order to qualify for benefits; and, or health reasons related to employment “good cause” for quitting.

**Holding:** The Court held that employee was not required to file a grievance with employer as a prerequisite to establishing “good cause” for quitting and the evidence established that employee’s health problems were related to employer’s decision to promote less qualified male employee, and thus female employee quit for “good cause”.

**Note:** There is an interesting discussion of findings of fact and conclusions of law.

CROSS-REF: ILLNESS OR INJURY

## VOLUNTARY QUIT

*Standridge v. Bd. of Review, 788 P2d 969 (Okla. App. 1990)*

**History:** Board of Review denied claim; claimant appealed; District Court of Latimer County affirmed; claimant appealed to the Supreme Court. Court of Appeals, Div. No. 2, reversed and remanded and ordered the case be released for publication.

**Facts:**

1. Claimant resigned due to allergies caused by the lint and dyes at the workplace.
2. Claimant's doctor affirmed her allergies developed while working for employer. The doctor also stated her condition was due to the work environment; the doctor advised claimant to seek other employment.
3. Claimant requested she be "laid off" and employer denied this request.

**Issue:** Is a verified health condition "good cause" for voluntarily leaving employment.

**Holding:** The Court held that the determination that employee with allergies left work voluntarily and without good cause, was not supported by the evidence, and Commission improperly required that claimant must have requested leave of absence prior to quitting in order to find that she left work with good cause.

**Note:** The Court chastises the Commission for basing their determination on unpublished procedure. Also, note the following statement of the Court in this case, "The statutes do not even hint at subjecting certain persons to a special standard for unemployment compensation merely because they are disabled because of illness. In fact, the stated policy of Oklahoma's Employment Security Act is to benefit all persons unemployed through no fault of their own".

CROSS-REF: ILLNESS OR INJURY

## VOLUNTARY QUIT

*Uniroyal v. OESC, 913 P2d 1377 (Okla. App. 1996)*

**History:** Employer appealed Board of Review decision allowing benefits; District Court of Love County affirmed decision; employer appealed to the Supreme Court.

**Facts:**

1. Claimant worked for employer for over twenty-two years.
2. Employer announced an intent to reduce its company-wide workforce either by the offer of early retirement benefits or unspecified “other means”.
3. In the event an employee elected not to accept the early retirement offer, the offer would be withdrawn, although an employee would remain eligible for ordinary retirement benefits with higher insurance premiums.
4. Claimant accepted the early retirement offer and then applied for unemployment benefits.

**Issue:** Was a claimant who accepted enhanced early retirement benefits precluded from receiving unemployment benefits.

**Holding:** Claimant was not entitled to benefits upon his acceptance of employer’s offer of enhanced early retirement benefits.

**CAVEAT:** Read carefully. The Court distinguishes an actual reduction in force.

## VOLUNTARY QUIT

*OESC v. Bd. of Rev. for OESC, 914 P2d 1083 (Okla. App. 1996)*

**History:** Board of Review decided that federal employee who retired under voluntary incentive program to downsize federal workforce was not eligible for unemployment benefits; claimant appealed; District Court, Oklahoma County, affirmed; claimant appealed; court of Appeals, Div. No. 4, affirmed, and ordered the case released for publication.

**Facts:**

1. Claimant retired under voluntary incentive program to downsize federal workforce.
2. Claimant accepted severance bonus. Claimant had no reason to believe she would be terminated if and/or when the employer was forced to have a reduction in force.

**Issue:** If a federal employee retires under a voluntary incentive program to downsize the work force, are they disqualified from receiving unemployment compensation for leaving employment voluntarily without good cause connected to the work.

**Holding:** The findings and conclusions by the Board of Review in the instant case are supported by the evidence, and there was no error of law in the Board's determination that employee was disqualified for unemployment compensation under 40 O.S. 1991 Section 2-404 for leaving employment voluntarily, without good cause connected to the work, having accepted employer's separation bonus, rather than the opportunity of continued employment.

**Note:** The Court viewed the job separation as a bona fide choice offered to claimant that could prove as beneficial as continuing in employment. The Court stated that the situation was in no sense a parachute, or narrow escape, from loss of employment. *Department of the Navy v. Unemployment Compensation Board of Review, 168 Pa. Commw. 356, 650 A2d 1138 (1994).*

## VOLUNTARY QUIT

*Pruitt v. State ex rel. OESC, Bd. of Rev., 918 P2d 80 (Okla. App. 1996)*

- History:
1. The District Court, Adair County, directed the board of Review to conduct proceedings to determine whether one of the witnesses for employer had told the truth concerning the reasons given by claimant for quitting.
  2. In the course of the remand proceedings, the board considered, among others, further testimony from the witness and a written statement which claimant testified the witness had signed in her presence.
  3. This statement was in affidavit form, but was not executed by a notary or other authorized to administer oaths.
  4. Both the witness' testimony and "affidavit" disclosed the witness had been told by the claimant she intended to quit if not paid commissions.
  5. The witness explained she omitted this from her earlier testimony, because the employer told her "not to expand" on her answers.
  6. The District Court affirmed the Board of Review's award, after first granting, and then vacating, claimant's post-award dismissal of the District Court proceeding.
- Issue:
1. Was the "affidavit" sufficient to support either the remand or the reversal of the denial.
  2. After claimant's dismissal did the District Court have jurisdiction to do anything but affirm the initial denial.
  3. Claimant did not prove she was entitled to any commissions when she quit; was such omission fatal to her, failure to pay commissions, "good cause" argument.

Holding:

1. When presented with the “Affidavit”, The District Court properly remanded the case to the Board of Review to consider “additional evidence”. Note: The Court of Appeals stated, “...in determining the evidentiary weight or value to be accorded the affidavit, the Board of Review was not bound by common law or statutory rules of evidence or by technical rules of procedure. 40 O.S. 1991, Section 2-607. Given the testimony of claimant that she saw the witness sign the “affidavit”, it was admissible at the very least to impeach any testimony of the witness that was inconsistent with its contents, in view of the opportunity the witness had to explain her knowledge of it, and to deny its contents and execution. See, 12 O.S. 1991, Section 2613.
2. Judicial review of a decision of the Board of Review is a “special proceeding”, not a civil action. *Edmondson v. Siegfried ins. Agency, inc.*, 577 P2d 72 (Okla. 1978). General provisions of civil procedure do not apply to the special proceeding for District Court review of decisions by the Board of Review. *District court for the Seventeenth Judicial District v. Bd. of Rev.*, 849 P2d 1102, 1103 (Okla. Ct. App. 1993). Accordingly, claimant’s mistaken unilateral attempt to terminate the District Court review pursuant to Section 684 did not deprive the Court of the continuing jurisdiction contemplated by Section 2-610(1) and (3) for further review of the decision and proceedings on remand upon their filing with the Court. Subsection (3) clearly provides that the review process is not completed until the Court’s issuance of a mandate.
3. While failure to timely pay compensation due an employee is indeed “good cause” for an employee to quit and remain eligible for unemployment compensation, so are other material breaches of a compensation agreement, such as the failure of the employer to timely account to the employee concerning the status of variable earnings like commissions based on net operating income. It was undisputed that employer, under the written terms and conditions of employment, had not paid or settled commissions for a two month period at the time claimant quit. Whether employer offered a credible justification for the breach was a factual issue to be resolved by the Board of Review.
4. The Court held that the Board of Review resolved the factual issue in favor of claimant and their conclusion was supported by the evidence. The employer’s breach of the compensation agreement in this regard was “good cause” for claimant to quit her employment and remain eligible for unemployment compensation under 40 O.S. 1991, Section 2-404.

Note:

Note that 40 O.S. 2-607 has been amended. (Rules and procedures in appeals.) Also, see the Rules on evidence submitted to the Board, Rule 40:15-3-3.

## VOLUNTARY QUIT

*Wright v. Edwards v. OESC, 934 P2d 1088 (Okla 1997)*

**History:** Board of Review affirmed award of benefits; employer appealed; District Court, McClain County, reversed; Court of Civil Appeals dismissed appeal finding that Commission lacked standing; Commission sought review, i.e., petition for certiorari, by the Supreme Court; Supreme Court granted cert and held the Commission had standing to appeal District Court decision, even though neither employee nor employer appealed such decision, and claimant left work voluntarily and was precluded from receiving benefits.

**Facts:**

1. Claimant worked for employer approximately three months.
2. She was hired on a temporary basis to replace an employee who was going on maternity leave.
3. It was understood at the time of hire the claimant would be allowed to prepare resumes and to interview for other jobs during the work day. It was further understood the claimant's job would end when the employee on maternity leave returned to work.
4. Said employee returned to work; the employer had no further work available for claimant.
5. The claimant was hired only as a temporary fill-in for a regular employee on leave, and her intention was to seek work elsewhere.

**Issues:**

1. Whether the OESC has standing to appeal from a decision of the District Court sitting in review of a decision by the Board of Review;
2. Whether a secretary hired to fill in during the three month pregnancy leave of another secretary is entitled to unemployment benefits when the regular secretary returns to work as scheduled.

- Holding:
1. Under the provisions of 40 O.S. 1991, Sections 2-610 and 2-611, the Commission had standing to bring the appeal in the case.
  2. The District Court found that the findings of fact of the Board of Review were not supported by the evidence. The district judge found that the evidence clearly showed that the employee intended to voluntarily separate and terminate her service. The District Court found that the decision of the Board of Review was erroneous as a matter of law in the application of 40 O.S. Section 2-404 and the misapplication of 40 O.S. Section 2-406. The Supreme Court agreed.

## VOLUNTARY QUIT

*City of Boerne v. Flores et al*, 521 US 507, 117 SCT 2157 (1997).

- History:** Petitioner filed suit in United States District Court for Western District of Texas, which entered judgment for the Respondent. Petitioner appealed to Fifth Circuit Court of Appeals, which reversed the decision of the District Court. The Respondent sought a writ of certiorari with the United States Supreme Court, which reversed and found in favor of the Respondent.
- Facts:** Local zoning authorities denied the Catholic Archbishop a building permit to enlarge a church under an ordinance governing historic preservation. The archbishop filed suit challenging the ordinance under the Religious Freedom Restoration Act of 1993 (RFRA). The United States District Court found that Congress had exceeded the scope of its enforcement power under Sec. 5 of the 14<sup>th</sup> Amendment in enacting the RFRA. The Court of Appeals reversed finding the RFRA to be constitutional. The Supreme Court held that the RFRA was unconstitutional and exceeded Congress' Section 5 enforcement powers.
- Issues:** Does legislation, which deters or remedies a constitutional fall within the sweep of Congress' enforcement power under the 14<sup>th</sup> Amendment even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into the legislative spheres of autonomy previously reserved to the states?
- Holding:** The RFRA exceeds Congress' power under section 5 of the 14<sup>th</sup> Amendment to enforce provisions of the 14<sup>th</sup> Amendment; it contradicts the principles necessary to maintain the separation of powers and federal-state balance, addresses laws of general application that place incidental burdens on religion that are not based on animus or hostility and do not indicate any widespread pattern of religious discrimination, and is not designed to identify and counteract state laws likely to be unconstitutional; RFRA is also out of proportion to supposed remedial or preventative object, displaces laws and prohibits official actions in almost every level of government, and constitutes a considerable congressional intrusion into states' traditional prerogatives and general authority to regulate.

## SECTION IV - VOLUNTARILY LEAVING EMPLOYMENT

- IV-20      **Abandonment of Position**  
-1-3              Case Law and Commission Cases
- IV-30      **Change in Terms or Conditions of Work**  
(A)-1              Change in Company Policy  
(B)-1-2            Change in Work Assignment/Duties  
(C)-1-3            Demotion &/or Pay Reduction  
(D)-1-2            Employer Failed to Keep Promise  
(E)-1              Excessive Overtime  
(F)-1-3            Reduction/Change in Hours Worked  
(G)-1              Relocation of Employment  
(H)-1              Temporary Change in Work Assignment  
(I) -1              Transfer to Different Shift
- IV-40      **Constructive Quit**  
-1                  Case Law and Commission Cases
- IV-50      **Leaving Because of Disciplinary Action**  
-1-3              Case Law and Commission Cases
- IV-60      **Opposition to Drug Testing Policies**  
-1                  Case Law and Commission Cases
- IV-70      **Husband and Wife Teams**  
-1                  Case Law and Commission Cases
- IV-80      **Illness or Injury**  
(A)-1              Aggravation to Pre-existing Condition  
(B)-1-2            Inability to Perform Duties  
(C)-1              Medical Leave  
(D)-1              Non Work-Related Accident or Illness  
(E)-1              Required to Permanently Leave Work  
(F)-1-2            Stress Related to Job  
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- IV-90      **Incarceration**  
-1                  Case Law and Commission Cases

## **ABANDONMENT OF POSITION**

If an employee voluntarily leaves his position and does not return or does not return within a reasonable time, then he is considered to have abandoned the position. In order to qualify for unemployment benefits, the employee must establish good cause for abandoning the job. This is based on the premise that an employer cannot be expected to hold a position open for an indefinite period of time without a prior arranged agreement between the employer and employee or without any contact from the employee. To be required to do so would place an undue burden upon the employer and presumably upon the other employees who would have to do the work of the absent employee.

See also: Discharge for Excessive Absence.

## ABANDONMENT OF POSITION

### *Case Law*

*Marks v. Action Staff, Inc. et al., No. 68-649 (Okla. Ct. of App. 6-12-88)*

**Facts:** Claimant was hired by a temporary agency and assigned to a fertilizer plant. He performed poorly and the plant decided to release him. That day, however, claimant was injured on the job. He received worker's compensation for three months. When he was released to work he did not return for another assignment. He applied for unemployment insurance.

**Held:** Claimant should have known that the temporary agency was his employer. He received his checks from them and had worked for them previously. He voluntarily abandoned his employment with the agency without good cause.

**Result:** Benefits denied.

### *Case Applications*

*97 AT 06164 BR*

**Fact** Claimant was employed from October 1, 1996, to February 1, 1997. Claimant thought that the ownership of the company had changed but the district manager said it did not. Claimant was assigned a new district manager on December 27, 1996. Claimant was scheduled to report to Cushing, OK, on January 11, 1997 for training, but she called and said that she was ill. Claimant did not contact the employer from January 14, 1996 to January 18, 1996, and was only present at the workplace for twenty minutes on January 17, 1997. Claimant and the District Manager each allege they tried to contact the other, but were not successful. On February 1, 1997, the District manager concluded claimant was not returning and sent a message firing the claimant.

**Held:** Claimant did not report in or call regarding her absence. Claimant voluntarily abandoned her employment without good cause.

**Result:** Benefits denied.

## ABANDONMENT OF POSITION

### *91 AT 966 BR*

Facts: Claimant worked for the employer for eight months, then quit because he could make more money baling hay. When claimant was required to work out of town for this employer, he received no help from the employer with expenses.

Held Claimant quit for personal reasons, but not for good cause connected with the work.

Result: Benefits denied.

### *90 AT 6954 BR*

Facts: Claimant called the employer to advise that he would be absent for two to three days due to illness. He did not report until two weeks later. He had a release from the doctor, but was told that he was considered a voluntary termination because of being absent for three days without calling.

Held: It is unreasonable to expect an employer to hold a position open for two weeks with no contact from the employee. Claimant disregarded his duties to his employer.

Result: Benefits denied.

### *90 AT 5273 BR*

Facts: The employer cross-trained all workers. Claimant was asked to sandblast, which he had never done. Although there were personnel to train him, claimant refused to learn. The supervisor reported the claimant was told to leave the property but be back at 8 a.m. Claimant did not report. Claimant said he assumed he was fired when he was told to leave.

Held: Claimant's refusal to train amounted to insubordination, but his failure to show the following day is a voluntary quit without good cause.

Result: Benefits denied.

## ABANDONMENT OF POSITION

*88 AT 12314 BR*

Facts: Claimant was a correctional officer. He had not been a tower guard for three years and did not regularly come into close contact with inmates. A riot broke out and the claimant was told to enter the inmate dorm. Claimant stated he felt as if he was having a heart attack. He left the facility. Three days later he was examined and was fine. The warden contacted the claimant and advised that he would probably be fired. A few days later he voluntarily resigned.

Held: A corrections officer cannot abandon his job and be compensated for it. The working conditions were unsafe, but he knew that.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

When an employer hires an employee and the employee accepts employment from the employer, a contract has been made between the parties. Even if not expressly stated in written form, the terms agreed upon by the parties or assumed by the parties based upon the statements made at the time of hire become the terms of the contract and are binding unless altered by an agreement between the parties. As with written contracts an agreement to alter the original employment contract or "contract of hire" cannot be considered valid if made under coercion or duress, express or implied. Therefore, any substantial and material change in the contract of hire imposed by the employer which adversely affects the employee's health, safety, or morals, workload, wages and hours or other working conditions may be considered good cause for the employee to quit the employment. It shall be considered whether the changes are unconscionable or substantial or material. If duties are added that are contrary to the employee's morals, for example, the change would be unconscionable. If the employee's wages are reduced, but not substantially, then there is not good cause for the employee to quit. If the reduction in wage is across the board and applies to all employees then the standard to determine whether a pay cut is substantial has been determined to be whether it is more than 15%. (See *R & R Engineering Co.*) A pay cut for an individual may be good cause if less than 15% based upon the reasonable person standard. The reasonable person standard can be applied to determine whether a change violates health, safety, moral, or other working conditions.

Cross-reference: Wages; Union Relations

Note: Black's Law Dictionary defines reasonable as being "fair, proper, just, moderate, suitable under the circumstances." Reasonable care is defined as "that degree of care which a person of ordinary prudence would exercise in the same or similar circumstances."

## CHANGE IN TERMS/CONDITIONS OF WORK

### *Change in Company Policy*

#### *Case Applications*

##### *90 AT 6912 BR*

Facts: Claimant smoked. The employer was aware of this and allowed the claimant to smoke on the premises. In December the employer announced a new no smoking policy which would begin the first of the year. The claimant tried to convince the employer to have an indoor smoking area. Claimant resigned. The Commission denied benefits. The Appeal Tribunal reversed and allowed benefits.

Held: There is no evidence that claimant tried to comply with the new policy. Reversed.

Result: Benefits denied.

##### *90 AT 6867 BR*

Facts: Claimant worked for the employer for four years. The job was stressful and the workload was not evenly distributed. There were frequent changes in policy. Claimant's doctor advised that she quit but she could not. Claimant finally quit because she was no longer allowed to smoke.

Held: There is no medical evidence of stress-related problems except a doctor's appointment on one day. The non-smoking policy would not have had a serious impact on claimant's work results or abilities.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Change in Work Assignments/Duties*

#### *Case Applications*

##### *00 AT 2790 R BR*

Facts: Claimant was a machine operator. She quit when she was told she would be transferred to another machine on which she would make \$2 - \$3 less per hour. Claimant had filled in on the other machines but had been paid her weekly average on her regular machine. On the new machine she would be paid on an allowance basis. Claimant would be paid on the number of bundles per day. This machine paid 60 cents to \$1 a bundle. For six bundles (the daily average) claimant would earn \$4.80 per hour. With the temporary allowance supplement, claimant would receive \$5.74 per hour. Claimant quit.

Held: There was a substantial decrease in wages. Claimant had good cause to quit.

Result: Benefits allowed.

##### *00 AT 2498 BR*

Facts: Claimant was hired as a dispatcher/driver at a regular salary. His primary duties were as dispatcher. Claimant was told by the employer that the dispatcher job was being terminated and he was transferred to driving. Claimant had to call in for dispatch. He never did. When contacted, the claimant stated he could not drive due to an injury.

Held: There was a drastic change in claimant's employment, hours and salary. Claimant would not be on salary, but would be paid by the load. He would work over forty hours per week. Good cause found.

Result: Benefits allowed.

##### *96 AT 4077 BR*

Facts: Claimant worked as a trash truck driver for two and a half years. He resigned when another employee was given the job as driver. Claimant was told he had to ride in the back of the truck and pick up trash.

Held: There was a substantial change in claimant's contract of hire. The Board of Review reversed the decision of the Appeal Tribunal and found good cause.

Result: Benefits allowed.

## CHANGE IN TERMS OF CONDITIONS OF WORK

### *90 AT 2830 R*

Facts: On the day that claimant quit, he experienced car trouble on the way home for lunch. Since he lived in the country, he had no way to call his employer for several hours while he repaired his car. As he arrived home his phone was ringing. It was his employer who directed him to return to work. When he returned he was advised that he could no longer be trusted and that his pay would be cut. He was also moved to a different job. Claimant quit.

Held: Claimant was presented with changes in his salary and work duties as a disciplinary action. These changes made his job untenable. Good cause was established.

Result: Benefits allowed.

### *87 AT 1224 BR*

Facts: Claimant was hired as an inside salesman and worked in that position for three and a half years. He was transferred to the warehouse for one year and then to a position as a truck driver. He had never worked as a truck driver and felt that he did not have the proper training to safely accomplish his duties so he quit.

Held: There was a material change in the original hiring agreement. The duties of a salesman and a truck driver are not similar.

Result: Benefits allowed.

### *83 AT 217*

Facts: Claimant was employed as a receptionist and loan servicing clerk. When her job was eliminated, the employer offered her a position as a teller with only a slight modification of working hours. Claimant quit.

Held: There was not good cause to quit as the claimant's job was only slightly different.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Demotion &/or Pay Reduction*

#### *Case Law*

*RAC Foods, Inc. dba Jr. Food Mart v. Bd of Rev. et al, No. C-89-100 (D.Ct. Latimer Co.)*

Facts: Claimant worked twice for this employer, the first time for two years. Then she was off for six months. She then worked two more years. She quit because the employer informed her that her hours were being reduced as were her wages from \$4.25 per hour to \$3.85 per hour. She was demoted to a previous position. Claimant was told that the demotion was due to an inventory control problem. Claimant was given no other reason. When claimant received her paycheck, her hours and salary were cut. The employer says the demotion was for rumors of embezzlement from some other organization.

Held: The demotion was based on refuted hearsay. The wages were reduced by 9%, but her hours were reduced by 20%. Good cause was found.

Result: Benefits allowed. Note: This affirmed the decision in 89 AT 5902 BR.

*See also: R & R Engineering; Steward v. Blue Bell, 80 BR 1717 (The standard for pay cut was 16% cut in pay.); Jones v. St. Francis Hosp., 350-BR 76 (This involved a 15% cut in pay; also stated that employers have a right to downgrade in a time of need).*

#### *Case Applications*

*00 AT 1821 BR*

Facts: Claimant notified the employer of medical problems her brother and husband were having which required her to be off work. She was unable to tell her employer how long she would need to be gone. The claimant was gone one week, but was then ready to return to work. She was demoted from assistant manager trainee to cashier. She tried to contact the store manager who would not speak to her. The employer gave no reason for the demotion, nor did he give any reason as to why her request for a meeting was denied.

Held: Claimant showed good cause for quitting.

Result: Benefits allowed.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *99AT 5985 BR*

Facts: Claimant was a telephone salesperson. The project she was working on ended. She interviewed for two other projects and was chosen for one project making one dollar less per hour. Claimant refused because of the salary reduction and because the scheduling could not accommodate a two day part-time job.

Held: Claimant was faced with a permanent cut of 6% and a temporary cut of 15%. Good cause has been shown for quitting. The Appeal Tribunal reversed the Commission and the Board of Review affirmed.

Result: Benefits allowed.

### *96 AT 7710 BR*

Facts: Claimant was hired part-time as needed. The terms of her contract changed so she was earning substantially less than she earned on her regular contract. Claimant was not happy with the contract but continued to work, thereby accepting the new contract. She did not resign until four months later. Claimant resigned because she was going through a divorce and needed the extra income.

Held: Claimant resigned for personal reasons. There was no change in the contract that affected her health, safety, morals, hours, wages, or working conditions. The Appeal Tribunal was reversed by the Board of Review.

Result: Benefits denied.

### *96 AT 6863 BR*

Facts: Claimant was employed as a materials manager and was a supervisor. As a result of allegations made by a company employee, and outside investigator was hired. Drug and alcohol use was uncovered, as well as time falsification and property theft occurring over a period of time. The claimant supervised two of the employees that were fired because of the investigation. The employer felt that claimant failed in his supervisory duties and took his duties away. Claimant was to be demoted to planner. Claimant's salary was not affected. Claimant felt humiliated and resigned.

Held: There was not good cause for quitting. Claimant quit for personal reasons.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

*95 AT 7695 BR*

Facts: Claimant resigned when his supervisor decided to transfer him from customer service manager to a position as produce clerk because of complaints the store received concerning customer service and excessive refunds during claimant's shift. His pay was reduced from \$330.00 per week to \$5.00 per hour. The reduction in salary was over 15%.

Held: Claimant had good cause for quitting. The Board of Review reversed the decision of the Appeal Tribunal.

Result: Benefits allowed.

See also: *00 AT 2790 R BR*, Change in Terms/Conditions of Work; *95 AT 9685 BR*, Reduction/Change in Hours Worked; *82 at 9295*; *83BR 202*, Wages: Changes in Per Diem Allowance

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Employer Failed to Keep Promise*

#### *Case Applications*

##### *89 AT 9512 BR*

Facts: Claimant was under the impression that when he moved from a temporary to full-time he would be eligible for full-time benefits. The employer said that he thought claimant was remaining in the position only until he found something better. When claimant learned that he was not in full-time status he resigned. The employer claimed that claimant was being considered for a full-time position when he quit.

Held: The Commission and Appeal Tribunal denied benefits. The Board of Review reversed and allowed finding that when claimant's position changed to full-time, he was entitled to benefits he never received. There was a change in the claimant's hiring contract.

Result: Benefits allowed.

##### *86 AT 13456 BR*

Facts: Claimant accepted a position with a bank and was told she would be trained for the position. She was given customers to help and did not know what to do, so she talked to the person that hired her. After two weeks she resigned. The Commission denied benefits.

Held: The employer promised to train claimant. This did not happen. When claimant could not provide services to a customer and sent the customer away, the employer became angry. She talked to the employer on several occasions but was ignored. Claimant left her employment for good cause.

Result: Benefits allowed.

## CHANGE IN TERMS OR CONDITIONS OF WORK

*1260 BR 77*

Facts: Claimant was employed as a broker and later promoted to sales manager. The business came under new ownership and the new employer asked the claimant to stay on as broker because no position was available as sales manager. Claimant was promised that he would be promoted as soon as possible. After several months, claimant was told to raise production or he would be fired. Claimant then heard that someone else had been promoted to sales manager. Claimant resigned.

Held: Claimant's testimony was unrefuted by the employer. The fact that someone else was promoted to the position claimant was promised is a change in claimant's hiring agreement. Claimant had good cause to resign.

Result: Benefits allowed

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Excessive Overtime*

#### *Case Applications*

*80 BR 666*

**Facts:** Claimant was a truck driver hired to work forty hours per week with some overtime, but nothing excessive. During the six weeks he worked he put in eighteen hours a day. In a two week period he worked 186 hours. Claimant asked his supervisor to cut his hours reminding him of what was said when he was hired. The employer refused to cut his hours. Claimant quit after giving two weeks notice.

**Held:** The amount of overtime was excessive and created a danger to the motoring public. Claimant left with good cause.

**Result:** Benefits allowed.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Reduction/Change in Hours Worked*

#### *Case Applications*

##### *01-AT-0775 BR*

Facts: Claimant worked from 11 a.m. to 7 p.m., five days per week. On August 30, 2000, the employer changed claimant's schedule to 7 p.m. to 7 a.m., three days on and three days off. The schedule did not show adequate staffing per state law. Claimant was told the change was for a two-week trial period. Claimant quit.

Held: The Appeal Tribunal found that the employer used twelve-hour shifts only from September 1, 2000, to September 10, 2000. The employer supplemented staffing with temporary or substitute workers. Claimant did not show why she could not work the scheduled hours on a temporary basis, but she assumed the change was permanent. The Appeal Tribunal held that the claimant did not take steps to protect her job by discussing it with the employer, and that the temporary change in hours for business purposes did not render the job untenable. Good cause was not found. The Board of Review reversed holding that the claimant was given no choice. Whether temporary or permanent, the schedule change was a major change in the terms of employment. Good cause found.

Result: Benefits allowed.

##### *00 AT 3057 BR*

Facts: Claimant worked for the employer for three months part-time (15 hours/week). She voluntarily left when she was told she would be required to work the scheduled hours whether day or night. Claimant was hired to work between 5 p.m. and 8 a.m. weekdays and any hours on the weekend so she could have her days free to seek full-time employment. Every time she was scheduled for the day, she told the manager again. The last week she was scheduled on a day that she had interviews. She called the manager and told him. He let her off. The next work day, she was harassed for taking off. She had a meeting with her supervisor the next day and was told that she would have to work the scheduled hours or be not employed. Claimant did not return.

Held: Good cause.

Result: Benefits allowed.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *96 AT 8963 BR*

Facts: Claimant worked part time for the employer at the same time he was working a full-time job elsewhere. He left the full-time job and began working full-time for the part-time employer. He only worked three days, then resigned because he was required to work sixteen-hour days. Claimant received a salary and commission. Claimant's supervisor told him that it would get better.

Held: Claimant had worked for this employer for one and a half years. He knew of the need for long hours. No good cause shown.

Result: Benefits denied.

### *96 AT 3355 BR*

Facts: The employer had a flextime policy. Claimant was working 8:30 to 5:30 so she could tend to her grandchildren. The employer changed the policy and was requiring the claimant to report to work at 8:00 a.m. Claimant would have had to have her grandchildren be at home alone to wait at the school bus stop in the cold. Claimant quit.

Held: The change in the hours was a material change in claimant's employment contract. Good cause shown.

Result: Benefits allowed.

### *96 AT 1914 BR*

Facts: The claimant signed a contract that did not state the number of hours she would work. In the past the claimant was allowed two weeks vacation, worked 35 hours per week and allowed to take off days when class was not in session. The new superintendent changed his hours to forty, plus no more days off. The claimant was allowed to keep his two weeks vacation as well as the retirement pay claimant was receiving. However, instead of the retirement money going to the fund, the money was added to her salary so that she could put it in a fund herself.

Held: Not good cause.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

*95 AT 9685 BR*

Facts: Claimant worked as a custodian eight hours per day and as a bus driver for one and a half hours per day five days a week. Claimant received seven and a half hours of overtime per week. Because of a cut in funding, the administration recommended that claimant not be allowed overtime hours. Claimant would then work six hours as a custodian and two hours as a bus driver. Claimant believed this reduced his pay 18%. Claimant's summer hours of eight hours per day would not change.

Held: Claimant's cut in pay was only 12.66% at most. He quit without good cause.

Result: Benefits denied.

See also: 97 AT 5692 BR, Resignation to seek/accept other work.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Relocation of Employment*

#### *Case Applications*

##### *84 BR 8447*

Facts: Claimant was laid off due to a lack of work. He received benefits. All base period employers were notified of the charging of benefits wages after the second benefit check was paid. The employer protested stating that the employee was eligible for rehire. Work was available, but the commute was 80 to 90 miles. Claimant refused the rehire.

Held: Distance is good cause for refusing employment.

Result: Benefits allowed.

##### *84 BR 1661*

Facts: As a disciplinary action claimant was demoted and transferred from Oklahoma City to Muskogee. She was required to pay her own moving expense. She advised the employer she could not financially afford the move and did not report to work.

Held: An employee is not required to relocate to another area to maintain employment. Good cause.

Result: Benefits allowed.

##### *84 BR 1552*

Facts: The claimant worked as a janitor in a state office building. She was informed that her position was being abolished and she was offered a job in another state building in the same city. Claimant declined.

Held: Claimant did not have good cause to refuse the position since the wages, hours and other conditions were the same as the previous job. Not good cause.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Temporary Change in Work Assignment*

#### *Case Applications*

*587 BR 76*

**Facts:** Claimant worked as a hand presser, but later moved to sewing machine operator. She was unable to keep up on a particular sewing contract so she was moved back to pressing. She was to return to sewing machine operator after the contract was finished. Claimant quit because she thought she would be permanently assigned to presser.

**Held:** The employees were to work as assigned. The job was a reasonable temporary assignment. Claimant did not establish a material change in the hiring agreement. No good cause.

**Result:** Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Transfer to Different Shift*

#### *Case Applications*

##### *97 AT 00774 BR*

Facts: Claimant worked for the employer for three years. She quit when the employer decided to require her to transfer from 7 a.m. to 1 p.m. to a 1 p.m. to 7 p.m. shift. The employer testified that claimant told her she could work the night shift if necessary. Claimant stated that changing shifts messed up her blood sugar.

Held: Claimant presented no evidence that her doctor said she could not work the evening shift.

Not good cause.

Result: Benefits denied.

##### *95 AT 7825 BR*

Facts: Claimant worked as an office manager trainee from 7 a.m. to 3 p.m. She was given a leave of absence for nearly two months to recover from the loss of her mother. At the time she took the leave she knew she could not return to the same position. During her leave, the employer called claimant to see if she was going to return and to offer her a new position. One position was the night assistant manager from 3 p.m. to 10 p.m. and paid \$6.00 per hour. The other position was as a front-end manager, receiving clerk, and stock clerk at \$5.50 per hour. Claimant turned down the jobs and resigned. Claimant had signed an agreement that her hours were to remain flexible.

Held: Claimant was offered a position at the same salary but a different shift. She had signed an agreement to be flexible. Not good cause.

Result: Benefits denied.

## **CONSTRUCTIVE QUIT**

When an employee solicits termination from his employer it is considered to be a constructive quit, because the employee is the moving force behind the separation. The issue of whether good cause exists still has to be considered to determine eligibility for benefits.

## CONSTRUCTIVE QUIT

### *Case Applications*

#### *90 AT 7685 BR*

Facts: Claimant was instructed to complete daily time sheets. He completed them weekly. The employer received two time sheets for the same week and when claimant was questioned, he could not explain how it happened. Claimant was told if it happened again, he would be fired. Claimant told the employer to go ahead and fire him. Claimant was dismissed.

Held: When an employee solicits termination and challenges the employer to discharge him, the conduct is a constructive quit, which equals disqualification.

Result: Benefits denied.

#### *80 BR 1289*

Facts: Claimant was being counseled by his foreman in regards to unsafe work practices. Claimant asked to be fired and the employer did so.

Held: Claimant forced his own termination.

Result: Benefits denied.

## **LEAVING BECAUSE OF DISCIPLINARY ACTION**

It is not generally considered good cause if an employee leaves to avoid receiving a reprimand or warning, nor if he leaves because of it. An employer has the right to reasonably reprimand, discipline or counsel employees. The Board of Review has established that the discipline should reasonably reflect the severity of the offense. The employee may feel that the discipline was unjustified, but unless the employee can show that the reason for leaving was due to other causes and not just the fact that he was disciplined, then good cause will not be established.

Cross-reference: See also Discharge for Misconduct: Refusal to sign reprimand.

## DISCIPLINARY ACTION, LEAVING BECAUSE OF

### *Case Applications*

#### *00 AT 3656 BR*

Facts: Claimant had worked for the employer for 33 years as a bookkeeper/accountant. Due to Federal regulations, claimant was sent to training meetings. Claimant was asked to help do the budget. Claimant told the boss she did not know how. He told her to fill out a budget worksheet and when she was ready to print, he would help her. Claimant never contacted the boss. Over Christmas he took it home to complete. After the holidays, he told claimant that he had done it. The boss told claimant to take a class paid for by the employer and held during work hours or evenings to learn how to do a budget. Claimant had complained about the extra work and she was reprimanded. Claimant quit.

Held: There was not a sudden change in job duties. Claimant was reprimanded for going over the supervisor's head to the Board with her complaints without sharing with him first. The reprimand was appropriate. Good cause not shown.

Result: Benefits denied.

#### *00 AT 2463 BR*

Facts: The employer required all factory workers to perform warm-up hand and arm exercises daily at work. This was to lessen repetitive task injuries. Claimant was counseled for not properly performing the exercises, which she could not do because of a previous injury. Claimant was observed talking and laughing during the exercises after a counseling session for the same infraction. The employer felt that it showed a lack of respect. Claimant was told that she would get a two-day suspension. Claimant walked out and quit.

Held: The exercises were a reasonable work requirement. The two-day suspension was a reasonable disciplinary tool. Good cause not shown.

Result: Benefits denied.

## DISCIPLINARY ACTION

### *97 AT 1654 BR*

Facts: Claimant resigned his employment as a clerk of a retail store after being placed on a three-day suspension for yelling and cursing in front of customers and employees and arguing with the store manager. Claimant was upset because the store's security guard had gone through his coat. The manager had been advised that claimant's coat was on the floor of the back room. The manager told the claimant to put it on the coat rack. Claimant argued with the manager more than once about it and about his behavior in front of the customers. Claimant was suspended for insubordination and for his behavior in front of customers. Claimant admitted using inappropriate language on the floor of the store. Claimant felt the suspension was unfair and decided to quit.

Held: An employer has the right to discipline employees. The suspension was not unduly harsh considering claimant's behavior. Good cause not shown.

Result: Benefits denied.

### *90 AT 0452 BR*

Facts: Claimant was employed as a meat cutter. He threw a temper tantrum and called the general manager about not receiving sick pay for a day of illness. The general manager said he would check on it and call back. When he called back, he advised claimant that he could be paid for holiday or sick pay but not both. Claimant began using abusive language toward the general manager. Claimant was counseled the following day and again became upset. He refused to sign a suspension form. He was told to schedule an interview with personnel. Claimant did not keep the appointment.

Held: Good cause not shown.

Result: Benefits denied.

## DISCIPLINARY ACTION

*89 AT 6657 R BR*

Facts: Claimant felt she was doing more than her share of work and asked the employer to check into it. The employer observed the claimant and a coworker for seven weeks. The employer then asked the claimant to meet with him at the close of business. Claimant agreed to stay if it would not take long as she had made plans. The employer told the claimant she was spending too much time on personal business and some other things. The meeting went longer than expected and claimant told the employer that she needed to leave. The employer told the claimant to stay until the conclusion or turn in her keys. Claimant turned in her keys and asked for a sack for her personal belongings. The employer asked the claimant to think about her actions. She declined. This meeting was taped.

Held: Claimant was the moving force in her separation when she turned in her keys and left because of a corrective interview which was being held based on her request. Claimant quit without good cause connected to the work.

Result: Benefits denied.

## **OPPOSITION TO DRUG TESTING POLICIES**

If a drug testing policy is part of the hiring agreement or “contract of hire” then quitting to avoid a drug test or because of opposition to the drug test is without good cause. Note that refusing to take a drug test not conducted in accordance with the Safe Workplace Drug Testing Act is good cause. If the policy was not a part of the original contract of hire then quitting employment because of opposition may be good cause if there is no basis for requesting the drug test. Employees who are hired prior to the enactment of a drug testing policy must be made aware of the policy and be given an opportunity to assent to it as a change in the contract of hire or object to it. If the employee does not affirmatively object to the change in the contract of hire, then it will be presumed that the employee consented to said change. Any subsequent quit to avoid a drug test then would be without good cause. Note that any employee of an industry regulated by the Department of Transportation must follow its rules and regulations regarding drug testing. Cross-reference: Section 2-406A Discharge. See also the Standards for Workplace Drug and Alcohol Testing Act.

(<http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=447185>)

## DRUG TESTING POLICIES, OPPOSITION TO

### *Case Law*

*Doby v. Quarles Drilling, et al., #75,100 (Okla. S. Ct. 12-24-91)*

**Facts:** After claimant worked for the employer for one year, the employer instituted a random drug testing policy. Refusal to take the test would result in termination. All employees were given a letter and claimant signed. One month later, claimant refused to take the test and was terminated. Benefits were denied based on claimant being discharged for misconduct.

**Held:** Misconduct under Sec. 2-406. Claimant was aware of the policy and agreed to it by signing the letter. Claimant's refusal to take the test was misconduct.

## **HUSBAND AND WIFE TEAMS**

There may be cases in which a husband and wife are hired as a team and work together as a team. If one quits the employment because the other has left then it is for a personal reason and not for good cause. There is an exception. If the reason the employee is leaving is because the spouse has accepted other work outside of commuting distance and the employee is quitting to relocate with the spouse.

## HUSBAND AND WIFE TEAMS

### *Case Applications*

*79 AT 129; 79 BR 207*

**Facts:** Claimant was employed as a residential guidance specialist. When he was hired, claimant was aware that the job required a husband/wife team. His wife resigned, so the employer asked the claimant to resign. Claimant asserted that he was discharged.

**Held:** Claimant knew the terms of hire. They were hired as a team. He knew ahead of time that his wife was resigning, and he was the moving force in her resignation. Good cause not shown.

**Result:** Benefits denied.

## **ILLNESS OR INJURY**

An employee forced to quit employment because of an illness or injury is deemed to have quit for good cause connected to the work. The illness or injury does not have to have been caused by the employer but must be connected to or aggravated by the working conditions or the nature of the work, regardless of any fault of the employer. The burden of proof is on the employee to show that he has sought medical treatment, and has been advised by a physician to quit the employment or change occupation. The employee should be prepared to present physical evidence of the physician's advice such as a letter from the physician, or both parties may agree to the limiting medical condition. Other factors to be considered are whether the illness is of a temporary nature and whether the employer provides for paid medical leave. If the employer's policy also provides for paid medical leave or other avenues which would help the employee protect his job, it must also be shown that the employee has followed the employer's procedures in that regard and has made every possible effort to protect the job attachment.

## ILLNESS/INJURY

### *Aggravation to Pre-Existing Condition*

#### *Case Law*

*Standridge v. Bd. of Rev. et al., No. 68,770 (Ok. Sup. Ct. 3-22-90)*

Facts: Claimant quit her last job on her doctor's medical advice. The lint and dyes in the building where she worked were affecting her allergies. Claimant appealed after being denied benefits for failure to show medical evidence and for failure to take steps to protect her job.

Held: Claimant's doctor stated that her allergies developed while she was working for the employer. The doctor advised the claimant to seek another job. Claimant had no choice but to quit. There is no requirement that claimant seek a leave of absence under the Act.

Result: Benefits allowed.

#### *Case Applications*

*86 AT 5814 BR*

Facts: Claimant had a 10% service-connected disability because of an injury and lower back problems. Claimant told the employer about the back problem during the job interview and the doctor during the pre-employment physical. The doctor told her it would not be a factor in the position for which she applied, which was sitting at a keyboard. She was not told there would be lifting or prolonged standing when she started. She was lifting packages and twisting and standing all day. Also, she had to unload trucks. She could not perform her job without back pain. She quit.

Held: Claimant's duties were much different than promised. Claimant provided the employer with her restrictions. She showed good cause.

Result: Benefits allowed.

## ILLNESS/INJURY

### *Inability to Perform Duties*

#### *Case Law*

*Winfrey v. Matador Processors, Inc., No. C-86-467 (McClain Co. D. Ct., 2/87)*

**Facts:** Claimant had transferred to lighter duty due to health problems. She left her work area every twenty to thirty minutes because of illness. She worked one-half day and told the employer she had to leave because of illness. She went to the doctor on her day off, the next day. When claimant returned to work, the employer told her to take medical leave. Claimant wanted to work. She asked if she was fired and was told no, but she couldn't return to work.

**Held:** The Appeal Tribunal found that claimant was placed on involuntary leave of absence. When she filed for unemployment benefits she terminated her job voluntarily without good cause. The Board of Review affirmed. The District Court held that claimant was involuntarily terminated and granted benefits.

**Result:** Benefits allowed.

#### *Case Applications*

*81 BR 848*

**Facts:** Claimant was hired for a job that required no heavy lifting. She was transferred to a job that did. Claimant's doctor advised her to do no heavy lifting. As no work without heavy lifting was available, claimant quit.

**Held:** Claimant showed that the change in work duties was adverse to her health. Good cause shown.

**Result:** Benefits allowed.

## ILLNESS/INJURY

*80 AT 0628; 80 BR 1051*

Facts: Claimant worked at four different jobs for the employer, two of which were on a quota system. Claimant did well on the first quota job, but could not meet quota on the second job. Claimant began having health problems. She presented a doctor's statement saying that she had a problem with her legs and that her job was not properly suited for her because it required standing. Claimant was twice denied a transfer. Claimant told the employer she could not make quota because of her health problems. The employer said that the reason was inefficiency.

Held: Claimant's last position involved a change of conditions which adversely affected her health. Claimant tried to protect her job by requesting a transfer. The doctor said she could do other jobs. Claimant quit for good cause.

Result: Benefits allowed.

## ILLNESS/INJURY

### *Medical Leave*

#### *Case Applications*

##### *90 AT 7730 BR*

Facts: Claimant was on a leave of absence because of medical problems. She was released to return to work, but when she returned and worked for a few hours, she was still hurting. She asked for another leave of absence, but was told she could not have more time off. She left. When she was again released to return, she checked with her employer who told her she would be called back in ten days. She was never called back.

Held: The claimant made an effort to protect her job. She was able to work. Claimant left with good cause even though she was denied the leave of absence.

Result: Benefits allowed.

##### *90 AT 7101BR*

Facts: Claimant had a medical problem causing her to be off work for five months. She was placed on medical leave of absence and given forms to complete, which she did not do. She came into the office after four months and resigned.

Held: Claimant had an obligation to notify the employer of her illness and when she would return to work. Claimant did not complete the forms to protect her job. Claimant left without good cause.

Result: Benefits denied.

##### *79 BR 802*

Facts: Claimant decided she was too sick to work and requested a thirty-day leave. The employer denied the request in the absence of a doctor's statement. Claimant saw a doctor and was diagnosed a diabetic. Claimant sought work with another employer, but not the former employer after controlling her illness.

Held: Claimant did not present a doctor's statement to her employer. The medical advice was received after she quit and showed that she did not need to resign permanently. Good cause not shown.

Result: Benefits denied.

## ILLNESS/INJURY

### *Non Work-Related Accident/Illness*

#### *Case Law*

*Winfrey v. Matador Processors, Inc., No. C-86-467 (McClain Co. D. Ct. 2/87)*

**Facts:** Claimant experienced some problems on the job because of an illness and was transferred to lighter duty. Even with lighter duty claimant still had to leave her work area every twenty to thirty minutes. She went to the doctor on her day off and was approached about taking a leave of absence. Claimant said she could not afford to take leave. She went home sick. Claimant called the employer to see if she had been fired. She was told that she had not been fired, but she could not return to work. Claimant filed for unemployment benefits.

**Held:** The Commission, Appeal Tribunal and Board of Review all denied benefits. The Court held that claimant was involuntarily separated from work. Good cause shown.

**Result:** Benefits allowed.

## ILLNESS/INJURY

### *Required to Permanently Leave Work*

#### *Case Law*

*Standridge v. Bd. of Rev., et al., No. 68,770 (Okla. S. Ct. 3/22/90)*

Facts: Claimant quit her last employer on the advice of her doctor. The lint and dyes in the building where she worked were adversely affecting her allergies.

Held: The Appeal Tribunal reversed the Commission and denied benefits because the claimant did not present a medical statement to the employer showing that the job conditions caused her illness. The Board of Review affirmed. The Court of Appeals held that the denial of benefits was not supported by evidence. No one considered the statement from the claimant's doctor. The Court reversed and allowed benefits. The Supreme Court affirmed.

Result: Benefits allowed.

#### *Case Applications*

*82 AT 1321; 82 BR 859*

Facts: Claimant left employment because she developed an allergic reaction to the dye with which she was working. At the time of her resignation claimant submitted medical evidence from her doctor advising that it was necessary for her health that she leave this type of employment.

Held: Good cause established.

Result: Benefits allowed.

*81 BR 1753*

Facts: Claimant worked in a noisy area. He had surgery to repair a ruptured eardrum. His doctor told him not to work in noisy areas. Since the employer had no other work available, claimant left his employment.

Held: Claimant presented competent medical proof showing his health problems were work connected. Good cause shown.

Result: Benefits allowed.

## ILLNESS/INJURY

### *Stress Related to Job*

#### *Case Law*

##### *Glenn v. OESC, 782 P2d 150 (Okla. App. 1989)*

Facts: The claimant and an employee that worked under her applied for the same position. The lesser-qualified male employee was hired. Claimant's workload increased and she experienced severe health problems, diagnosed by her physician and psychiatrist as severe reactive depression directly related to not being promoted when she was qualified. Both doctors advised her to quit.

Held: It was not necessary for the claimant to file a grievance with her employer as a prerequisite to establishing good cause for quitting. Her health problems were related to the employer's decision to promote a less qualified male employee. She quit for good cause. The Board of Review had denied benefits. The District Court reversed and allowed. The higher court affirmed.

Result: Benefits allowed.

#### *Case Applications*

##### *90 AT 8652 BR*

Facts: Claimant worked two jobs for her employer. She quit due to stress. Her employer died and one job was eliminated causing her salary to go from \$1400 to \$900. This is a 33% drop. Then the employer's company came under investigation by the FBI. They continually questioned the claimant about alleged stolen property.

Held: The claimant's working conditions changed severely. This caused great stress. The Appeal Tribunal denied benefits. The Board reversed.

Result: Benefits allowed.

##### *87 AT 2185*

Facts: Claimant was advised to avoid high stress jobs. When work became too stressful, she quit.

Held: Claimant should have checked with the employer to determine if she could be reassigned to a less stressful position. She did not try to maintain her job.

Result: Benefits denied.

ILLNESS/INJURY

*84 AT 8853; 84 BR 2446*

Facts: Claimant left work because of a health condition created by internal strife within the corporation. Claimant submitted a report from his doctor showing that it was necessary that claimant leave work.

Held: The Commission and Appeal Tribunal denied benefits. The Board of Review reversed and allowed finding that claimant left his job on the advice of his doctor because the stress at work was too much. Good cause found.

Result: Benefits allowed.

*81 AT 13820; 85 BR 306*

Facts: The company for which claimant worked was sold and the new employer's operations were disorganized. The new employer was abusive when speaking to claimant about work. Claimant was under much mental stress and quit.

Held: Claimant showed good cause for quit.

Result: Benefits allowed.

ILLNESS/INJURY

*Work Related Accident/Illness*

*Case Applications*

*90 AT 1949 UCFE BR*

Facts: Claimant was injured on the job in January 1988. She was released to return to work with restrictions. Claimant alleged that the restrictions were not honored and she continued to miss work. The employer said claimant was expected to be fully released in July 1989. The employer had no opening consistent with claimant's restrictions. Claimant was released on July 31, 1989, with the restriction that her duties be rotated every two hours. Claimant called in August 1989, and said she would not be at work because her arm hurt. She then mailed in a letter of resignation.

Held: Claimant did not return from medical leave when released by the doctor. She failed to furnish any medical document showing a need for continued leave of absence. Claimant did not establish good cause.

Result: Benefits denied.

## **INCARCERATION**

If an employee's actions result in his incarceration and he is therefore prevented from appearing for work and he does not make an effort to report to his job after his incarceration then he will be deemed to have abandoned his job.

Cross-reference: Discharge for Incarceration

## INCARCERATION

### *Case Applications*

*80 AT 4554;80 BR 1100*

**Facts:** Claimant was an inmate in a work-release program. He was separated from employment when the corrections department transferred him to a different correctional facility in another city. The transfer was made because claimant was deemed a poor risk under the pre-release center program and a bad influence on the community. Claimant served out his term and then returned to his hometown and filed for benefits.

**Held:** The Commission and Appeal Tribunal denied benefits. The Board of Review held that claimant's separation from employment was caused by his violation of the terms of the pre-release center. After his release the claimant did not try to reapply for his old job.

**Result:** Benefits denied.

- IV-100      **Labor Dispute**  
-1-3      Case Law and Commission Cases
- IV-110      **Lack of Work**  
(A)-1      Business Closed Because of Buyout  
(B)-1-2      Layoff While on Leave of Absence  
(C)-1      Medical Problems After Layoff  
(D)-1      Moving After Layoff  
(E)-1      Temporary Layoff  
(F)-1-3      Temporary Worker
- IV-120      **Leaving in Anticipation of Discharge**  
-1-2      Case Law and Commission Cases
- IV-130      **Personal or Domestic Reasons**  
(A)-1      Care of Children  
(B)-1      Desire for Promotion or Higher Wages  
(C)-1      Dislike of Work  
(D)-1      Illness or Death of Relative  
(E)-1      Moving Residence  
(F)-1      Leaving to Attend School  
(G)-1-2      Spouse Relocated  
(H)-1      Transportation  
(I)-1      Vacation  
(J)-1      Wanting Part-time Work Only
- IV-140      **Opposition to Polygraph Testing**  
-1      Case Law and Commission Cases
- IV-150      **Pregnancy**  
-1      Case Law and Commission Cases
- IV-160      **Religious Beliefs**  
-1-2      Case Law and Commission Cases
- IV-170      **Resignation**  
(A)-1      Early Acceptance by Employer  
(B)-1      Desire for Higher Wages  
(C)-1-2      In Lieu of Discharge  
(D)-1      To Seek or Accept Other Work  
(E)-1      To Seek Full-Time Position  
(F)-1      Resignation Withdrawn
- IV-180      **Retirement**  
-1      Case Law and Commission Cases

## LABOR DISPUTE

A union member who resigns rather than accept a union contract reducing wages and benefits, leaves work without good cause attributable to the employer, because the agreement has been accepted by the union and the employer making it a part of the employment contract. A non-union member who refuses to work and quits during a strike has also left without good cause, the exception being if there are threats of violence. If a union member leaves because a union shop becomes an open shop under new management, then he leaves without good cause connected to the work. The applicable section of the Act governing union employees is as follows:

*Section 2-410. Participation in labor disputes.*

*(1) An individual shall be disqualified to receive benefits for any week with respect to which the Commission finds that his unemployment is due to a stoppage of work which exists at the factory, establishment or other premises at which he is or was last employed, because of a labor dispute.*

*(2) This section shall not apply if it is shown that: (a) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; (b) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute; or (c) The employer has locked out his employees.*

*(3) Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment or other premises.*

Cross-reference: Refusal of Suitable Work See also Section 2-405

## *Law Summary*

*When a union member resigns rather than accept a union contract reducing wages or benefits, his leaving is voluntary without good cause. The union agreement has been accepted by the union and employer and becomes part of the employment contract. A non-union member who refuses to work and quits during a strike, absent violence or threats, has voluntarily left without good cause. If a union member leaves employment because the union shop becomes an open shop under new management and receives severance pay per the union contract, he has left voluntarily without good cause.*

## *Case Law*

*Blankenship v. Bd. of Rev. et al., 486 P2d 718 (Okla. 1971)*

Facts: Claimant voluntarily quit work because of a labor dispute at work. They voluntarily stayed out of work because of the labor dispute. They refused to cross the picket line.

Held: The Board of review said that claimants voluntarily quit without good cause and because they refused to cross the picket line they participated in the strike. There is no evidence that there would have been any bodily harm to the claimants if they had crossed the picket line. The District Court affirmed, and the Supreme Court upheld the decision.

Result: Benefits denied.

*Aero Design & Engineering Co. v. Bd. of Rev. et al., 356 P2d 344 (Okla 1960)*

Facts: A large number of employees of Aero ceased work and left the plant to protest the failure or inability of their designated collective bargaining agent, United Auto Workers Union, and Aero to negotiate a labor contract. At the time, Aero made it clear that anyone wanting to work could continue. A sufficient number of people continued working thereby allowing Aero to continue operations. Those that did no work filed for benefits.

Held: Those on strike were eligible for benefits as long as they were unemployed by no fault of their own. Someone on strike can hardly be said to be unemployed not of their own fault. An individual that ceases work by reason of a labor dispute or strike against his employer is ineligible for benefits. The Supreme Court reversed the decision of the District Court to allow benefits.

Result: Benefits denied.

IV-100-1

LABOR DISPUTE

*Case Applications*

*90 AT 5664 BR*

Facts: Claimant was working in another union because there were no local union members to fill the positions. After working six months, employees were advised that some locals were out of work and some employees decided to quit to allow the locals to work, a common practice.

Held: Although the action was admirable, it was unnecessary. The claimant could have continued working. The reason for leaving was not related to the work itself.

Result: Benefits denied.

*89 AT 00286*

Facts: Teamsters established a picket line at the claimant's place of employment. Although claimant was not a member of the workers striking, he honored the picket line. Employment was available had he elected to work

Held: Since claimant directly participated in the work stoppage due to the labor dispute, he is ineligible in accordance with Section 2-410.

Result: Benefits denied.

*88 AT 11581 LD*

Facts: Claimant was prevented from returning to work by union established picket lines outside the business where he had been working. His tools were in the plant and he was not allowed to enter to retrieve them or perform work duties. Claimant asserted he was locked out and prohibited from entering the plant.

Held: Since it was not shown that claimant was participating in or directly interested in the labor dispute which caused the stoppage of work, there was no basis to subject him to the disqualifying provisions of Section 1-103 and 2-410 of the Act. The claimant was unemployed due to a labor dispute and the Commission was ordered to determine his eligibility for benefits based on the fact he was unemployed through no fault of his own.

Result: Benefits allowed.

## LABOR DISPUTE

*80 AT 3194*

Facts: Claimant was a delivery driver and a member of the Teamsters Union. The contract between the claimant's union and his job expired and claimant worked one month then went on strike. The employer sent claimant a letter saying they would replace him if he did not return to work. Claimant did not return. The union was voted out and claimant filed for benefits because he knew he had been replaced.

Held: Claimant voluntarily left his job when he failed to reapply after the strike ended.

Result: Benefits denied.

*See Also* Disagreement with Employer/ Rules or Regulations

IV-100-3

**LACK OF WORK**

In most cases when an employee is unemployed due to a lack of work for whatever reason it is considered to be a discharge, but not for misconduct. However, in some circumstances such as a temporary layoff, where, for example, the employee cannot work for a time because of weather, but fails to return to the job when the conditions change, it will be adjudicated as job abandonment and without good cause.

IV-110

LACK OF WORK

*Business Closed Because of Buyout*

*Case Applications*

83 BR 514

Facts: Claimant was one of two stockholders in a company. Business was bad and the company had to lay off one employee. Because claimant was unable to secure financing, the other stockholder purchased all of claimant's stock. Claimant then had no job and filed for benefits.

Held: Claimant was discharged as an employee and was eligible for benefits due to a lack of work.

Result: Benefits allowed.

IV-110 (A)-1

LACK OF WORK

*Layoff While on Leave of Absence*

*Case Applications*

97 AT 00861 BR

Facts: Claimant was a certified home health aide. In August of 1996, claimant was absent from

work so she could have a medical procedure. On September 4, 1996, claimant requested leave and notified her supervisor that claimant's doctor had scheduled her for surgery on September 11, 1996. Claimant was released by her doctor on September 30, 1996, to return to work with a maximum lifting restriction of 25 pounds. The employer had no work available that would accommodate claimant's restriction. Claimant filed for benefits on September 27, 1996. On October 11, 1996, claimant received a complete release from her doctor. The employer was informed and scheduled her for work on October 28, 1996.

Held: Claimant was laid off for lack of work and eligible for benefits in the time period she was out of work.

Result: Benefits allowed.

*84 BRD 2756*

Facts: Claimant was given an indefinite leave of absence to care for her seriously ill mother. Four

months later the claimant's sister became available to care for their mother. Claimant notified her employer that she could return to work. The company told her work was slow and to check back the following month. She was placed on layoff status without returning to work and applied for benefits.

Held: Claimant was separated due to a lack of work.

Result: Benefits allowed.

*83 BRD 10627*

Facts: Claimant was granted a leave of absence. No work was available to him when the leave expired.

Held: When no work is available after a leave of absence expires, a layoff occurs.

Result: Benefits allowed.

IV-110 (B)-1

LACK OF WORK

*1407 BR 77*

Facts: Claimant worked as a retail sales clerk. She injured her knee while at work and missed several days of work. She returned to work for a few weeks, but later was put on leave while she had surgery. Claimant's position was filled and when she tried to return to work

she was informed her position was not available. The employer offered a position in a different location doing maintenance work with some retail sales. Because the work was different from sales and because claimant had not been released by her doctor to perform those duties, claimant quit.

Held: The position offered was different from the previous one held by the claimant. Claimant has shown good cause to quit.

Result: Benefits allowed.

IV-110 (B)-2

LACK OF WORK

*Medical Problem After Layoff*

*Case Applications*

See also: Required to Permanently Leave Work, 83 BR 1287

IV-110(C)-1

LACK OF WORK

*Moving After Layoff*

*Case Applications*

*83 BR 1893*

Facts: Claimant was laid off for lack of work. She was never recalled and three months later she

moved to another town for economic reasons and filed for benefits. The employer objected saying it could have recalled claimant had she remained in the city.

Held: Claimant did not refuse a recall offer. If she had, she would not be disqualified since during her period of unemployment she had to move for economic reasons. It would have been impractical for her to commute that distance.

Result: Benefits allowed.

IV-110 (D)-1

LACK OF WORK

*Temporary Layoff*

*Case Applications*

*81 BR 1239*

Facts: Claimant was a construction worker and work shut down when the weather was bad. The next workable day the employees were expected to return to work. Claimant did not return and was not heard from for months.

Held: Claimant abandoned his job and did not show good cause.

Result: Benefits denied.

IV-110 (E)-1

LACK OF WORK

*Temporary Worker*

*Case Applications*

*00 AT 04280 BR*

Facts: Claimant was employed by a temporary help firm and was assigned to various employers

since May 12, 1997. His last assignment began January 24, 2000, and ended on March 29, 2000, due to a lack of work. Claimant contacted the employer on March 31, 2000, to collect his check for the last week of work. He did not advise that he was ready for a new assignment because he did not know it was necessary to do so. Also, he was scheduled to have surgery the next week. He remains eligible for reassignment by the employer.

Held: The separation on March 29, 2000, was due to a lack of work. Claimant was eligible for benefits.

Result: Benefits allowed.

IV-110 (F)-1

#### LACK OF WORK

*96 AT 7020 BR*

Facts: Claimant worked 49 hours per week on the day shift. The employer changed the schedule while claimant was on her days off. He gave her schedule to another employee. Claimant could not be reached so she was taken off the schedule. She called and was offered the evening shift, which would probably be full-time. She was told they would try to find available hours. Claimant was never given a schedule showing she was scheduled forty hours per week. She was told to check to see what hours were available.

Held: Claimant should not be required to find her own hours. She was constructively

discharged. When she was removed from the schedule and not offered a new schedule. She was not discharged for cause.

Result: Benefits allowed.

*96 AT 3481 BR*

Facts: Claimant was hired as a temporary worker for the employer's client. After the assignment ended, claimant contacted the employer for more work. On August 18, 1995, claimant filed for benefits. On August 21, 1995, claimant was offered and accepted a new assignment. Claimant never reported to the new assignment and contacted the employer again in September 1995.

Held: If claimant had not contacted the employer, a temporary help firm, for reassignment after completing his first assignment, he would have been disqualified under Section 2-404A as a voluntary quit without good cause. This was not the case. Claimant immediately contacted the employer and no offer of employment was made on that date. When claimant filed for benefits on August 18, 1985, he was unemployed due to lack of work. Therefore, Section 2-406 is the applicable Section. After claimant applied for benefits on August 21, 1995, he was offered employment by his former employer. The hearing officer did advise that the offer should be investigated and adjudicated by the Commission. Claimant did contact the employer as required. There was no disqualification

Result: Benefits allowed.

IV-110 (F)-2

LACK OF WORK

*96 AT 04849 BR*

Facts: Claimant was employed as a trimmer. Claimant quit because the crew he was working on shut down and he was assigned to another crew that was too far from his home. The driving distance was twice as far from his home.

Held: The Appeal Tribunal found good cause to quit and allowed benefits. The Board of Review reversed and denied because claimant lived in a small town and should have expected to drive some distance to get to work. Twenty miles were not excessive.

Result: Benefits denied.

*90 AT 07420*

Facts: Claimant was employed three months as a cook. She was hired as a substitute and was laid off at the end of the school year. Claimant told the Commission she would be going to school soon and would be willing to change her school schedule to become employed.

Held: The Commission denied benefits. The Appeal Tribunal ruled the job separation was the result of a lack of work as the school year ended.

Result: Benefits allowed.

## **LEAVING IN ANTICIPATION OF DISCHARGE**

If an employee quits work voluntarily because of pending termination proceedings, but he has not in fact been terminated, then that employee has quit without good cause connected to the work. Presumably until the actual time of termination work is still available. The mere belief that termination could be imminent is not considered good cause. However, if an employee has been notified of his termination and a date certain has been announced, such as in the case of a lay off where the employee is given, for example, a two week notice of the last day of employment, then if the employee does not wish to continue that employment during the notice period, that can be considered good cause.

Cross-reference: Constructive Discharge

## LEAVING IN ANTICIPATION OF DISCHARGE

### *Case Applications*

#### *90 AT 1992 BR*

Facts: Claimant contracted to provide services for a hospital that had announced its closing date. The employer assured claimant that all employees would be placed at other locations. Up until one month before the hospital was to close, no one had been placed elsewhere. Claimant quit to find work.

Held: The Commission denied benefits and the Appeal Tribunal affirmed. The Board of Review affirmed holding that claimant left while work was still available. She was assured her employment would continue elsewhere. Good cause not shown.

Result: Benefits denied.

#### *86 AT 11870 BR*

Facts: Claimant received four garnishments, but was counseled by the employer instead of being fired. Claimant failed to report to work and, when contacted by the employer, said she was not returning. She had received a fifth garnishment and knew she would be fired, so she quit.

Held: The Commission and Appeal Tribunal denied benefits. The Board of Review affirmed holding that claimant was never told she would be fired. Claimant left work without good cause.

Result: Benefits denied.

## LEAVING IN ANTICIPATION OF DISCHARGE

*81 AT 8355; 82 BR 772*

Facts: Claimant resigned because she felt she would be fired. Claimant was told three separate times that she was going to be fired because of her bad attitude and personal use of the telephone. On each occasion the supervisor changed his mind and allowed the claimant to continue working. Claimant submitted her letter of resignation.

Held: The Commission denied benefits. The Appeal Tribunal reversed and allowed. The Board of Review held that no employee should be placed under the strain of not knowing from one day to the next if they had a job. Claimant left work with good cause.

Result: Benefits allowed.

*See also: In Lieu of Discharge, William Perkins v. EEOC and Comm'r of Labor, State of Nebraska, No. 89-200 (S.Ct. Neb.); Unfavorable working conditions*

## **PERSONAL OR DOMESTIC REASONS**

People quit jobs for many reasons, many of which are good reasons for them, but which do not necessarily qualify as good cause connected to the work. Sometimes they grow discontent with the type of work, the distance to work, the hours, the wages, etc. However, unless there has been a material and substantial change in the contract of hire, these reasons may be good, but are not good cause and the employee will be ineligible. Sometimes employees change their minds about the type of work they wish to do, and they desire to seek additional education and the schedule of classes conflicts with their work schedule. While undoubtedly it is good for a person to better themselves, under the terms and requirements of the Act, it is not good cause connected to the work. An employee may also quit because he develops problems with transportation, childcare or the like. Again, the employee may not feel he has a choice but to quit for such reasons, but since it is not a problem attributable to the employer, then it is not good cause connected with the work.

Good cause will be found if the claimant is forced to quit work due to a medically verifiable illness of the claimant or a minor child of the claimant and the physician determines it is necessary for the claimant to quit work. Also a finding of good cause will be found if the claimant quits work to relocate with his/her spouse who is being relocated in another city or state and the new home is more than a radius of fifty miles from the work location.

PERSONAL OR DOMESTIC REASONS

*Care of Children*

*Case Applications*

*90 AT 7692 BR*

Facts: Claimant worked as a laborer. His wife died and he had full responsibility for their child, who lived sixty miles from the workplace. He quit work.

Held: Claimant quit to relocate for domestic reasons. Although his reasons were compelling personal reasons, they were not connected to the job.

Result: Benefits denied.

PERSONAL/DOMESTIC REASONS

*Desire for Promotion or Higher Wages*

*Case Applications*

*83 BR 463*

Facts: Claimant worked for years without receiving a raise, so she quit.

Held: Claimant accepted the job at that rate of pay. Failure to receive a raise is not *per se* good cause. Good cause not found.

Result: Benefits denied.

IV-130 (B)-1

PERSONAL/DOMESTIC REASONS

*Dislike of Work*

*Case Applications*

*97 AT 01685 BR*

Facts: Claimant was employed as an assistant manager. Claimant felt his success and progress was being thwarted on the job. He noticed that co-workers were not doing their job. He met with his supervisor and the owner to explain his concerns. Neither of them had a solution. Both of them noted a satisfactory performance on the claimant's part and asked him to wait a few weeks before making a decision. Claimant stayed two more weeks, but felt nothing had changed, so he quit.

Held: Claimant did not prove good cause for quitting. There was no change in his contract of hire. There was no evidence that claimant's job was at risk.

Result: Benefits denied.

*95 AT 4275 R BR*

Facts: Claimant quit when he was not allowed a day off for Christmas and learned he would not get New Year's Day off either. Both holidays fell on Sunday, which is not a normal work day. The employer said that claimant did not get days off because he was a manager and not an hourly wage employee;.

Held: Claimant has not met the burden of proof showing that working Christmas and New Year's Day was a change in the contract of hire.

Result: Benefits denied.

*90 AT 5640 BR*

Facts: Claimant was hired as a legal secretary on a temporary basis to see if she should be hired permanently. Claimant chose not to take the job before the end of the appointment, because it involved more word processing than legal secretary. She gave notice before the end of the temporary period that she did not want the permanent job.

Held: Claimant voluntarily left the job without good cause connected to the work.

Result: Benefits denied.

PERSONAL/DOMESTIC REASONS

*Illness or Death of Relative*

*Case Applications*

*90 AT 7432 BR*

Facts: Claimant took a leave of absence for pregnancy and planned to return after the birth. But the baby was frequently ill and claimant was afraid she would not be given permission to leave work if the baby was ill, so she did not return.

Held: Claimant left for personal reasons, but not for reasons connected to the work.

Result: Benefits denied.

IV-130 (D)-1

PERSONAL/DOMESTIC REASONS

*Moving Residence*

*Case Applications*

*90 AT 5182 BR*

Facts: Claimant relocated her residence 67 miles from the workplace, which required two and a half hours of driving daily. She did not have enough time with her twelve-year-old child and became stressed so she quit.

Held: Claimant had a good personal reason, but the relocation was not attributable to the employer.

Result: Benefits denied.

*89 AT 9290 BR*

Facts: Claimant moved to another state due to marital problems and her mom's illness. She got work there, but quit to return to Oklahoma as her husband was threatening divorce if she did not return.

Held: Claimant had good personal reasons, but did not quit for good cause connected to the work.

Result: Benefits denied.

IV-130 (E)-1

PERSONAL/DOMESTIC REASONS

*School, Leaving to Attend*

*Case Applications*

IV-130 (F)-1

PERSONAL/DOMESTIC REASONS

*Spouse Relocated*

*See Section 2-405: Good cause for voluntarily leaving work...may include...4. If the spouse of the claimant was transferred or obtained employment in another city or state, and the family is*

*required to move to the location of that job that is outside of commuting distance from the prior employment of the claimant, and the claimant separates from employment in order to move to the new employment location of the spouse. As used in this paragraph, "commuting distance", means a radius of fifty (50) miles from the prior work location of the claimant.*

*Case Applications*

*02-AT-9794-BR*

Facts: Claimant's spouse was separated from employment. They owned a home in another city and the spouse decided to move there because he had contacts there and knew he could get work. He moved there and obtained employment as an independent self-employed construction worker. A few months later claimant resigned her employment to join her spouse. The commission and the Appeal Tribunal denied benefits.

Held: The Board of Review reversed and allowed holding that claimant separated from employment in order to move to the new employment location of her spouse. The spouse's new work location was outside the commuting distance of the claimant's prior work location and therefore, claimant had good cause to quit.

Result: Benefits allowed.

*00 AT 4474*

Facts: Claimants husband accepted a job out of state. She voluntarily resigned to relocate with her husband. Claimant was told to leave early after a confrontation, her borrowing \$20 from petty cash without prior approval and replacing it the next day.

Held: It was mutual agreement that claimant leave prior to her effective date. There was not a discharge as the separation occurred when the claimant tendered her resignation.

Claimant

quit to relocate with her spouse.

Result: Good cause found. Benefits allowed. *See also* No Duty to Allow Claimant to Work Out Notice; Benefit Wage Charge Relief

IV-130 (G)-1

*98 AT 7073 BR*

Facts: Claimant quit work to move with her spouse to his new employment.

Held: Good cause.

Result: Benefits allowed.

IV-130 (G)-2

PERSONAL/DOMESTIC REASONS

*Transportation*

*Case Applications*

95 AT 2545 BR

Facts: Claimant worked as a pizza delivery man. His car was essential to employment. The timing belt on claimant's car broke and he did not have money to fix it. He immediately informed the employer's assistant manager. The employer did not have other work for the claimant. The assistant manager instructed claimant to check back when his car was repaired.

Held: Since it was the employee's responsibility to provide transportation for his job, when he could not provide his own vehicle he was deemed to have voluntarily quit. Good cause not found.

Result: Benefits denied.

90 AT 2209 BR

Facts: Claimant worked 21 miles from his residence. He had problems with transportation and was unable to get to work.

Held: It is claimant's responsibility to provide transportation to work. He voluntarily left work without good cause connected to the work.

Result: Benefits denied.

82 AT 2439; 82 BR 731

Facts: Claimant worked for the employer on a drilling rig, which was moved 120 miles from his home. Claimant had been commuting with the driller, but when the driller quit because of the distance, the claimant could not get to work. Claimant argued it was not practical for him to use his car to commute because his wife would be without transportation. The employer stated that the claimant knew where the jobsites were when he took the job.

Held: Claimant had valid personal reasons for quitting, but it was not connected or attributable to the employer.

Result: Benefits denied.

IV-130 (H)-1

PERSONAL/DOMESTIC REASONS

*Vacation*

*Case Applications*

*82 AT 0144; 82 BR 251*

Facts: Claimant asked for a two-week vacation so he could go on the wheat harvest. His employer later told him he could have one week, but requested the vacation begin in July, not June as claimant wanted, when the plant shut down. He asked all employees to do the same. Claimant changed his mind, wanted his vacation to begin immediately, and quit.

Held: The employer has an inherent right to direct its work force and to grant dates for leave and vacation. Vacation was offered to claimant. Good cause not found.

Result: Benefits denied.

IV-130 (I)-1

PERSONAL/DOMESTIC REASONS

*Wanting Part-time Work Only*

*Case Applications*

*00-AT 2391 BR*

Facts: Claimant was employed as an insurance agent and office clerk. She started as a clerk for which she earned a salary and later added salesperson for which she was paid a commission. The added income caused the claimant to exceed the yearly amount to remain eligible under her husband's health insurance. The employer delayed payment to the next year to keep her eligible and agreed to reduce her hours to four days per week and thus her salary. Claimant suggested reducing hours to three days. The employer said it would not meet his needs and countered with a proposal. Claimant refused.

Held: The Appeal Tribunal held that it was a constructive discharge under 2-406 and allowed benefits. The Board of Review modified it to make 2-404 the applicable section, and stated that claimant voluntarily quit. She placed the restrictions on her employment. The employer tried to meet her restrictions but claimant was not satisfied. Claimant had good personal reasons, but she quit without good cause.

Result: Benefits denied.

## **OPPOSITION TO POLYGRAPH TESTING**

If the requirement to take a polygraph is a change in the contract of hire, and if the employee has not been made aware of the requirement and given the opportunity to assent to or object to the requirement, then quitting work because of the requirement would be good cause connected to the work. Polygraph testing must conform to the requirements of the Employee Polygraph Protection Act of 1988.

## POLYGRAPH TESTING, OPPOSITION TO

### *Case Applications*

*81 AT 8229*

**Facts:** Claimant left work rather than submit to a polygraph test. A shortage was discovered and claimant was told she would have to take a polygraph to keep her job. Claimant felt this was unreasonable because she had worked fifteen months without problems. She said she was never informed of any company policy that required her to take the test. The employer representative said that the policy was in effect for one year, but claimant never was told about it.

**Held:** A request for a polygraph is reasonable if the employee is aware of the requirement and continues employment. Both claimant and the employer agreed that claimant did not know about the requirement. The requirement now becomes a change in her hiring agreement. Good cause found.

**Result:** Benefits allowed.

## **PREGNANCY**

A woman who leaves work because of pregnancy is considered to have quit without good cause unless she can establish that she left under doctor's orders. A woman who returns from approved leave after the birth of her child to find her job unavailable is considered to have been discharged, not quit.

## PREGNANCY

### *Case Law*

*Brown et al. v. Frances E. Porcher et al., US D Ct., South Carolina District (11/18/80)*

**Facts:** This was a class action suit brought in South Carolina by two women who left work because of pregnancy and were denied benefits when they returned to work. The Employment Security Commission of South Carolina found that they left work without good cause.

**Held:** The District Court found that the practices of the SCESC which disqualify otherwise eligible women from receipt of unemployment because of pregnancy is in contravention to law. The SCESC was ordered to pay the women if they were separated just because they were pregnant.

### *Case Applications*

#### *90 AT 7223 BR*

**Facts:** Claimant filed for benefits indicating she left her work as a housekeeper on maternity leave.

Claimant's mother (also head of housekeeping) said that claimant had turned in a leave request with the manager's secretary. The employer's representative said claimant's mother said claimant was quitting in two weeks and she would need to find a replacement with no mention of a request for maternity leave.

**Held:** Claimant left her job due to pregnancy and had not been released as able to return to work. She had not checked with her employer about returning to work. When she filed for benefits, she voluntarily terminated her employment.

**Result:** Benefits denied.

#### *90 AT 1115 BR*

**Facts:** Claimant was granted six weeks maternity leave to begin upon the birth of her baby. The baby was born July 13<sup>th</sup> and claimant secured a medical release to return to work on August 29<sup>th</sup>. The employer testified that claimant told him in late August that she would be unable to return to work. Claimant stated she asked for an extension of her leave of absence until September 4<sup>th</sup>, but the employer refused. Claimant worked part-time for the employer from August 17<sup>th</sup> to October 17<sup>th</sup> to train employees and her replacement.

**Held:** The employer indicated that if claimant had wanted her job she could have had it. She voluntarily left without good cause.

**Result:** Benefits denied.

## **RELIGIOUS BELIEFS**

An individual may not be compelled to forfeit his First Amendment rights in order to be eligible for unemployment. If the employee can establish that his religious beliefs are in conflict with the terms of his employment, the quitting because of that conflict is for good cause connected with the work. It must be shown that the conflict has arisen since the time of hire and that the employee was not aware of the conflict at the time of hire. It also must be shown that the employee has attempted to resolve the conflict with his employer, but has been unable to do so. The employee must have made his employer aware of the conflict with his religious beliefs.

## RELIGIOUS BELIEFS

### *Case Law*

*Employment Div, Dept of Human Resources of Oregon et al., v. Smith, 494 U.S. 872, 110 SCt 1595 (1990)*

Facts: Claimants were fired by a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug, for sacramental purposes at a ceremony of their Native American Church. They were disqualified for unemployment compensation for willful misconduct. The State Court of Appeals reversed stating that the denials violated their First Amendment free exercise rights. The State Supreme Court affirmed, but the U.S. Supreme Court vacated the judgment and remanded for a determination whether sacramental peyote use is proscribed by the States' controlled substance law, which makes it a felony to knowingly or intentionally possess the drug. On remand the State Supreme Court held that the use of the peyote violated and was not excepted from the state law prohibition, but concluded that that prohibition was invalid under the Free Exercise Clause.

Held: The Free Exercise Clause permits the State to prohibit sacramental peyote use and thus to deny unemployment benefits to persons discharged for such use. Since Oregon listed peyote as a controlled dangerous substance and the possession thereof without a prescription from a medical practitioner, its use was illegal. The right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that his religion prescribes (or proscribes). *See U.S. v. Lee, 455 U.S. 252, 263, n.3, 102 SCt 1051, 1058, n.3, 71 Led2d 127 (1982)*. There is no evidence that the Oregon drug law represents an attempt to regulate religious beliefs, the communication of religious beliefs, or the raising of one's children in those beliefs.

*See also Boerne v. Flores et al., 521 US 507, 117 SCt 2157 (1997) abstract on page IV-14.*

## RELIGIOUS BELIEFS

*Thomas v. Review Board of the Indiana ES Division et al., No. 79-952 (U.S. Sup. Ct. 4/6/81), 450 U.S. 707, 67 L.Ed.2d 624 (1981)*

Facts: Claimant was originally hired to work fabricating sheet steel. When that department closed

the claimant was sent to a department that manufactured turrets for military tanks. Claimant's religious beliefs forbade him to work producing war materials. Claimant requested a layoff but later quit. Under Indiana law, a termination motivated by religion is voluntary and not with good cause. Case was appealed to the Supreme Court.

Held: When a state conditions the receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit thereby putting pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. This burden infringes upon the free exercise of religion and is not constitutionally permissible.

### *Case Applications*

#### *90 AT 770 BR*

Facts: Claimant was employed one month as a correctional officer cadet. He resigned when he learned that there would be no alteration of a policy requiring that he attend classes until 10 p.m. on Friday. Claimant is a Seventh Day Adventist and his Sabbath is from sundown Friday to sundown Saturday.

Held: Claimant was not aware of the hours when he accepted the position. When he learned that there would be a conflict he attempted to work out a solution. Religious convictions may not be used to deny him benefits. Good cause shown.

Result: Benefits allowed  
*81 BR 357*

Facts: During the four years claimant worked for the employer, she worked a rotating shift which required her to work two Sundays per month. Claimant requested to be off every Sunday so she could attend church. When it was not approved, she quit.

Held: The fact that claimant worked over four years before complaining indicates that working every other Sunday was a condition of her employment. Her employer tried to accommodate her but she wanted more. Good cause not found.

Result: Benefits denied.

## **RESIGNATION**

In order to be considered a voluntary quit, a resignation has to be put in motion by the employee. It cannot be coerced by the employer. A voluntary resignation can be for good cause if, for instance, the employee knows for certain that the employment will end on a date certain. If an employee tenders a resignation and gives the employer notice of a date of last employment, the employer is not obligated to allow the employee to continue during the notice period. In that case it is not a termination, but an early acceptance of the resignation. Likewise, when an employee wishes to withdraw the resignation, and the employer does not accept the withdrawal, it is not a termination but a voluntary resignation. For there to be good cause, the employee must still meet the criteria of injury to health, safety or morals, or a substantial change in the contract of hire.

Cross-Reference: Leaving in Anticipation of Discharge.

RESIGNATION

*Early Acceptance by Employer*

*Case Applications*

*00 AT 4474*

*See Quit to Relocate with Spouse*

*87 AT 5487 BR*

Facts: Claimant wrote her employer a letter stating he was resigning as soon as a project was at a “reasonable point”. He was terminated two days later.

Held: Claimant indicated a desire to resign. The employer was under no duty to allow the claimant to work out any notice period. Claimant voluntarily resigned.

Result: Benefits denied.

*Desire for Higher Wages*

*Case Application*

*75 AT 4491; 590 BR 75*

Facts: Claimant worked six days a week for which he was paid \$100 a week, given a house rent free worth \$125 per month and a pickup to drive. He worked 65 hours a week. He quit because he felt he was working an excessive number of hours for low wage. He asked for a raise before he quit. He was offered a different job or an hourly wage.

Held: Claimant worked under these conditions for several years before deciding he needed a change. He did not show a change in working conditions prior to leaving. Good cause not shown.

Result: Benefits denied.

*In Lieu of Discharge*

*Case Law*

*William A Perkins v. Equal Opportunity Comm. and Virginia Tueill, Comm'r. of Labor, State of Nebraska, No. 89-200 (S.Ct. Neb.)*

Facts: Perkins duties were to investigate claims of discrimination. During his nine-month probationary period, he proved to be incapable of making as many investigations as the employer expected. The probation period was extended for three months. Perkins was told that if his performance did not improve he would be discharged. He still could not make the level of production and concluded that resignation was preferable to discharge. He would have been fired at the end of the probation extension.

Held: Perkins did not leave work voluntarily. He would have been discharged, not because he would not do the work, but because he could not do the work.

Result: The court reversed the lower authority and allowed benefits.

*Case Applications*

*94 AT 11836 UCFE BR*

Facts: The employer was forced to lay off some workers and offered a package for four volunteers to leave. The claimant had worked for the employer for seventeen years and because of her seniority, claimant had no reason to believe that she would be terminated if she did not accept the voluntary separation agreement. Claimant resigned her employment in order to accept a severance bonus.

Held: The Appeal Tribunal found that claimant was terminated due to lack of work, citing previous Board decisions in prior cases which held that when an employer announces a layoff or reduction in force, but is willing to accept volunteers for the layoff, then those persons who volunteer are still deemed to have been laid off due to lack of work. In many of these cases the employee would be considered to have been discharged for lack of work, but only in cases where the employee believed he could possibly be terminated if he did not accept the offer. Each case must be decided on its own merits. Because of claimant's seniority, she had no reason to believe she would be terminated if she did not accept the voluntary separation agreement. The claimant resigned her employment in order to accept a severance bonus the employer offered for employees who chose to leave voluntarily. Claimant left work voluntarily, but not for good cause.

Result: Benefits denied.

## RESIGNATION

*87 AT 3322 BR*

Facts: The claimant left work after being informed that the business was closing.

Held: Good cause is found for leaving.

Result: Benefits allowed.

*84 BR 1895*

Facts: Claimant was demoted from a managerial position to a sales position. He never made his quota and was always below quota. He was asked to resign. He resigned and then applied for benefits.

Held: An individual that submits his resignation at the insistence of his employer has not voluntarily left employment. He has been involuntarily separated.

Result: Benefits allowed.

*See also Section 2-405 re Determining good cause: Good cause for voluntarily leaving work...may include...2. If the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a layoff, has elected to be separated and the employer has consented thereto.*

IV-170(C)-2

RESIGNATION

*To Seek or Accept Other Work*

*Case Applications*

*97 AT 5692 BR*

Facts: Claimant's hours were reduced due to a lack of work and she filed for unemployment. She was found eligible. She continued to work part-time and drew partial benefits. She later resigned to accept full-time work. Claimant would not have left employment if her hours had not been reduced.

Held: Claimant began looking for work after her hours were reduced, therefore, claimant cannot be disqualified from receiving benefits because she continued working for the employer.

Result: Benefits allowed

*90 AT 5311 BR*

Facts: Claimant left work as a carpenter because he was working too few days due to rain.

Held: Claimant quit his job while work was available. He may have had good personal reasons for leaving, but they were not related to the work. Lost time due to weather is usual in his industry and does not constitute a change in working conditions.

Result: Benefits denied.

*To Seek Full-Time Position*

*Case Applications*

*95 AT 6571 BR*

Facts: Claimant left a temporary agency to accept a permanent position with a previous employer. After six months, she was laid off because of a lack of work. Since the last job was non-profit, the determination must be based on the temporary agency separation.

Held: Claimant's reason for leaving was not for good cause. There were no changes in her wages, hours, etc.

Result: Benefits denied.

*83 AT 3517; 83 BR 924*

Facts: Claimant was a part time truck driver. He quit his job because of insufficient working hours and in order to find full-time employment. Claimant was never guaranteed a minimum of hours per week. He was not earning enough to justify commuting fifty miles to work. The employer introduced evidence that the claimant worked between 24 and 35 hours the first three weeks and then eleven for the last week.

Held: The claimant did not show that the employer violated the terms of hire. Claimant knew that there was no minimum amount of hours guaranteed.

Result: Benefits denied.

## RESIGNATION

### *Withdrawn*

If an employee announces that he intends to resign effective on a future date, but then attempts to withdraw the resignation, the employer's refusal to accept the withdrawal does not change the separation from a voluntary quit to a discharge.

## RETIREMENT

An individual who elects to take early retirement in order to receive retirement benefits is not eligible for benefits, provided retirement is not compulsory. The election to accept early retirement when the employee's job is not in jeopardy or when it is not required because of medical or physical problems constitutes leaving work without good cause connected to the work. However, if an employee is required to retire early for medical reasons and upon the advice of a physician, then good cause is established.

IV-180

RETIREMENT

*Case Law*

*OESC V. Bd. of Rev. of OESC, 914 P2d 1083 (Okla. Ct. App. 1996)*

Facts: Claimant retired under a voluntary incentive program to downsize the federal workforce. Claimant accepted a severance bonus. She had no reason to believe she would be terminated if and/or when the employer was forced to reduce the force.

Held: The Board of Review denied benefits because continued employment was available. The decision was upheld by the District Court and the Court of Appeals.

Result: Benefits denied.

*Uniroyal v. OESC, 913 P2d 1377 (Okla. App. 1996)*

Facts: Claimant accepted the early retirement offer of the employer because the employer had announced company-wide layoffs either by early retirement or other unspecified means. If the early retirement was not accepted, it would be withdrawn.

Held: The Commission, Appeal Tribunal, Board of Review and District Court allowed benefits. The Supreme Court reversed and denied benefits holding that the claimant was not entitled to benefits upon the acceptance of the employer's offer of enhanced benefits.

Result: Benefits denied.

*Case Applications*

*95 AT 4132 BR*

Facts: A reduction in force had been announced. Claimant had not been declared surplus and could have continued to work. She volunteered to take the place of a surplus employee scheduled to be laid off.

Held: Claimant voluntarily left employment to accept the severance package. Good cause not shown.

Result: Benefits denied.

- IV-190      **Unfavorable Working Conditions**
- (A)-1-2      Disagreement with Employer Rules or Decisions
  - (B)-1        Drug Problem in the Workplace
  - (C)-1        False Accusations
  - (D)-1        Harassment
  - (E)-1        No Provision for Physical Needs
  - (F)-1        Relationship with Co-Workers
  - (G)-1-2     Relationship with Employer
  - (H)-1        Request for Transfer Denied
  - (I) -1        Sexual Discrimination and/or Harassment
  - (J) -1        Use of Foul Language
  - (K)-1-2     Verbal Abuse Causing Mental Stress

- IV-200      **Unsafe Working Conditions**
- (A)-1        Excessive Overtime Requirements
  - (B)-1        Inexperienced Supervisors or Co-Workers
  - (C)-1        Injuries or Potential for Injuries on the Job
  - (D)-1        Machinery Not in Good Repair
  - (E)-1        Personal Attacks or Threat of Personal Attacks on Employees
  - (F)-1        Physical Assault (Robbery, etc.)

- IV-210      **Wages**
- (A)-1        Change in Per Diem Allowance
  - (B)-1        Changes Pursuant to Union Contract
  - (C)-1        Failure to Pay Promptly or Correctly
  - (D)-1-2     Reduction in Wages

- IV-220      **Voluntary Quit – Temporary Employees**
- 1-2         Case Law and Commission Cases

## **UNFAVORABLE WORKING CONDITIONS**

An employer has the right to make reasonable rules for his workplace. Leaving work because one disagrees with those rules is not leaving for good cause. The test is whether the rules are reasonable under the reasonable person standard. Leaving work because of the existence of conditions that are detrimental to one's health, safety or morals is leaving for good cause connected to the work. It must be noted that health can be physical or mental. Also, conditions that greatly increase stress can establish good cause. There must be some physical evidence, such as symptoms and documentation by a physician. There also must be no relief without quitting. Some conditions are generally considered intolerable by the reasonable person standard. Those would include drugs rampant in the workplace, harassment or discrimination, foul language, and verbal or physical abuse. The employee must establish that he took all reasonable available steps to protect his job, including informing the employer of the conditions and giving the employer an opportunity to correct the conditions. Working conditions that have changed to the detriment of the employee may establish good cause.

Quitting because of merely not getting along with one's coworkers or employer is not enough. It must be established that the job has been made untenable, that the employee has taken all possible steps to solve the problem, and the employer is either unwilling or unable to correct the situation.

## UNFAVORABLE WORKING CONDITIONS

### *Disagreement with Employer Rules or Decisions*

#### *Case Application*

*97 AT 06214*

Facts: Claimant was employed from November 1995 to May 1997. During the last week of August 1996, a new advertising director was hired. In October 1996, the new director redefined claimant's job duties. Claimant's commission income dropped \$50. Claimant discovered that her coworker was making slightly more than she was. Claimant noted that the director would assign her work not in her job description. Claimant tried to resolve the problem with the director, but the director told claimant in the final incident that the conversation was at an end and to be at work the next day. Claimant called the office manager to advise that she would not be back.

Held: Claimant did not provide any medical documentation that she was stressed and that stress caused her medical problems. Claimant did not meet the burden of proof.

Result: Benefits denied.

*97 AT 5814 BR*

Facts: Claimant left work after his employer promoted a fellow employee over him as a supervisor.

Held: Claimant's job duties changed constantly and claimant did not object until now. No good cause found.

Result: Benefits denied.

## UNFAVORABLE WORKING CONDITIONS

*96 AT 3998 BR*

Facts: The employer alleges that claimant resigned when she wrote that she considered any contract between herself and the employer as null and void. Claimant asserts that the statement was not meant as a resignation but a refutation of the contract she had signed which said she would work two years following successful completion of a college course for becoming a registered nurse, if the employer paid for the full cost of the course.

Held: Given claimant's wording, it is easy to see how the employer thought she resigned. Claimant left work voluntarily without good cause.

Result: Benefits denied.

*93 AT 5978 BR*

Facts: Claimant was counseled concerning her behavior and was told her job was in jeopardy. Claimant asserts that during a counseling session the employer said, "no one really needs to know about this conversation." Claimant thought this meant he would not discuss it with anyone. Claimant quit when she discovered that the employer discussed the situation with one of her coworkers. The employer testified that he told his assistant to protect the work flow of business since the claimant's job was in jeopardy and she could be discharged at any time.

Held: The employer discussing the situation with the coworker was normal management procedure. No good cause found.

Result: Benefits denied.

## UNFAVORABLE WORKING CONDITIONS

### *Drug Problem in the Workplace*

#### *Case Applications*

*80 BR 1843*

Facts: Claimant testified there was a drug problem on the employer's premises and that was why he quit. The employer agreed that there was a problem with drugs.

Held: No employee should have to work where there is a drug problem. Good cause shown.

Result: Benefits allowed.

## UNFAVORABLE WORKING CONDITIONS

### *False Accusations*

#### *Case Application*

*81 BR 705*

Facts: Claimant was accused by two teenage customers of serving stale food. They reported that claimant served food from the trash. Claimant denied it and the cook that prepared the food advised that he had indeed cooked the food in question. The supervisor refused to accept the explanation and called the claimant a liar in front of other employees. Claimant quit.

Held: Claimant had evidence to establish that the working conditions were unsuitable and below industry standards. Good cause shown.

Result: Benefits allowed.

*79 AT 4579; 79 BR 915*

Facts: Claimant's ex-husband called her employer's wife and told her that claimant and the employer were having an affair. This was untrue, but the employer's wife threatened the claimant. Claimant later married and her ex-husband called again with the same lie. Again the claimant was threatened. Claimant quit her job and moved with her new husband.

Held: Good cause shown.

Result: Benefits allowed.

## UNFAVORABLE WORKING CONDITIONS

### *Harassment*

#### *Case Applications*

##### *97 AT 1034 BR*

Facts: Claimant worked for the employer for fourteen years. She resigned and accepted a separation agreement offered by the employer. She testified that she quit because of harassment from her supervisor and mistreatment by other employees in her unit.

Held: Claimant did not follow through with grievance procedures offered by the union nor did she talk to anyone. She never completed her application for a transfer. Her reason for quitting is not good cause.

Result: Benefits denied.

##### *96 AT 6159 BR*

Facts: Claimant quit because of ongoing harassment from a supervisor. The supervisor called her names and would not allow another employee to assist her in loading 3516 buckets even though that employee was willing and not busy. Claimant told the vice president of the problems and even was placed under a different supervisor. The former supervisor continued to harass her. Claimant told her employer who said she would have to deal with it.

Held: Claimant cannot be expected to accept harassment with the realization that she has no other recourse. Good cause.

Result: Benefits allowed.

##### *95 AT 2358 R BR*

Facts: According to claimant's testimony and the testimony of three other co-workers, claimant worked under tremendous harassment by a co-worker. Claimant reported the conflict to her supervisor several times, but nothing was ever done.

Held: Claimant had good cause for quitting.

Result: Benefits allowed.

## UNFAVORABLE WORKING CONDITIONS

### *No Provision for Physical Needs*

#### *Case Applications*

82 AT 7553

Facts: Claimant was 5' 10" and 375 lbs. He was hired as an over-the-road truck driver. He was assigned to a truck with a seat that was not large enough. He was then given a truck with a modified seat. The modified truck was sold and claimant was put back into a small seat. When the employer could not produce a truck with adequate seating, claimant quit.

Held: The employer was aware of claimant's physical dimensions when he was hired. The working conditions were modified by the employer to a point where claimant was unable to continue work. Good cause for quitting.

Result: Benefits allowed.

## UNFAVORABLE WORKING CONDITIONS

### *Relationship with Co-Workers*

#### *Case Applications*

##### *89 AT 5348 BR*

Facts: Claimant quit because of disagreement with the employer's daughter. Claimant was hired by the daughter but the daughter quit. The daughter was later hired back in a non-supervisory position, while the claimant had been given the daughter's duties. The claimant and daughter fought constantly and the claimant informed the employer that she was quitting.

Held: Although advised of a problem between the claimant and the daughter, the employer did nothing to correct the problem. Quit for good cause.

Result: Benefits allowed.

##### *87 AT 5849 BR*

Facts: Claimant quit because her co-workers constantly ridiculed her by calling her the employer's pet. Lewd remarks were made about the claimant and the employer. Claimant consulted the employer who counseled the co-workers, who denied the accusation. The employer offered to transfer the claimant away from the co-workers, but the claimant did not wish to work in the warehouse so she resigned.

Held: If the conditions were so bad, claimant would not have stayed sixteen months. The employer offered a good faith transfer and claimant refused. Good cause not shown.

Result: Benefits denied.

## UNFAVORABLE WORKING CONDITIONS

### *Relationship with Employer*

#### *Case Applications*

##### *00 AT 3037 BR*

Facts: Claimant worked for the employer for eight years. He had a new supervisor that he did not get along with. On January 26, claimant said he felt ill and since his supervisor was not there, he told his former supervisor he was going home and would call in the next morning. He called the next morning at 9:15 and asked if he could take one week of vacation. He had diabetes and his doctor told him to take time off work. A coworker said that claimant complained about the supervisor then cleaned out his desk. Claimant's supervisor said that he told claimant that he could not have vacation time because he left work without notice.

Held: Claimant was ill and told the only other person in the office he was ill. Claimant called in the next day. The Board of Review reversed the Appeal Tribunal and modified it to show that claimant was discharged pursuant to 2-406.

Result: Benefits allowed.

##### *97 AT 06131 BR*

Facts: Claimant had been transferred four times in his career. Each time was at his request and each time was an advancement. The final eight years were spent in the store in Durant, Ok. The employer alleged that he received complaints from the store employees under the claimant. There was no firsthand testimony from the employees. The employer started an investigation and informed the claimant he was to be transferred to a store in Perryton, Tx. Claimant declined the transfer.

Held: Claimant did not show a change in his contract of hire or that working conditions would significantly change with a move to Texas.

Result: Benefits denied.

## UNFAVORABLE WORKING CONDITIONS

### *5 AT 2908 BR*

Facts: Claimant was employed eighteen months and quit on or around December 5, 1994, after his employer threatened to discharge him and used an obscenity as he did so. The employer questioned whether claimant had actually been working while on the job. Claimant gave his two weeks notice.

Held: The acts of the employer, some of which occurred in front of other employees and bystanders, were sufficient to cause the employment to be untenable. Claimant has shown good cause.

Result: Benefits allowed.

### *94 AT 4769 BR*

Facts: On December 8, 1993 and December 14, 1993, claimant approached an administrator to discuss company business. Claimant was met with language and actions which intimidated and threatened the claimant. On one occasion, the administrator apparently indicated he was so mad he “could rip (claimant’s) head off.”

Held: Claimant offered uncontradicted evidence. Claimant was subjected to conditions within her work environment that were not acceptable. The situation was untenable. Good cause.

Result: Benefits allowed.

*See also* Illness or Injury/ Job Related Stress; Leaving in Anticipation of Discharge, *81 AT 8355;82 BR 772*

## UNFAVORABLE WORKING CONDITIONS

### *Request for Transfer Denied*

#### *Case Applications*

##### *90 AT 05956 BR*

Facts: Claimant resigned her position because the workload had become too much for her, both in amount of work and amount of heavy lifting. Claimant said she tried to transfer, but was told she was too valuable in her position to be transferred. The supervisor agreed that claimant tried to transfer. He decided to deny the transfer.

Held: An employer has the right to direct the work force, but also has the responsibility to safeguard an employee's interests. Claimant was denied the transfer because she performed well in her present position, not because there were no openings or because she was not qualified. Good cause found for quitting.

Result: Benefits allowed.

##### *81 BR 1575*

Facts: Claimant quit because his repeated requests for a transfer to the day shift were not granted because he was not fast enough on his job to comply with the day shift requirements.

Held: Good cause not found for quitting.

Result: Benefits denied.

##### *81 BR 1331*

Facts: Claimant was burned while working in the furnace area and missed time from work. When he returned, he asked to be transferred to another area. The transfer was denied because there were no other openings at the time. Claimant failed to come to work for two days and the employer assumed that claimant had quit.

Held: There was no change in the working conditions. There was danger in the area where claimant worked but was the same for the other people in the area. Good cause not found.

Result: Benefits denied.

## UNFAVORABLE WORKING CONDITIONS

### *Sexual Discrimination and/or Harassment*

#### *Case Applications*

##### *96 AT 9275 BR*

Facts: Claimant left work after an altercation which allegedly occurred at the employer's office with a fellow employee. There were a series of incidents occurring over the past several years. Claimant provided witnesses which substantiated these allegations.

Held: Claimant took steps to resolve the situation. Claimant had good cause to quit.

Result: Benefits allowed.

##### *89 AT 8508 BR*

Facts: Claimant alleges that she left her employment because of sexual harassment. She worked for the employer for eight months and left because of sexual advances made by the owner toward her. Claimant described the incidents but in each incident only the claimant and the owner were present and the owner denied the incident.

Held: The Appeal Tribunal denied benefits finding that there was not enough evidence. Claimant worked for the employer on four different occasions and yet went back even though she alleges sexual harassment. Good cause not shown.

Result: Benefits denied.

##### *88 AT 2738 BR*

Facts: Claimant resigned because of sexual harassment. She alleges that over twelve years she was harassed by several principals and coworkers. She never filed a written complaint or grievance.

Held: Claimant had alternatives to quitting, but chose not to exercise them. Good cause not found.

Result: Benefits denied.

## UNFAVORABLE WORKING CONDITIONS

### *Use of Foul Language*

#### *Case Applications*

##### *87 AT 7691 BR*

**Facts:** Claimant quit due to excessive foul and abusive language used by her supervisor. She said there were several previous incidents where the supervisor used profanity in front of the claimant or made off-color remarks about the claimant's personal life in front of customers. She reported the last incident to a higher authority and did not return to work.

**Held:** The Appeal Tribunal denied benefits finding that claimant did not give the employer a chance to resolve the issue. The Board of Review reversed and allowed finding that no female employee should have to tolerate the foul language and verbal abuse to which she was subjected. Good cause shown.

**Result:** Benefits allowed.

##### *81 BR 486*

**Facts:** Claimant was Christian and the foul language used in the workplace caused her problems. She asked the president and vice president if something could be done about the language. Claimant's physician told her that stress from the job contributed to her problems and she should quit if this was true. Claimant had worked for the employer before and knew about the language.

**Held:** There was no material change in the employment that caused claimant to quit. The working conditions were not such that a person desiring work would be unable to do so. Good cause not shown.

**Result:** Benefits denied.

##### *81 BR 157*

**Facts:** Claimant left work because of the employer's excessive cursing. In one incident the employer began cursing. Claimant thought it was at him but it was at the business.

**Held:** The employer cursing at the business does not create a situation that requires an employee to quit. Good cause not shown.

**Result:** Benefits denied

## UNFAVORABLE WORKING CONDITIONS

### *Verbal Abuse Causing Mental Stress*

#### *Case Applications*

##### *83 BR 2018*

Facts: Claimant was subjected to verbal abuse and embarrassment by her supervisors and left her employment.

Held: No female should be subjected to verbal abuse and embarrassment in the workplace. The working conditions were untenable. Good cause shown.

Result: Benefits allowed.

##### *81 BR 919*

Facts: Claimant says that his supervisor harassed, cursed and threatened him. Claimant did everything he could from asking for a transfer to filing a complaint with the union. Nothing was done.

Held: There is no information from the employer discrediting claimant's story. The supervisor's threats constituted good cause.

Result: Benefits allowed.

##### *81 BR 705*

Facts: Claimant's supervisor called him a liar and accused him of losing his sanity in front of other employees.

Held: The actions of the supervisor rendered the job unsuitable and equaled good cause for quitting.

Result: Benefits allowed.

## UNFAVORABLE WORKING CONDITIONS

### *80 AT 5031*

Facts: Claimant quit her job because of her alcoholic boss. The boss drank heavily on the job and would become mean and sarcastic, harassing and verbally abusive. Claimant worked though it caused her extreme nervousness.

Held: The working conditions were untenable. Claimant was subjected to repeated harassment and verbal abuse. Good cause shown.

Result: Benefits allowed.

### *80 BR 1394*

Facts: Claimant left employment because the supervisor made excessive demands of her and gave contradictory instructions. He was evasive and rude and made false accusations. He verbally abused her and made her cry. Claimant spoke with her supervisor and to the store manager, but realized there was no way to improve the situation so she quit.

Held: The job was untenable due to the treatment claimant received from her supervisor. Good cause shown.

Result: Benefits allowed.

*See also* Harassment.

## **UNSAFE WORKING CONDITIONS**

No one should be required to work in dangerous or unsafe conditions. Working long hours when one's job involves heavy machinery or driving can place the employee or others at serious risk. Likewise, machinery which is not kept in good repair or which lacks the necessary safety devices can pose a threat to health. The employee must establish that the employer placed the requirement on the employee, that the employer was made aware of the problem and failed to correct it before good cause can be found for leaving the employment.

Good cause can also be established for leaving a hazardous job, if the employee was not aware of the hazards when accepting employment, or the hazards have increased or been made worse due to the employer's failure to provide adequate protection from the hazard. Some jobs are by their nature hazardous, e.g. a prison guard. A person accepts that employment with the prior knowledge and acceptance of the hazard. As long as the customary and reasonable protections are provided by the employer, a decision to quit would be without good cause.

## UNSAFE WORKING CONDITIONS

### *Excessive Overtime Requirements*

#### *Case Applications*

*87 AT 2890 BR*

Facts: Claimant was required to drive more hours than federal regulations allowed. Drivers who violated federal regulations were fined. Claimant felt the excessive hours were unsafe. He was told to continue, so he quit.

Held: Good cause shown.

Result: Benefits allowed.

*See also Excessive Overtime/ Change in Terms or Conditions of Hire*

## UNSAFE WORKING CONDITIONS

### *Inexperienced Supervisors or Co-Workers*

#### *Case Applications*

*83 AT 1058; 83 BR 1686*

**Facts:** Claimant quit because of his new driller's inexperience in drilling deep gas wells. The employer said the driller was qualified and the well was completed with no problems.

**Held:** Mere allegations of unsafe working conditions are not enough. There was no proof of unsafe working conditions.

**Result:** Benefits denied.

## UNDAFE WORKING CONDITIONS

### *Injuries or Potential for Injuries on the Job*

#### *Case Law*

##### *Lyntone Belts, Inc. v. Shelly Meyers et al., Case No. C-90-152L*

Facts: Defendant Meyers did not quit her job with good cause. She was advised by her doctor to not work in a poorly ventilated area where spray paint and thinners were used. There was no evidence that claimant's doctor investigated the area. Plaintiff presented the results of a State Department of Labor investigation which said there were no hazards in the air samples taken. Meyers was also offered maternity leave by plaintiff.

Held: Good cause not shown.

Result: Benefits denied.

#### *Case Applications*

##### *90 AT 2184 BR*

Facts: Claimant quit when the employer refused to provide proper safety equipment for use of the chemicals the employees worked with, and did not give raises as promised.

Held: The employer did not provide proper safety equipment. The cloth gloves were not chemical resistant. The risk to health was good cause.

Result: Benefits allowed.

##### *90 AT 2028 BR*

Facts: Claimant was assigned to a two-man team with a person with whom he did not get along. Claimant told his supervisor the man acted drunk and was not adequately doing his job. The supervisor ordered claimant back to his post and he left.

Held: The employer admitted the two men did not get along and the job was dangerous. There was evidence of unsafe conditions. Good cause shown.

Result: Benefits allowed.

## UNSAFE WORKING CONDITIONS

### *Machinery Not in Good Repair*

#### *Case Applications*

*87 AT 2116 BR*

Facts: Claimant worked for the employer for nine years with the last six months as a truck driver. On three occasions while driving a truck, the brakes failed. In another incident the front end of his truck fell out while he was driving causing him to lose control. He quit.

Held: Good cause shown.

Result: Benefits allowed.

## UNSAFE WORKING CONDITIONS

### *Personal Attacks or Threat of Personal Attacks on Employees*

#### *Case Applications*

*77 AT SUA 338; 642 BR 77*

Facts: Claimant was employed as a guard. Inmates made threats against him. He had problems with his supervisor. He was very nervous on the job. There was talk that the employer was putting claimant on the tower but it did not happen.

Held: Claimant knew the conditions he was getting into at the time of his hire. There was no evidence that he was ever promised the tower job. Good cause not shown.

Result: Benefits denied.

*75 AT 5385; 666 BR 75*

Facts: Claimant suffered bodily harm when he was attacked by a coworker. This was the second attack of this type. Claimant was injured so that she was off work for a period of time. After the first attack she went to the owner and asked for measures to be taken to avoid a similar incident. Claimant quit this time because she felt the owner could not help her.

Held: Leaving after the second attack is what any prudent employee would do. The employer was unwilling to help. Good cause shown.

Result: Benefits allowed.

## UNSAFE WORKING CONDITIONS

### *Physical Assault (Robbery, etc.)*

#### *Case Applications*

*81 AT 3307; 81 BR 1255*

Facts: Claimant was robbed one day on his shift. After working a few days after the robbery, claimant received crank phone calls. Claimant asked for a transfer, but it would be to a store in a less secure area. Claimant resigned.

Held: Claimant was given training on what to do in a robbery. He knew it was a possibility. There was no change in the terms of hire. Claimant left without good cause.

Result: Benefits denied.

*75 AT 4409; 527 BR 75*

Facts: Claimant was night manager at a grocery store. He asked the store manager for more help in operating the store after dark. The claimant's requests were unanswered even after the claimant was knifed and robbed.

Held: Good cause shown. The employer did not assist the claimant even after the physical danger was shown.

Result: Benefits allowed.

## **WAGES**

The terms of employment are determined at the time of hire. Any substantial reduction in wages or compensation of any form would establish good cause for leaving. Wages are not limited to salary or hourly wages, but can include per diem allowances, and benefits, a reduction of which would materially alter the contract of hire or result in a substantial loss of pay. See the Union Relations for an exception. A mere pay dispute is not enough to establish good cause, but the failure of the employer to pay wages in a timely and accurate manner may establish good cause. A one-time delay or error in an employee's paycheck does not qualify. The problem must be persistent. It must be shown that the employer was made aware of the problem, was given an opportunity to correct it, and failed or refused to do so.

## WAGES

### *Change in Per Diem Allowances*

#### *Case Applications*

*82 AT 9295; 83 BR 202*

**Facts:** The employer eliminated claimant's per diem allowance because of depressed conditions in the oil and gas industry. Claimant would have incurred a loss of \$147 every two weeks.

**Held:** There was a good economic reason for the reduction, but the reduction was an adverse change in the hiring agreement. Good cause shown.

**Result:** Benefits allowed.

*See also: Change in Terms or Conditions of Work*

## WAGES

### *Changes Pursuant to Union Contract*

#### *Case Applications*

*82 AT 6671; 82 BR 1580*

Facts: Claimant was notified that he was to be laid off from his job, but he could accept a job at a lower classification. He would not have been prevented from returning to his new job if it became open. Claimant declined the offer in order to find a job with higher pay.

Held: The position change would only have cost claimant \$110 per month. It was only temporary, and, under the terms of the union contract, claimant could have remained employed. Good cause not shown.

Result: Benefits denied.

## WAGES

### *Failure to Pay Promptly or Correctly*

#### *Case Law*

*Pruitt v. State ex rel. OESC, 918 P2d 80 (Ok Civ App 1996)*

Facts: Claimant quit because the employer failed to timely pay commission that she says the employer owed her. The employer had not settled or paid commissions for July or August, a two-month period of claimant's employment at the time she quit on October 14, 1992.

Held: Good cause shown. The District Court and Supreme Court upheld.

Result: Benefits allowed.

#### *Case Applications*

*90 AT 7707 BR*

Facts: Claimant was a truck driver. Her employer made errors in her pay and she contacted payroll. They indicated she was paid by what the dispatcher reported. It was not correct. Claimant was also not reimbursed for phone bills and did not receive trip pay to which she was entitled. Claimant quit.

Held: The employer was not paying claimant correctly. Good cause shown.

Result: Benefits allowed.

*83 BR 1024*

Facts: Claimant quit because the employer was late in meeting payroll. The employer used a bank that was closed by the government and had asked employees to give them time to meet payroll for the preceding two-week period. All employees agreed to this. A few days later, claimant told the employer she found a job elsewhere.

Held: The delay in receiving pay did not equal good cause to quit.

Result: Benefits denied.

## WAGES

### *Reduction in Wages*

#### *Case Law*

*R & R Engineering Co. v. OESC, Bd. of Rev., & Gilbert V. Farris, 737 P2d 118 (Okla 1987)*

Facts: Farris resigned after being informed that he would receive a 16 2/3% reduction in pay due to poor economic conditions. All employees received a pay cut. Farris was the only one that resigned.

Held: Good cause shown. A pay cut in excess of 15% is excessive.

Result: Benefits allowed.

#### *Case Applications*

*00 AT 4305 BR*

Facts: Claimant was a loan originator for two years. Claimant was hired at a base salary of \$18,720 plus incentives for each loan he originated. In 1999, claimant earned \$36,778, which included over \$15,000 in incentive pay. During the last eight months of claimant's employment, the incentive program was reduced each month. Claimant quit.

Held: The Appeal Tribunal held that there was no guarantee of incentive pay. It was not cut, it was just reevaluated each month by the employer. There was nothing in writing to show that claimant was guaranteed incentive pay. Good cause not shown. The Board of Review held that the employer set a precedent, based on past performance, of paying incentives. These were part of claimant's wages. His wages were substantially reduced by the abolishing or adjusting of the incentives. Good cause shown by the substantial reduction of wages. Reversed.

Result: Benefits allowed.

## WAGES

*83 AT 12791; 83 BR 2996*

Facts: Claimant left employment because wages were reduced by \$1.20 per hour due to economic reasons.

Held: The wage cut was reasonable in a time of economic hardship. The standard wage for riggers was between \$10 - 12.60. Claimant would now make \$12.30. Claimant's wages were suitable. Good cause not shown to refuse employment.

Result: Benefits denied.

*83 AT 2733; 83 BR 936*

Facts: Claimant was earning \$35 per day, then was promoted to \$45 per day, but was injured on the job. While gone she was replaced. When she returned it was to \$40 per day. Claimant first advised she would return, but then decided not to.

Held: The new salary was reasonable and did not render the job untenable.

Result: Benefits denied.

*See also* Change in Terms or Conditions of Work/Demotion and/or Pay Reduction

## **VOLUNTARY QUIT: TEMPORARY EMPLOYEES**

Because of the proliferation of temporary employment and placement firms in recent years the legislature added a section to the Act effective in 1995 to deal with questions specifically related to temporary employees. The applicable section of the Act is as follows:

*Section 2-404A. Leaving work voluntarily of temporary employee.*

*A. For the purposes of this section:*

- 1. "Temporary help firm" means a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects; and*
- 2. "Temporary employee" means an employee assigned to work for the clients of a temporary help firm.*

*B. A temporary employee of a temporary help firm will be deemed to have left his or her last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee will not be deemed to have left work voluntarily without good cause connected with the work unless the temporary employee has been advised of the obligation to contact the temporary help firm on completion of assignments and that unemployment benefits may be denied for failure to do so.*

*C. For the purposes of the Employment Security Act of 1980, the temporary help firm is deemed to be the employer of the temporary employee.*

The requirement is the same for temporary employees as others to establish good cause; however, the temporary employee must meet additional requirements to establish that he is a temporary employee, and that he has contacted the employer for reassignment. It must also be shown that the temporary employer has advised the employee of the obligation to contact the temporary employer.

N.B. Re: Leased Employees: This section does not apply to leased employees or those who are hired with the intent of becoming permanent employees.

## TEMPORARY EMPLOYEES

*05-AT-05239-BR*

**Facts:** The claimant was employed as general labor with a temporary employee service. The claimant notified her employer that she was unable to complete her assignment because her legs and feet were swelling. The employer advised the claimant that they would try to find her another assignment. They did not offer her another assignment.

**Held:** The claimant was still employed when she left her last assignment. She did make contact with her employer when she left that assignment; and, therefore, met her obligation to contact the employer. The law does not require that she make another contact with her employer. Her separation is due to lack of work and not misconduct connected to the work.

**Result:** Benefits allowed. Board of Review affirmed.

*02-AT-9001-BR*

**Facts:** The claimant worked for a temporary help agency. He was not satisfied with the employment because the agency required that he come in to their office each day for assignment and he was not always given an assignment, even when the employer he had worked for the day before has asked him to return. He last performed work for them on May 24<sup>th</sup>. He returned on May 30<sup>th</sup> to seek employment but was told they had no suitable work available.

**Held:** The claimant is only required to contact the temporary employer one time after his assignment ends. If the employer does not have work available, then he has good cause to leave that employer.

**Result:** Benefits allowed.

*03-AT-0100-BR*

**Facts:** The claimant worked for a temporary employment agency. She had been assigned to the employer's client for about five months. She was sexually harassed by a female coworker. When she reported it to the client company and her employer, she and the coworker were called in and she was required to apologize to the coworker for making the accusation. The claimant then asked the employer to find another placement for her. Approximately a month later, the sexual harassment began again. Because of the way she was treated in the first instance, the claimant did not report it again, but left the assignment. She asked the temporary employment agency for another placement, but no long-term work was available. The claimant then decided to move to California where she would have the assistance of friends and family.

Held: The claimant left her last assignment because of sexual harassment and unfair treatment. She contacted her employer for another assignment, but none was available to her. The claimant was discharged for lack of work. Quitting an assignment is not quitting employment.

Result: Benefits were allowed.

*00-AT-04280*

Facts: The claimant was employed as a temporary employee with a temporary help firm, assigned to various client businesses. His last assignment lasted three months and ended due to lack of work. He contacted his employer to collect his check two days after the end of the assignment. He did not advise his employer that day that he was ready for reassignment, because he was unaware it was necessary to do so and he was scheduled to have surgery the following week. He was still eligible for reassignment by the employer.

Held: The claimant's assignment ended due to lack of work. He contacted his employer at the end of the assignment. The fact that he could not accept another assignment because of medical reasons does not change the nature of his separation from work and is not disqualifying. The requirements of the Act were not imposed to punish those unable to take an assignment for a justified reason. The claimant was not discharged and he did not voluntarily quit work. He was separated for lack of work.

Result: Benefits allowed

## SECTION V - MISCONDUCT

V – 1,2	<u><a href="#">Definition of Misconduct/Burden of Proof</a></u>
V- 3	<u><a href="#">Burden of Proof - Precedential Case Law</a></u>
3	<i>Vester</i>
4	<i>Tynes v. Uniroyal Tire Co</i>
5	<i>Arkle v. Independent School District No. One of Tulsa Co.</i>
7	<i>Stagner</i>
8	<i>Smith</i>
10	<i>Vogle</i>
11	<i>Nordam</i>
12	<i>First Place v. OESC</i>

## MISCONDUCT

The applicable provision of the Act governing disqualification for misconduct is as follows:

*Section 2-406. An individual shall be disqualified for benefits if he has been discharged for misconduct connected with his last work, if so found by the Commission. Disqualification under this section shall continue for the full period of unemployment next ensuing after he has been discharged for misconduct connected with his work and until such individual has become reemployed and has earned wages equal to or in excess of ten times his weekly benefit amount.*

### *Definition*

Oklahoma's definition of "misconduct" was officially established in *Tynes v. Uniroyal Tire Co.*, 679 P2d 1310 (Okla App 1984), wherein the court adopted the language used in *Arizona Dept. of Economic Security v. Magma Copper Co.*, 125 Ariz 389, 609 P 1089 (Ariz App 1980) (quoting *Boynnton Cab Co. v. Neubeck*, 237 Wis. 249, 296 NW636,640 (1941)). In *Tynes* misconduct was defined as:

*...conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such a degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute.*

The Supreme Court subsequently affirmed this definition of misconduct in *Vester v. Board of Review of Oklahoma Employment Sec. Com'n.*, 697 P2d 533 (Okla. 1985). In its decision the Court went further to explain that any definition of misconduct which requires only an act or course of conduct detrimental of the employer's best interest and does not contain the element of willfulness or culpable negligence is contrary to the expressed purpose and intent of the Act and is erroneous as *a matter of law*. It must be understood that while we realize that an employer might have good reason to discharge an employee who does not measure up due to ability or ordinary negligence, absent a finding of willfulness or culpable negligence, there is no misconduct for purposes of disqualification under the Act.

## **BURDEN OF PROOF**

As the employer is the party with the most knowledge of any alleged misconduct, the employer bears the burden to prove the charge of misconduct by a preponderance of the evidence. Preponderance of the evidence has been defined to mean that, after weighing all the evidence, the fact-finder determines it is “more likely than not” that the misconduct occurred.

## MISCONDUCT

*Vester v. Board of Review of OESC, 697 P2d 533 (Okla. 1985)*

**History:** The Board of Review determined that the employee was discharged for misconduct and was disqualified for unemployment benefits. The District Court of Noble County affirmed. The Supreme Court reversed and remanded.

**Facts:**

1. Claimant had numerous absences and did not challenge the attendance record submitted by the employer. She was counseled about her attendance problem and was given an opportunity to correct the problem. Her work was satisfactory.
2. Claimant always called to report her absences. Her absences were caused mainly by health problems. She did provide medical statements on many of the absences.

**Issue:** Is a history of excessive absenteeism misconduct, even if those absences may have been for health reasons?

**History:**

1. Adoption for purpose of determining qualification for unemployment benefits of definition of misconduct which definition requires only act or course of conduct detrimental to employer's best interest, without element of willfulness or culpable negligence, was contrary to express purpose and intent of State Employment Security Act, and was erroneous as a matter of law;
2. Evidence supported finding of appeals tribunal referee of Commission that employee had given notice of her absences, that absences were mainly the result of health problems, and that employee had presented documentation as to that fact so that Supreme Court was bound to accept that statement as fact; and,
3. Finding of fact of referee precluded conclusion that employee had to be disqualified for unemployment benefits due to discharged for job-related misconduct.

**Note:** Case includes discussion and definition of misconduct, and has extensive cites from other jurisdictions.

## MISCONDUCT

*Tynes v. Uniroyal Tire Company, and OESC, 679 P2d 1310 (Okla. App. 1984)*

**History:** The Board of Review affirmed the decision of the hearing officer to deny benefits because claimant had failed to comply with employer's attendance policy and was guilty of misconduct. The District Court, Carter County, affirmed. Court of Appeals, Division No. 1 reversed and remanded; released for publication.

**Facts:**

1. Claimant was hired as an oiler. At the time of her firing, she was a general mechanic.
2. Claimant testified she had missed work due to illness on at least one occasion. She had also been absent because she was caring for her terminally ill mother. Her last tardy was due to a required court appearance.

**Issue:** Was claimant's accumulation of tardies and absences, in excess of those allowed by the employer, an act of misconduct?

**Holding:** Disqualifying claimant from unemployment compensation on grounds of misconduct for having exceeded employer's allowable number of "tardies/early leaves": without examining reasons for absences was error. Reversed and remanded to the OESC Board of Review for a new evidentiary hearing to determine whether claimant was guilty of misconduct under the guidelines set forth.

## MISCONDUCT

*Arkle v. Independent School District No. One of Tulsa County, 784 P2d 91 (Okla.App.1989)*

- History: Board of Review denied benefits; District Court of Tulsa County permitted aware of benefits; Court of Appeals, Div. No. 3, affirmed and released for publication.
- Facts:
1. Claimant, appellee, was employed in the transportation department as a lot crewman.
  2. One of his job duties was to substitute as a school bus driver. Oklahoma law requires that all school bus drivers obtain a certificate issued by the Oklahoma State Department of Education prior to their employment.
  3. Before a certificate will be issued, the driver must take and pass an annual physical examination; persons who do not obtain a certificate cannot be employed as school bus drivers.
  4. Claimant knew of his scheduled physical examination at least two weeks in advance. Claimant's understanding was the physical examination and drug screening test did not need to be done at a certain time, as long as they were done prior to his returning to work in September.
  5. Approximately one week before his scheduled physical examination, claimant notified his supervisor he would be out of town on the date of his physical examination, and he would have his private doctor perform the physical. Claimant went out of state to visit his ill mother.
  6. On his return, claimant was instructed to go to his own doctor for the required tests prior to returning to work on September 2<sup>nd</sup> or 3<sup>rd</sup>.
  7. Claimant then discovered he was ill and needed to be hospitalized. He was admitted to the hospital suffering from chronic hepatitis. His doctor notified employer in writing that claimant would be confined for approximately thirty days. Claimant did not instruct his doctor to send the results of his physical examination or drug screening to employer.
- Issue: Was employee's failure to timely send results of physical examination and drug screening to employer an act of misconduct; did employee's illness and the illness of his mother mitigate his failure to timely respond?

Holding: Court of Appeals determined that an error of law was committed by the Appeal Tribunal and the Review Board; they found claimant's acts to be willful misconduct. They did not apply the proper legal test of willful misconduct, or if they did, they made a clearly erroneous legal conclusion. As a matter of law, the trial court had the duty to correct the incorrect legal conclusions of the appeal tribunal and the review board and order the payment of unemployment benefits to claimant. The trial court did so, and the Court of Appeals affirmed.

## MISCONDUCT

*Stagner v. Board of Rev of OESC, 792 P2d 94 (Okla. App. 1990)*

**History:** Board of Review denied claim; claimant appealed; District Court, Kay County, affirmed; claimant appealed; court of Appeals, Div. No. 3, affirmed and released for publication.

**Facts:**

1. Claimant was employed as a dental hygienist for approximately ten years and was paid on a commission basis.
2. Employer installed a time clock and required claimant and others to clock in and out. Claimant did not use the time clock after April 1987.
3. Employer terminated claimant for failure to use the time clock in October 1987.

**Issue:** Is an employee's refusal to follow an employer's reasonable work rules and requests, especially with regard to accurate recording of time spent on the job, a sufficient showing of misconduct?

**Holding:** The Court stated that the question of whether there has been sufficient "misconduct" from benefits presents a question of fact on which the Board of Review's determination is conclusive if supported by any of the evidence introduced. The Court found no reversible error of law and that the findings of fact were supported by sufficient evidence. Affirmed.

History: Board of Review denied benefits, claimant appealed; District Court of Oklahoma County affirmed; claimant appealed; Court of Appeals, Div. No. 3, reversed and remanded with directions; released for publication.

- Facts:
1. Claimant was employed by the City of Oklahoma City as a crew supervisor for the City Street Department.
  2. He took leave to have surgery for a condition which was not employment related.
  3. The period from July 3, 1985, until after July 23, 1985, was leave with pay. After July 23, 1985, however, he was placed on leave without pay status.
  4. He was told to submit a physician's statement, either releasing him to return to work full-time, or estimating the total time required for his recovery.
  5. Claimant presented a statement which released him on a restricted basis, and employer's representative advised him this would be unacceptable.
  6. Claimant was informed light duty work was available only to employees whose illnesses were employment related.
  7. Claimant's supervisor advised him on August 21, 1985, he must submit the physician's statement by August 22, 1985, or he would be terminated.
  8. He attempted to obtain the required statement, but learned his physician was on vacation until September 1985.
  9. Claimant's employment was terminated on August 23, 1985.

Issue: Was claimant's failure to submit a physician's statement, and the fact that he filed for social security disability, enough to constitute misconduct?

Holding: Claimant was not guilty of disqualifying "misconduct", either in failure, despite attempts, to submit requested physician's statement or in inability to perform his work; reversed and remanded with directions to enter an order allowing benefits.

NOTE: There was evidence at the hearing before the Appeal Tribunal that indicated the employer took the position that claimant quit his employment; the Court of Appeals determined that the evidence supported the argument that claimant was terminated.

## MISCONDUCT

*Vogle v. OESC, 817 P2d 268 (Okla. App. 1991)*

**History:** Board of Review denied benefits; claimant appealed; District Court, Oklahoma County, affirmed the denial; claimant appealed; Court of Appeals, Div. No. 3, reversed and reinstated the decision of Appeal Tribunal awarding benefits; released for publication.

**Facts:**

1. Claimant was a beauty advisor in the cosmetics department. Employees were encouraged to take discontinued perfume testers for their own use.
2. Approval must first have been obtained from the store manager or immediate supervisor, then an approval slip was taken to customer service.
3. Customer service was to verify the approval and issue a claim slip to the employee.
4. At the end of the day the employee turned in the claim slip and took the merchandise home. The merchandise was also taken past a security guard who provided an additional checkpoint. One day claimant inadvertently omitted the first step in the process. Another employee also failed to get approval, but was not terminated.
5. Claimant had always obtained approval on previous occasions. This was the only time claimant failed to obtain approval. Claimant returned the testers as soon as she learned there was a problem.

**Issue:** Does mere violation of a work rule meet the definition of misconduct?

**Holding:** An isolated infraction of a work rule not detrimental to the employer's interest is not misconduct within the meaning of the Act and is not sufficient to deny unemployment benefits.

**NOTE:** The court stated, "...the conduct of (claimant) may have been inadvertence or ordinary negligence, and may have been grounds for dismissal, but it does not constitute the type of conduct described in *Vester* or *Tynes* which would divest her right to unemployment benefits. Mere violation of a work rule, although it may justify a discharge, does not necessarily constitute misconduct for the denial of benefits. 81 C.J.S. Social Security Section 224 (1977). Claimant's conduct was not willful or intentional. It was a mistake..."

## MISCONDUCT

*Nordam v. Board of Review of OESC, 925 P2d 556 (Okla. 1996)*

**History:** Board of Review affirmed award of benefits; employer appealed. District Court affirmed award; employer appealed and in an unpublished opinion, the Court of Appeals affirmed; on grant of certiorari, the Supreme Court affirmed the award of benefits.

**Facts:**

1. Claimant was presented with a written memorandum regarding her work performance by a supervisor; the memo was a statement entitled “notice of probation” that declared she was a tardy employee who did not do any work in the office. Employer offered no testimony or documentary evidence to support this allegation.
2. Claimant told the supervisor “she didn’t have to take this” and began to leave the supervisor’s office.
3. The supervisor then fired claimant.

**Issue:** What is the correct standard to be employed by the reviewing court when reviewing a decision of the Oklahoma Employment Security Commission?

**Holding:**

1. Correct standard of review of Board of Review’s decision was whether the record supported the Board’s conclusion that claimant’s actions did not constitute misconduct, and,
2. Evidence supported finding that claimant did not engage in misconduct when she apparently became upset and left the meeting with the supervisor.

FIRST PLACE v OESC, BD OF REV, AND MCKNIGHT, Case No, 102,663 (Okla Ct Civ App, Div 1, 9-15-06)

**Hsitory:** The employer appealed the Commission's Determination allowing the claimant and finding no willful misconduct. The Appeal Tribunal and Board of Review affirmed. The claimant was awarded benefits. The District court found that the findings were supported by the evidence and that there was no error in law.

**Facts:** The claimant was discharged for tardiness. She was hired to work the 6 a.m. to 2 p.m. shift. The employer changed her schedule temporarily to 7 a.m. to 3 p.m. to accommodate her childcare needs, but reverted back to the original schedule without informing the claimant. The claimant was unable to find daycare at 5:15 a.m. when she had to leave for work and was late as a result. The claimant was not warned or given deadline to resolve the daycare and tardiness problem.

**Issue:** Did tardiness due to unavailability of childcare constitute willful misconduct under *Vester*.

What is the standard of review for findings of the Board of Review.

**Holding:** Affirmed. The Court of Appeals cited *Vester* in determining that the claimant's tardiness was not unexplained, unjustified or unreported and therefore did not constitute willful misconduct. The decision of the Board of Review may not be overturned so long as there is competent evidence in the record to support its finding and there is no error in law.

**Reasoning:** There was competent evidence in the record to support the findings of the Board of Review and the law was properly applied. The employer was aware of the claimant's daycare problem and that she had tried to resolve it. The employer did not discipline the claimant or warn her that her job was in jeopardy; nor did they give her a deadline to correct the problem.

Cross Reference: Procedure

V-20	<u><b>Absenteeism</b></u>	
(A)-1		Company Attendance Policy
(B)-1-2		Excessive Absences
(C)-1-3		Failure to Report to Work
(D)-1-2		Family Illness
(E)-1-6		Personal Illness
(F)-1		Improper Request for Leave
(G)-1		Lack of Transportation
(H)-1		On the Job Injury
(I)-1-3		Tardiness
(J)-1-2		Without Notice
(K)-1		Procedure (Burden of Proof)

V-30	<u><b>Accidents</b></u>	
-1		Case Law and Commission Cases

V-40	<u><b>Alcohol and Drugs</b></u>	
(A)-1-7		Drug and Alcohol Testing
(B)-1-2		Intoxication on the Job
(C)-1-2		Treatment for Use
(D)-1-2		Use of Alcohol or Drugs on the Job
(E)-1-4		Use of Alcohol/Drugs When Off Duty

V-50	<u><b>Arrest and/or Incarceration</b></u>	
(A)-1-2		Arrest

## ABSENTEEISM

One of the most common reasons for a disqualifying discharge is excessive and chronic absenteeism, which has been consistently held to be misconduct when the absences are without justifiable cause, timely notification to the employer and without permission of the employer.

Many employers have instituted point system attendance policies to enable them to deal more uniformly with employees. Many of these are no-fault policies, in which the mere accumulation of points (similar to demerits) determines the employee's ability to remain employed. In these no-fault policies, no distinction is made between not showing up for work and an absence due to illness. Some policies allow exceptions for illness and other personal emergencies, in which case an employee would not lose his job because of illness. Most require the employee to furnish a doctor's note or proof of illness. Some policies are a composite of both, in which illness is excused to the extent that only one day of a multiple day's absence due to illness is charged against the employee. While employers do have the right to enact their own attendance policies, they may not legislate for the Commission, which is governed by the Act. See *Tynes*. Again, the purpose and objective of the Act must be considered. Unemployment compensation is to be provided for employees who are separated through no fault of their own. Illness of the employee falls into that category. It is reasonable for an employer to require proof of that illness. However, while absence due to illness may justify an employer in discharging an employee, such absence does not amount to willful misconduct precluding payment of unemployment. See *Vester v. Board of Review of Oklahoma Employment Sec.Com'n.*, 697 P2d 533 (Okla. 1985). Further, it has been consistently held by the Commission that even if the employee has accumulated points, if the final absence is justified thereby placing the employee over the point limit, then the employee has not been discharged for willful misconduct. Also, any point system which charges points against an employee for an absence due to illness even with a doctor's note and which points can accumulate to cause an employee's separation is contrary to the purpose and objective of the act and does not come within the definition of misconduct as outlined in *Vester*. While employers may find point system policies make it easier to administer their absenteeism policy, they will also find that violation of those policies alone will not be binding on the Commission in adjudicating misconduct.

## ABSENTEEISM

### *Company Attendance Policy*

Primary case law: *Tynes v. Uniroyal Tire Co. et al.*, 679 P2d 1310 (Okla. App. 1984)

90 AT 4805 BR

Facts: Claimant failed to follow the company attendance policy by not calling in to report that he would be absent. He also failed to submit a medical statement to support his absence as required by the company policy.

Held: Claimant's actions were a willful disregard of the employer's interests.

Result: Benefits denied.

89 AT 2478 BR

Facts: Claimant was discharged for excessive absences as per the company attendance policy. The claimant notified the employer and produced a doctor's statement every time he was absent. The only time he was reprimanded was when he had transportation problems.

Held: It may be company policy, but personal illness is not misconduct.

Result: Benefits allowed.

81 BR 1998

Facts: Claimant had a medical problem that required surgery and two weeks off from work. She was terminated by the employer because they believed the two weeks off to be unfair to other employees.

Held: A medical problem is not an act of misconduct. Discharge was not for misconduct.

Result: Benefits allowed.

**SEE ALSO:** Excessive Absences, 96 AT 5113 BR; 89 AT 2524 BR; Personal Illness, 99 AT 00155 BR, 97 AT 1809 BR, 96 AT 6572 BR, 95 AT 7952 BR; Family Illness, 96 AT 3050 BR

## ABSENTEEISM

### *Excessive Absences*

89 AT 2524 BR

Facts: Claimant experienced a period of excess absenteeism and tardiness but explained or reported each occurrence to her employer. Claimant had sufficient reason for her absences and there is no evidence that the absences and tardies were within her control.

Held: As the absences were not within claimant's control, there is no willful misconduct.

Result: Benefits allowed.

89 AT 03644

Facts: Claimant was discharged for absence without notice. When the employer asked claimant's wife, she advised the employer that the claimant was in jail. Claimant made no attempt to notify his employer. Claimant had a history of attendance problems and had been previously suspended for the same. He had been treated under the employer's drug treatment program twice, the maximum allowed.

Held: Excessive absences are misconduct, especially after the claimant has received counseling and discipline for same by the employer.

Result: Benefits denied.

89 AT 7270 BR

Facts: Claimant had previously worked for the employer and had a problem with absenteeism at that time. Claimant was discharged for chronic absenteeism. All absences were unexplained or unjustified.

Held: Chronic unjustified absences are misconduct.

Result: Benefits denied.

81 BR 50

Facts: Claimant was absent on the Monday before payday on seven occasions and was absent on a Thursday before payday on one occasion. He was not paid for those days, but there were other absences for which he was paid. He was discharged for excessive absenteeism. Claimant testified that he was ill and his daughter had called in for him.

Held: Absenteeism may constitute misconduct when an employee is absent repeatedly and on numerous occasions so that, even though the absences may appear to be justified and even though the absences are reported to the employer, the entire course of his attendance demonstrates and leads to the conclusion that the employee is following a course of conduct that is detrimental to the employer. Claimant was consistently and habitually absent on Mondays and his contention that he was either sick or had car trouble those days is difficult to accept. Claimant's attendance record was very poor, to say the least, and his consistent failure to report to work on Mondays clearly constitutes misconduct connected with the work itself.

Result: Benefits denied.

Cross-reference: Attendance policy, 89 AT 2478 BR; Tardiness, 89 AT 6382 BR; Personal/Family Illness, 99 AT 0065 BR

## ABSENTEEISM

### *Failure to Report to Work*

00 AT 02248 BR

Facts: Claimant was discharged for failure to report to work or call in according to the company policy. Claimant had been provided a copy of the employee handbook. The absences were caused by the family being in a car accident and their car breaking down. The claimant had tried to call the employer but the employer's phone did not accept collect calls. The Appeal Tribunal found misconduct and denied benefits.

Held: The Board of Review on appeal found that there was no willful disregard of the employer's interest and therefore, no misconduct.

Result: Benefits allowed.

97 AT 7298 BR

Facts: Claimant was a food service supervisor at a corrections facility. The facility experienced flooding problems affecting the electrical and water purification systems. Claimant recommended an emergency food preparation program, which was denied. Claimant requested to be put on administrative leave. When he returned upon request, the unit manager informed the claimant that the food preparation area was safe for inmates. Claimant requested documentation as proof. The request was denied and claimant was told to return to work or be fired. Claimant refused to return and was discharged.

Held: As a food service supervisor, claimant's request for documentation was not unreasonable. No misconduct was shown.

Result: Benefits allowed.

90 AT 05579 BR

Facts: Claimant failed to report or call in on a scheduled workday. Claimant was ill and did not have a phone. Claimant admitted her error.

Held: This was an isolated offense. No willful misconduct was established.

Result: Benefits allowed.

97 AT 5330 BR

Facts: Claimant experienced problems with his car and was unable to drive it to work. He left work early on Thursday and did not work on Friday or the following Monday. When the claimant called in on Monday, he was told if he did not report to work on Tuesday, he would be discharged. Claimant did not show for work and was discharged.

Held: Claimant's actions in not arranging transportation to work showed a disregard of the employer's interests. Misconduct was established.

Result: Benefits denied.

90 AT 03503 BR

Facts: A new manager advised the claimant that employees would have to work some night shifts. Claimant, who had a good employment record, informed the manager that her husband did not wish her to work nights. The manager agreed to schedule the claimant around the night shifts, but claimant found out at the last minute that she was scheduled to work a Sunday night right after her second job. Claimant called the manager and told him she could not work that night, whereupon she was discharged.

Held: This was an isolated incident; no misconduct shown.

Result: Benefits allowed.

80 AT 6665; 80 BR 1366

Facts: Claimant was discharged for failure to attend a mandatory meeting of which she had been notified well in advance. Claimant felt that the meeting was not important and would not benefit her.

Held: Intentional failure to attend the mandatory meeting was misconduct.

Result: Benefits denied.

89 AT 9112 BR

Facts: Claimant was discharged after not reporting for work on a day that he was scheduled to work. Claimant had worked the same schedule for twelve years, so he knew what days he was to work. He had been given sufficient warning about missing work when he was scheduled.

Held: Claimant's actions were willful misconduct.

Result: Benefits denied.

81 AT 3677; 81 BR 1256

Facts: Claimant was on an approved medical leave until a certain date. To extend her leave, claimant was required to get paperwork from her doctor to the employer. After the leave expired, claimant contacted her doctor and was assured that the required paperwork had been mailed. However, her employer informed her that it had not been received. Claimant made no further effort to follow up. Claimant was terminated for failure to return from leave.

Held: Failure to report from leave or to properly insure that the leave was extended was misconduct.

Result: Benefits denied.

93 AT 04763 BR

Facts: Claimant failed to report to work at the proper time following a three-day suspension for not working his scheduled shifts. Claimant knew the employer's policy since he had been there two years.

Held: Misconduct established.

Result: Benefits denied.

Cross-references: Family illness, 96 AT 3050 BR; Personal illness, 96 AT 7944 BR, 96 AT 6572 BR; Without notice, 95 AT 5896 BR; On the job injury, 96 AT 8427 BR

## ABSENTEEISM

### *Family Illness*

99 AT 0065 BR

Facts: Claimant worked as a mechanic. He is a single parent with custody of three children all under the age of eight. In 1998, the claimant was absent from work for 49 days. Claimant was absent fifteen days for an appendectomy. The majority of the absences were due to illness of the children. Claimant properly notified the employer regarding the absences. In September 1998, claimant called in saying his daughter was sick, he needed to take her to the hospital, and he would be absent all day. Claimant reported to work the next day and was discharged. Claimant requested to be allowed to work part-time, but the employer replied that he could not use a part-time worker.

Held: Claimant's excessive absences do not measure to misconduct. All absences were properly reported. Absences due to illness of a close family member are not misconduct.

Result: Benefits allowed.

97 AT 5340 BR

Facts: Claimant was up all night with a child who had a fever. The next morning claimant over-slept and called her employer at 6:58 a.m. advising that she would not be in for the 7:00 a.m. shift. The employer claimed that the claimant had been previously warned about tardiness, but offered only hearsay testimony to support it.

Held: Claimant had no control over the illness of her child. There was no showing of willful misconduct.

Result: Benefits allowed.

96 AT 3050 BR

Facts: Claimant was aware of the employer's policy requiring employees to call in two hours before the start of their shift if they were going to be absent and also to call in every day of their absence. Claimant worked December 23<sup>rd</sup>, but went home because her eyes were hurting. On December 24<sup>th</sup>, she called her supervisor to advise that she would not be in because her daughter had chicken pox. She did not advise that she would not be in on December 25<sup>th</sup>. Claimant's husband was to have called in for her on December 25<sup>th</sup>, but was advised that claimant must call in for herself. Claimant returned to work on December 26<sup>th</sup>, but was terminated.

Held: Claimant did not take the steps necessary to retain her employment.

Result: Benefits denied.

81 BR 1804

Facts: Claimant took his pregnant wife to the hospital one night and due to complications was there until the next day. Claimant did not report to work and failed to call his employer. He was discharged.

Held: Generally, willful failure to notify the employer is misconduct, but emergency situations require exceptions. Claimant's failure to notify the employer was not willful misconduct.

Result: Benefits allowed.

Cross-reference: Improper request for leave, 97 AT 3624 BR; Without notice, 90 AT 7556 BR.

## ABSENTEEISM

### *Personal Illness*

Primary case law: *Vester v. Board of Review of OESC*, 697 P2d 533 (Okla. 1985)  
*Smith v. OESC*, 803 P2d 1174 (Okla. App. 1990)

*Other case law:*

*OESC and Board of Review of OESC v. Love*, No. 93, 493 (Civ.App., Div.4, 3-28-00)

Facts: Claimant was described as a good worker. He did not have a telephone and was seven miles from the nearest pay phone. The employer knew this. One weekend claimant's leg was pierced by a piece of wood. When his leg began to swell, the claimant called his supervisor to advise what had happened. Claimant went into surgery and did not call his employer the following day. The next day his friend called the employer. The claimant returned to work the subsequent day with a doctor's note excusing him from work until the following week. Claimant was terminated for job abandonment. The Commission, Appeal Tribunal and Board of Review all denied benefits. The case was appealed to District Court.

Held: The Commission did not properly apply the law. The claimant's failure to notify his supervisor was ordinary negligence in an isolated instance.

Result: Benefits allowed.

*Harris v. OESC, et al.*, No. 62, 713 (Okla.Civ.App., Div. 2, 1/21/86)

Facts: Claimant missed work due to alcoholism. Claimant argued that alcoholism is an illness, and therefore his absences should be excused.

Held: Alcoholism may be an illness, but it can be controlled. Willful misconduct shown due to excessive absenteeism was not approved by the supervisor.

Result: Benefits denied.

## ABSENTEEISM

### Case Applications

00 AT 2151 BR

Facts: Claimant was discharged because he did not call in to report his absence on November 3<sup>rd</sup>. Claimant was diagnosed with degenerative arthritis and was given medication by his doctor. On November 3<sup>rd</sup> claimant was scheduled to arrive at work at 7 a.m. A friend called the claimant and then arrived at claimant's home to find claimant so ill that he could not hold up his head. Claimant was taken to the hospital on November 4<sup>th</sup> and was released on November 5<sup>th</sup>.

Held: Claimant's failure to call in was not willful misconduct. He was very ill and unable to call.

Result: Benefits allowed.

90-07459 AT

Facts: Claimant was absent from work for medical reasons. She made an appointment with her dentist to treat two abscessed teeth. Claimant was discharged for not reporting to work. The employer asserted that if claimant had taken care of her teeth, she would not have missed work.

Held: There is no evidence of willful misconduct. Claimant's reason for absence was medical.

Result: Benefits allowed.

97 AT 1809 BR

Facts: Claimant was ill and off work for 45 days because of a cyst on her foot. After the first doctor's appointment she told the personnel department she might be off work for an extended period. She was given a form to request medical leave. She did not do so. Claimant was not allowed light duty since the injury was not work-related and not covered by workmen's compensation. The employer again requested a medical leave form from the claimant and a doctor's note. Claimant did not bring in either item and was discharged.

Held: Refusal to complete the form was a violation of the standard of behavior which an employer has the right to expect from an employee. Misconduct was shown.

Result: Benefits denied.

96 AT 6572 BR

Facts: Claimant sustained a non work-related injury. She returned to work one night but left. She then brought in two releases from her doctor for light duty until March 14<sup>th</sup>, then for full duty on March 25<sup>th</sup>. Claimant asked about sick leave, but her supervisor said she needed to talk to the store manager. She said she would return the following week, but she did not contact her employer again until one month later.

Held: Claimant exhibited disregard for her obligations to her employer. Misconduct established.

Result: Benefits denied.

96 AT 7944 BR

Facts: Claimant was given a leave of absence for surgery for thyroid cancer. She was to return to work the fourth day after surgery. Claimant was to bring in more documentation after her surgery. Claimant advised the employer that she would notify the employer when she was released to return to work. The day after surgery claimant's boyfriend went to get her check. Neither he nor claimant's daughter, who worked at the same place, were asked about the claimant's condition. Claimant was discharged for job abandonment.

Held: Claimant's length of leave of absence was decided without knowing when claimant would be able to return. It was not logical to expect that claimant would be able to speak with her employer immediately after surgery. Claimant had worked for the employer for years and the employer had some responsibility to check on claimant's welfare. No misconduct was shown.

Result: Benefits allowed.

90 AT 5843 BR

Facts: Claimant went on temporary approved maternity leave. The employer said it would hold claimant's position for six weeks. Claimant informed the employer she was ready to return to work. The employer informed claimant that she had been replaced.

Held: There is no evidence of misconduct on claimant's part. Claimant was discharged.

Result: Benefits allowed.

89 AT 6792 BR

Facts: Claimant was discharged for excessive tardiness and absenteeism. The majority of absences were due to illness and were reported to the employer.

Held: While the employer may have had a valid business reason, misconduct has not been established.

Result: Benefits allowed.

99 AT 00155 BR

Facts: The claimant worked as a general laborer. Claimant was injured at work in August 1997. The claimant, her attorney and the employer agreed upon a specific physician for treatment of her injury. The doctor released the claimant April 1998 with maximum medical improvement. Claimant was given a permanent impairment rating in May 1998. Claimant continued to experience discomfort from the injury. Claimant went to two chiropractors who restricted her from work. Claimant called in daily and took the doctor's slip to the human resources office. Claimant returned to work and was discharged for exceeding the maximum number of points allowed under the company attendance policy, as her absence was not approved by the human resources manager.

Held: Claimant had a valid medical reason for her absence from work. It was properly reported and did not constitute misconduct.

Result: Benefits allowed.

95 AT 7952 BR

Facts: Claimant was receiving treatment for a job related injury. She had been released for light duty while wearing a cast. When the cast was removed she told the doctor she did not feel she should return to work. The doctor would not write an excuse and claimant went to a doctor of her own choosing to obtain a note. The employer expected claimant to return to work since they had received a release from the other doctor. When the claimant did not return, the employer contacted the claimant to inform her that she was expected at work and if she missed further consecutive scheduled work days without calling in, she would be terminated. The claimant failed to call in each day to report her absence. When claimant did not return she was discharged.

Held: Claimant failed to follow employer's attendance policy. Misconduct shown.

Result: Benefits denied.

94 AT 1270 BR

Facts: After completing a double shift claimant went home and then called her supervisor advising that she was ill and would not be able to work the next day. The supervisor advised her she must find her own replacement. Claimant called seven or eight other employees and no one was available. The claimant called the supervisor again and told her that she was unable to find a replacement. The supervisor told her that if she could not find a replacement, she would have to come on in and work. Claimant continued to try without success so she called the nursing home again, but the supervisor was unavailable. She talked instead to a nurse's aide. Claimant told the aide that she could not find a replacement so she guessed she would just have to quit. The claimant did not report on the next scheduled day because she was still sick. When she returned several days later, she had been removed from the schedule.

Held: The supervisor should not have expected the claimant to report to work when she was ill. Claimant fulfilled her responsibility to the employer when she called in to report that she would be unable to come to work because of illness. Claimant's statement to the other nurse aide that she guessed she would have to quit was made in response to her supervisor's statement that she would be required to come into work if she could not find her own replacement. An employer cannot expect an employee to report to work when ill. No misconduct.

Result: Benefits allowed.

90 AT 8387 BR

Facts: Claimant was permanently replaced on her job while she was under a physician's care and unable to perform her normal duties. No work was available when she was released and was involuntarily separated from her work.

Held: Claimant was separated from work but not for any misconduct on her part.

Result: Benefits allowed.

90 AT 3 BR

Facts: Claimant could not work in the furnace area due to a health problem. He reported this to a supervisor who told claimant to report to the personnel department. The supervisor told personnel that claimant had quit. Personnel recorded claimant as a dismissal. No effort was made to investigate the validity of claimant's health claim

Held: Claimant was discharged but not for willful misconduct.

Result: Benefits allowed.

86 AT 1606 BR

Facts: Claimant was discharged for excessive absences which she claimed were for illness. The employer requested a doctor's note after four absences in three months. Claimant did not provide a note.

Held: Claimant failed to comply with employer's reasonable rule. Misconduct established.

Result: Benefits denied.

83 AT 15913

Facts: Claimant was discharged while on medical leave for failing to keep the employer informed as to her health status and whether and when she would be able to return to work.

Held: It was reasonable for the employer to expect to be kept informed. Misconduct found.

Result: Benefits denied.

82 AT 4213

Facts: Claimant was discharged for excessive absenteeism caused by migraines for which she was under a doctor's care. She complied with the employer's reporting rules.

Held: Migraines are an illness. No misconduct found.

Result: Benefits allowed.

Cross references: Improper Request for Leave, 89 AT 3029; Company Attendance Policy, 89 AT 2478 BR.

ABSENTEEISM

*Improper Request for Leave*

97 AT 3624 BR

Facts: Claimant was discharged when she took extended leave to care for her grandchild. There is no doubt that claimant wanted to return to work but she did not request time off or leave of absence. She just advised the personnel department that she would be gone indefinitely.

Held: Claimant had an obligation to the employer to be on the job or to request some type of leave. Misconduct shown.

Result: Benefits denied.

89 AT 3029

Facts: Claimant called the employer after work saying that he was drinking and wanted the next day off. The employer denied the request. Claimant called again later and said he was going to be ill and would not be in.

Held: It is obvious what claimant's intentions were. Misconduct established.

Result: Benefits denied.

80 AT 4159; 80 BR 1031

Facts: Claimant had asked and been given permission to take the four days off prior to Christmas. Claimant called and informed the manager that she would not be in on the fifth day as well as she was leaving early. This left the employer shorthanded.

Held: Misconduct shown.

Result: Benefits denied.

Cross-reference: Personal illness: 96 AT 7944 BR

ABSENTEEISM

*Lack of Transportation*

97 AT 0734 BR

Facts: Claimant was returning from Tulsa when his car broke down. As he was unfamiliar with Oklahoma City, he stayed with his car overnight and then called the employer the next morning. His supervisor was not there and claimant was told to contact him that night. Claimant went to work and was discharged.

Held: Claimant's absence was due to a situation beyond his control. There is no misconduct shown.

Result: Benefits allowed.

97 AT 5330 BR

Facts: Claimant experienced problems with his car. He left work early on Thursday and did not report to work on Friday or the following Monday. When the claimant called to advise that he would not be at work on Monday, he was told that if he did not report to work on Tuesday he would be fired. Claimant did not report and was fired.

Held: Transportation to and from work is the employee's responsibility. Claimant's action in not securing transportation to work showed disregard for the employer's best interests.

Result: Benefits denied.

90 AT 1371 BR- R

Facts: Claimant had no transportation to work and refused his employer's offer of using a company vehicle.

Held: It is claimant's responsibility to be at work when scheduled and to provide transportation. Misconduct shown.

Result: Benefits denied.

Cross-reference:

## ABSENTEEISM

### *On the Job Injury*

96 AT 8427 BR

Facts: Claimant was injured on the job. He worked half days until released by his doctor to work full days. Claimant said he was still hurt and continued to work half days. The employer called the doctor and was informed that the claimant could work full days as long as he was seated 50% of the time. The employer told the claimant to work full days. Claimant stopped going to work. He missed three days of work, worked one day, and then missed two more days. Claimant returned to work and was discharged.

Held: Claimant's refusal to work full time in accordance with the doctor's release was a deliberate violation of the expected standard of behavior to which an employer is entitled. Misconduct has been established.

Result: Benefits denied.

96 AT 8824 UCFE BR

Facts: Claimant worked for the employer one year and received good performance reviews for the two months before she was discharged. She was injured on the job. All incidents that the employer cited as reasons for claimant's discharge occurred after the injury, and was not substantiated by corroborating testimony.

Held: It was difficult to believe that an employee with good attendance and performance would suddenly start calling in absent and ignoring direct orders. Misconduct not proven.

Result: Benefits allowed.

83 BR 427

Facts: Claimant refused to go back to work after three physicians found him able to return to work.

Held: Failure to return to work after a doctor's release is willful misconduct.

Result: Benefits denied.

Cross-reference:

## ABSENTEEISM

### *Tardiness*

Case law:

*Moore v. Dorsett Education Systems, C-75-710 (Okla. Co. D. Ct)*

Facts: Claimant states she was discharged for poor job performance. The employer states she was also discharged for excessive tardiness and absenteeism.

Held: Repeated tardiness and absenteeism is misconduct. It is a failure to abide by reasonable rules of employment.

Result: Benefits denied.

*Hall v. Bd of Review of OESC, OESC and Oberlin Color Press, No. 78,250 (Okla. Civ. App., Div. 1, 12-22-92) Not for Publication*

Facts: Claimant was discharged for excessive tardiness and absenteeism. In the last five months of employment all but one in four documented instances was due to her alarm clock

Held: Claimant's repeated inattention to the requirement that she be at work on time measured to misconduct. Note: Claimant appealed to the Court of Appeals where the appeal was denied.

Result: Benefits denied.

## ABSENTEEISM

### 99 AT 1572 BR

Facts: Claimant was employed as an operations clerk. She was discharged for tardiness, absenteeism and failure to properly notify the employer. Claimant had received a written warning for tardiness in August 1998. She was given two written warnings in September. Claimant was tardy for three days during the third week of October, and was absent due to illness on October 22 and 23<sup>rd</sup>. She did not contact her employer until 11 a.m. on the 22<sup>nd</sup> and not until the end of the shift on the 23<sup>rd</sup>. She was then discharged.

Held: Claimant knew her job was in jeopardy and her actions showed a willful disregard for the interests of her employer. Failure to properly notify the employer is misconduct.

Result: Benefits denied.

### 97 AT 3451 BR

Facts: Claimant was discharged for excessive tardiness and alleged rudeness to customers. Claimant was counseled several times by the employer. There were times that the employer had to open the business due to claimant's tardiness.

Held: Repeated tardiness is a willful disregard of the employer's interests and the employee's duties. Misconduct shown.

Result: Benefits denied.

### 89 AT 6382 BR

Facts: Claimant was discharged for excessive absenteeism and tardiness. He was never advised his job was in jeopardy. The employer's representative had no record of the times or dates on which claimant was allegedly tardy or absent.

Held: There is a failure of proof. No evidence of misconduct.

Result: Benefits allowed.

80 BR 909

Facts: Claimant was late to work on several occasions. The employer informed the claimant that his contract would not be renewed, but he would be allowed to work to the end of the term (six more weeks).

Held: The employer condoned the claimant's tardiness by allowing him to continue working. The employer did not prove misconduct.

Result: Benefits allowed.

80 BR UCX 266

Facts: Claimant was late to work one day because his car broke down. He called his supervisor to report that he would be late.

Held: A single act of absenteeism or tardiness is not sufficient grounds for discharge. Claimant was not guilty of misconduct.

Result: Benefits allowed.

## ABSENTEEISM

### *Without Notice*

97 AT 4914 BR

Facts: Claimant left work fifteen minutes early one day because someone upset her. She was first advised that she would be written up for going home early. Two weeks later, claimant was fired for job abandonment.

Held: Leaving early one day is not sufficient to establish misconduct.

Result: Benefits allowed.

95 AT 5896 BR

Facts: Claimant used profanity toward his immediate supervisor during a staff meeting. Claimant left the meeting without authorization and was absent the following day without contacting the employer. Claimant was placed on medical leave and was asked for documentation. The employer made the request three times without response.

Held: Claimant's actions were insubordinate and showed willful misconduct. Absence without notice is misconduct.

Result: Benefits denied.

90 AT 8674 BR

Facts: Claimant requested time off for his vacation. He states he later got permission to leave a day early but did not put it on the company calendar where time off requests were placed. The day before departure claimant was working on a difficult assignment that he was unable to complete. He asked for help but none came and he thought the problem was solved. When the supervisor learned that claimant was gone one day early and the problem was not solved. Claimant was discharged.

Held: Claimant made an effort to solve the problem and did have permission to leave. No evidence of willful misconduct.

Result: Benefits allowed.

90 AT 7556 BR

Facts: Claimant was discharged after she took three days off during the employer's busiest time without permission. Claimant was absent the first day for personal business and her work was caught up. She called twice to see if she was needed. Claimant was absent the second day for an appointment she made for her children, after having worked eight hours. Claimant left early the third day because her son had an ear infection. She had scheduled a doctor's appointment for him.

Held: The claimant missed work one day, but had already done her work. She did check on two occasions to see if they needed her help. On the next occurrence, the claimant had an appointment and had already worked eight hours that day. She received her first warning at that time. The only occurrence after that warning was the day she had to go get medical attention for her son. No one was in the office to ask permission until the very last minute and she was already late. She may not have used good judgment in not telling the supervisor of her departure, however, her actions did not measure to misconduct.

Result: Benefits allowed.

Cross-reference: Excessive, 89 AT 03644

## ABSENTEEISM

### *Procedure (Burden of Proof)*

97 AT 06122 BR

Facts: Claimant was considered to have abandoned his job due to his failure to call and report to work for three consecutive workdays. Claimant did call the employer on two occasions during his absence and his immediate supervisor was notified prior to his absences.

Held: The employer did not meet the burden of proof. No misconduct shown.

Result: Benefits allowed.

96 AT 5113 BR

Facts: Claimant was discharged for substandard work and excessive absences. Claimant did not pick up the trash on the weekend as he was supposed to. Claimant had only used two of five sick days for the year. At claimant's last evaluation he was ranked good or excellent on all points except appearance. There were no specific incidents cited that would amount to misconduct.

Held: The evaluation indicated that the employer was happy with claimant's performance. No misconduct shown.

Result: Benefits allowed.

89 AT 6382 BR

Facts: The employer had no record of the times and dates that claimant was allegedly tardy or absent.

Held: The employer has failed to meet his burden of proof.

Result: Benefits allowed.

Cross-reference: Tardiness, 80 BR 206, 80 BR 909, 90 AT 4547 BR; Improper Request for Leave, 90 AT 8739 BR.

## **ACCIDENTS**

Accidents happen, as the saying goes. The Commission, in determining whether there is misconduct, will look to the cause of the accident. If the accident was caused by recurring or extreme negligence or carelessness, and if the employee could have prevented the accident, the Commission has repeatedly found evidence of willful misconduct. If the accident occurred as a result of willful or negligent behavior, that the employee had been previously cautioned against, then willful misconduct is found. The mere occurrence of an accident without the evidence of recurring or extreme negligence, carelessness or willfulness is not sufficient to show misconduct.

## ACCIDENTS

### 90 AT 8580 BR

Facts: Claimant was discharged for negligence resulting in a serious accident causing injury. The claimant could have prevented the accident, which was caused by his own negligence.

Held: Misconduct shown.

Result: Benefits denied.

### 90 AT 7483 BR

Facts: Claimant swerved to miss an animal and hit a pole. He was discharged because the accident happened in a company vehicle and the insurance company would not insure him.

Held: Misconduct was not established because the accident was not the driver's fault. Claimant did not lose his license and could have continued to work.

Result: Benefits allowed.

### 90 AT 6907 BR

Facts: Claimant was aware of the employer's policy to dismiss drivers involved in three chargeable accidents involving negligence. Claimant's first accident damaged his cargo when he struck an overhead object. Claimant knew the clearance. The second accident damaged a shipment of glass because claimant did not properly cover the freight and it became wet. The third accident occurred when claimant struck a car while making a right turn. Claimant did not take any photos of the accident and did not get the name of the car's driver.

Held: Each accident involved driver negligence. Misconduct was shown.

Result: Benefits denied.

## ALCOHOL AND DRUGS/DRUG TESTING

Generally, use of alcohol or drugs while on the job is willful misconduct. This includes the actual intake of foreign substances while on duty as well as arriving to work under the influence of alcohol or drugs. An employer has the right to maintain an alcohol and drug-free workplace. An employer has a legitimate interest in the safety of its employees and customers. An impaired employee constitutes a danger to others, especially if the employee operates a vehicle or machinery as a part of his job. Use of alcohol while off-duty, which results in arrest or incarceration, may be misconduct if the job is one of public trust or interest. Refusal to comply with company policy regarding rehabilitation after discovery of a problem is considered willful misconduct.

Due to the increased use of drug and alcohol testing by employers a number of questions have arisen regarding the application of the Act. Effective in 1993, the legislature added a section to the Act specifically to deal with discharge for refusal to undergo a test or for a positive test result. The applicable section is as follows:

*Section 2-406A. An employee discharged on the basis of a refusal to undergo drug or alcohol testing or a confirmed positive drug or alcohol test conducted in accordance with the provisions of the Standards for Workplace Drug and Alcohol Testing Act shall be considered to have been discharged for misconduct and shall be disqualified for benefits pursuant to the provisions of Section 2-406 of Title 40 of the Oklahoma Statutes.*

**Any case law preceding the Drug Testing Act and this Section should be carefully examined as it may no longer be applicable.**

Before benefits are denied for failing to take a drug test, it must be shown that proper testing and confirmation procedures are followed. The Commission follows the Drug and Alcohol Testing Rules and Standards for Workplace Drug and Alcohol Testing Act, tit.310, Ch. 638 (1995)(Drug-Testing Act).

(<http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=447185>.) Employers must comply with the provisions of this Act if they test for drugs and alcohol. Refusal to take a drug test will be disqualifying if the employer has probable cause to request a drug test of an employee or if the employer has a random testing policy and has followed the requirements of the testing policy. Probable cause may be established by observing the employee's demeanor or appearance or by the occurrence of an accident. Otherwise, the employer does not have the right to regulate the employee's personal activities except as to its residual effect on the workplace or the employee's performance, or in the case of public employees, the effect on the public image.

## ALCOHOL AND DRUGS

### *Drug and Alcohol Testing*

#### *Primary Case Law:*

*Uniroyal Goodrich Tire Co v. OESC, 887 P2d 1380 (Okla. Civ. App., Div. 3, 8-30-94)*

**Facts:** The employer conducted random drug test. Claimant tested positive and was discharged. The evidence concerning the test was not presented by the employer until the appeal to the Board of Review.

**Held:** New evidence presented on appeal to the Board of Review was not admissible. The employer did not prove the case with proper evidence.

**Result:** Benefits allowed.

*Farm Fresh Dairy, Inc. v. Blackburn, 841 P2d 1150 (Okla 1992)*

**Facts:** Claimant worked for the employer as a delivery driver. He signed a form agreeing to random tests. Claimant tested positive for marijuana and was fired.

**Held:** Supreme Court reversed findings of lower authorities and held that the employer did not have to establish that claimant acted strangely.

**Result:** Benefits denied.

## ALCOHOL AND DRUGS

### *Case application - Drug Testing*

*05-AT-06599-BR*

**Facts:** The claimant was discharged due to a positive drug test. The Hearing Officer found that the employer did not comply with the Standards for Workplace Drug and Alcohol Testing Act because: their drug policy was not posted in a conspicuous employee access area; the claimant was not given a copy of the policy; and, the employer had not provided the chain of custody evidence at the time of the hearing. The employer provided a chain of custody document with its appeal to the Board of Review.

**Held:** The claimant was not legally tested since the employer did not meet the requirements of the Act. The Rules for the Administration of the Oklahoma Employment Security Act require that if at the original Appeal Tribunal hearing any documents, exhibits, testimony or evidence was or could have been in the possession of the propounding party but they failed to introduce it at the hearing and it was not included in the documents provided to the Tribunal, then it shall not be considered by the Board of Review. Therefore, the Board of Review may not consider the chain of custody document. Further, the chain of custody document presented to the Board of Review would fail to meet the requirements because the “received at lab” signature block was blank.

**Result:** Benefits allowed.

*05-AT-06734-BR*

**Facts:** The employer requested that the appellate hearing be reopened because they intended to have their Medical Review Officer testify at the hearing, but he was unable to do so because of a conflict in-patient scheduling. The decision of the Hearing Officer was based on the finding that the employer did not comply with the requirements of the Standards for Workplace Drug and Alcohol Testing Act for failure to give thirty days notice to the claimant of the drug and alcohol testing policy, even though the claimant signed an acknowledgment of the policy twenty-one days prior to the random drug test. The employer’s policy also did not meet the other requirements of the Act.

**Held:** The appearance of the Medical Review Officer would have no effect on the finding that the employer was out of compliance. Since the employer was out of compliance, the employer had no legal right to test the claimant and the claimant may not be found discharged for misconduct.

**Result:** Benefits allowed.

*05-AT-03343-BR*

Facts: The claimant was discharged for failing a drug test. The claimant was aware of the employer's drug and alcohol testing policy; however, the policy did not comply with the Standards for Workplace Drug and Alcohol Testing Act because it does not specify which employees are subject to testing; the substances to be tested, including brand or common names and the chemical names of any drug or its metabolite to be tested; the testing methods and collection procedures to be used; the rights of employees to explain test results confidentially; the rights of employees to obtain all information and records related to their tests; confidentiality requirements; or available appeal procedures, remedies or sanctions.

Held: Since the policy was out of compliance, the employer had no legal right to test the claimant; therefore, the test results cannot be used to establish misconduct.

Result: Benefits allowed.

*05-AT-04128-BR*

Facts: The claimant was discharged for testing positive on a drug screen. The law requires that the employer must prove up its case by showing the tests, the results and that appropriate evidence handling and testing procedures were followed. The employer did not provide the test results or the chain of custody evidence. The employer's policy also does not comply with the Standards for Workplace Drug and Alcohol Testing Act because it does not specify the substances, which may be tested for, including brand or common names and the chemical names of any drugs or metabolites to be tested for.

Held: Since the employer's policy did not meet the requirements of the Act, the employer had no legal right to test the claimant. A test given under such circumstances cannot be used to find the claimant was discharged for willful misconduct.

Result: Benefits allowed.

*03-AT-8935-BR*

Facts: The employer requested a new hearing in order to present evidence of chain of custody, which the employer did not present at the time of the hearing before the Appeal Tribunal. The Notice of Hearing mailed to the employer for that hearing informed the employer that they would need to prove up their case by showing the drug testing results and that appropriate evidence handling and testing procedures had been followed.

Held: The employer had plenty of time to obtain this information prior to the appellate hearing. No new or proper evidence has been submitted and no new hearing will be allowed.

Result: Decision of the Appeal Tribunal is affirmed. Benefits allowed.

Cross-reference: Procedure – Evidence

*05-AT-01631-BR*

Facts: The claimant was discharged for failing a drug test administered because he had an accident on the job, which involved property damage. At the hearing the employer did not produce the following required items in order to establish compliance with the Standards for Workplace Drug and Alcohol Testing Act and the OESC Rules as listed in the Notice of Hearing: a lab report from the testing facility showing a positive test result; a complete chain of custody document; and a medical review officer's certification of proper testing standards and procedures. The employer did send a more complete copy of the chain of custody document with their appeal to the Board of Review. The employer did not present any evidence of a reason to believe the accident was due to the claimant's use of drugs.

Held: Rule 240:15-3-3(c) prohibits the Board of Review from considering any documents that were or could have been in the possession of the propounding party at the time of the Appeal Tribunal hearing, but which were not presented at that hearing. The Standards require that an employer must have reasonable suspicion that the accident occurred as a direct result of the use of drugs or alcohol. The employer did not present sufficient evidence to find willful misconduct.

Result: Benefits allowed.

Cross-reference: Procedure- Evidence

*00-AT-4013-BR*

Facts: The claimant was discharged for misconduct connected with the work because he tampered with a urine specimen he gave for a random drug test. When confronted with the medical officer's finding that the specimen had been adulterated, the claimant admitted to smoking marijuana and tampering with the urine specimen.

Held: The requirements of Section 2-406A do not apply in this case since the claimant was not discharged on the bases of a refusal to undergo testing or for a confirmed positive drug or alcohol test.

Result: Benefits disallowed.

*00-AT-8619-BR*

Facts: The claimant reported to the employer that her leg was numb and asked to go to the doctor. She had a previous on-the-job injury two years earlier and felt that the numbness was related to that previous injury. The employer made an appointment for her and told her that the doctor would also administer a drug test in accordance with the employer's accident policy. The claimant tested positive for amphetamine and methamphetamine. The employer presented proof that they followed all the testing requirements of the Standards for Workplace Drug and Alcohol Testing Act. The employer represented that the employer's accident policy provides that any employee who has an on-the-job injury that requires medical attention greater than first aid be tested for drugs. The Hearing Officer found that the employer's reason for testing did not fall under any of the allowable categories under which employees may be tested under that Act. The Standards provide that an employer may test for drugs for applicants, reasonable suspicion, post-accident, random testing, scheduled periodic testing and post-rehabilitation only.

Held: The claimant was tested for drugs when she alleged an on-the-job injury was causing numbness in her leg. The Standards allow for drug-testing post-accident. Since the claimant alleged her ailment was a result of this previous accident, the post-accident provision applies.

Result: Benefits denied.

98 AT 07570

Facts: Claimant was employed as a climber-trimmer and was discharged for refusing to undergo a drug test. Claimant was injured on the job October 1997 and reinjured on April 1998. Both accidents were reported. On July 16, 1998, the claimant advised the employer he would need to take the next day off to see his doctor regarding a previous injury. That notice was interpreted as a report of a new injury and claimant was requested to take a drug test. Claimant refused.

Held: The employer's drug policy provides for post-accident testing within 32 hours of the accident. No accident was reported on July 16, 1998. Claimant did not violate company policy and there was, therefore, no misconduct.

Result: Benefits allowed.

97 AT 1168 BR

Facts: Claimant was discharged for failing a random drug test. Claimant said the policy was unfair because she was not allowed assistance. Company policy allows for abuse assistance with no termination if the employee asks for help; it does not help employees who violate the rules first, then ask for help. Claimant admitted that the positive test was accurate.

Held: Being under the influence while at work is a violation of the employer's policy. Misconduct found.

Result: Benefits denied.

97 AT 5122 BR

Facts: Claimant applied for a full-time position with the employer. Claimant was required to take a drug test. He tested positive for marijuana and was terminated in accordance with the employer's drug testing policy which states that testing positive for drugs is a terminable offense. Claimant did not deny drug use.

Held: Claimant was discharged for misconduct connected to work.

Result: Benefits denied.

95 AT 2242 BR

Facts: Claimant was a truck driver covered by Department of Transportation rules concerning drug testing, which state that a motor carrier shall use random selection and request driver be tested for drugs. The Oklahoma standards for Drug and Alcohol Testing Act exempt testing required by federal law from the provisions of said Act. Claimant was discharged for testing positive for marijuana. The testing was done by a NIDA certified lab and the results were reported by a medical review officer. The chain of custody documents were complete.

Held: Misconduct shown.

Result: Benefits denied.

Cross-reference: Use of Drugs While Off-Duty, 89 AT 1651 BR

## ALCOHOL AND DRUGS

### *Intoxication on the Job*

90 AT 9325 BR

Facts: A hospital security officer notified claimant's supervisor that claimant had reported to work drunk. The supervisor confirmed that claimant appeared drunk and smelled of alcohol. Claimant had a drinking problem and had entered a treatment facility at the employer's request. He was told if he had further alcohol problems, he would be fired.

Held: Misconduct shown.

Result: Benefits denied.

90 AT 8804 BR

Facts: Claimant was driving a company vehicle making deliveries. The employer could not reach the claimant by radio and sent another driver to find him. When claimant returned, his behavior and breath indicated he was intoxicated. Claimant said he drank the night before.

Held: Claimant's behavior indicated intoxication. Reporting to work and driving in this condition was misconduct.

Result: Benefits denied.

89 AT 3236 UCFE

Facts: Claimant worked at the Air Force Base. He was stopped at the entrance when he smelled of alcohol. He failed a breathalyzer test and also was driving with a suspended license. His license to drive on base was revoked.

Held: Claimant was guilty of willful misconduct.

Result: Benefits denied.

89 AT 3106 BR

Facts: Claimant had previously been discharged for testing positive for drugs. He was allowed to return after signing a strict agreement regarding drug use. Claimant was discharged when his behavior indicated intoxication. Claimant failed a drug test.

Held: Claimant failed to abide by the terms of the agreement and was obviously impaired. Failure to abide by the rehire agreement even without the observation of impairment was misconduct by itself.

Result: Benefits denied.

87 AT 2903 BR

Facts: Claimant was employed as a foreman of bridge construction. The Superintendent had received reports that claimant bought beer during working hours. The employer investigated and discharged claimant.

Held: The employer had no direct evidence that claimant committed the act, only the hearsay testimony of three coworkers. The lower authorities found no proof of misconduct. The case was appealed to District Court, then remanded to the Board of Review, which took additional testimony, which showed that claimant drank before coming to work and while at work. Misconduct found. Claimant was around heavy machinery and his alcohol use could put him and co-workers in danger.

Result: Benefits denied.

Cross-reference:

## ALCOHOL AND DRUGS

### *Treatment for Use*

#### *Case Law:*

*Shawnee Milling Co. v. Bd of Rev et al., C-87-165 (Pott. Co. D Ct. 9-2-87)*

Facts: Claimant took medical leave to enter drug rehabilitation. When the employer found out, the claimant was discharged. There was no evidence of poor performance or impairment or use at work.

Held: The employer did not meet the burden of proof. No misconduct found.

Result: Benefits allowed.

#### *Case Application:*

90 AT 09144 BR

Facts: Claimant received a DUI and went into the alcohol abuse program with the employer's permission. When claimant returned to work, the employer learned that the claimant had been convicted of DUI, a felony. The City's rules required that claimant be discharged for being convicted of a felony.

Held: Claimant took steps to correct his problems and was allowed by the employer to enter treatment. No misconduct found.

Result: Benefits allowed.

90 AT 9265 BR

Facts: Claimant was hospitalized for thirty days for alcohol treatment. Her father notified the employer and she was discharged. The employer said that if claimant had called, she would not have been fired.

Held: Claimant was hospitalized, and she gave notice. No misconduct found.

Result: Benefits allowed.

85 AT 9470 BR

Facts: Claimant reported to work intoxicated and was found sleeping on the job. He used abusive and foul language and was insubordinate. The employer sent him to treatment and told him he must follow the program or be discharged. Claimant was dismissed from treatment for lack of cooperation.

Held: Claimant was discharged for misconduct.

Result: Benefits denied.

Cross-reference:

## ALCOHOL AND DRUGS

### *Use of Alcohol or Drugs on the Job*

93 AT 2695 BR

Facts: Claimant was in a position of authority and was aware that the company policy concerning use of alcohol on the employer's premises had been violated. The claimant did not report the violation to management.

Held: Claimant's failure to report the violation was a disregard of the duties and obligation owed to his employer and measured to misconduct.

Result: Benefits denied.

90 AT 8627 BR

Facts: Claimant was discharged for drinking on the job, which he admitted, but asserted that it had been allowed previously by his employer. Posted company policy forbid it.

Held: Claimant was aware that he violated company policy. Misconduct shown.

Result: Benefits denied.

90 AT 7357 BR

Facts: The employer investigated a report that claimant was drinking on the job. The claimant was located in an unauthorized area next to a bottle of wine. The employer smelled alcohol on his breath. Claimant was discharged.

Held: Claimant's behavior was inappropriate in the workplace. Misconduct shown.

Result: Benefits denied.

89 AT 5175 BR

Facts: Claimant was discharged for using and encouraging other employees to use cocaine on the job. The claimant had recently made mistakes on the job. Claimant had been previously warned. A witness confirmed that claimant had offered drugs to coworkers on the job.

Held: The burden of proof was met of drug use during working hours.

Result: Benefits denied.

89 AT 3226 BR

Facts: Claimant admitted drinking beer for lunch at the employer's place of business. Claimant stated he only drank at lunch, which was his own time. The employer was allowing the claimant to sleep on the premises until he could make other arrangements. Claimant drove a company vehicle and met in person with customers.

Held: Claimant was a salaried employee, so he was compensated for lunch-time. Misconduct shown.

Result: Benefits denied.

Cross-reference:

## ALCOHOL AND DRUGS

### *Use of Alcohol/Drugs When Off Duty*

#### Case Law:

*Ariza v. Family Clinic of Drumright et al., C-86-529 (Creek Co. D. Ct. 2-9-87)*

Facts: Claimant was a clinic nurse and attempted suicide by overdosing on prescription drugs. She entered psychiatric care. She was discharged.

Held: There was no finding of misconduct.

Result: Benefits allowed.

*Shawnee Milling Co. v. OESC & Witt, C-87-165 (Pottawatomie Co. Dist. Ct. 9-2-87)*

Facts: Claimant used marijuana while off-duty.

Held: Off duty acts may be misconduct if they adversely affect the employee's ability to perform his job duties. In this case, no evidence was presented to show that claimant's work performance was affected by his off duty use of marijuana.

Result: Benefits allowed.

Cross-reference: See also Treatment for Use

Case applications:

95 AT 4765 BR

Facts: Claimant was fired for failure to notify the employer within five days of an arrest/conviction related to drug charges as per company policy. The employer did not find out about the arrest until right before the claimant was discharged. The claimant says she never read the policy as outlined in the employee's handbook.

Held: Because the claimant had previously counseled with her employer regarding admitted substance abuse problems and because she admitted to telling her lawyer to call the employer to tell of her arrest, she knowingly violated the employer's drug policy. Misconduct shown.

Result: Benefits denied.

89 AT 2269 BR

Facts: Claimant was a club manager and was discharged for drinking on the job and for disruptive behavior. She had been reprimanded, but she denied drinking after the reprimand. She did drink after her shift while performing work duties. The employer had no first hand knowledge of the incident.

Held: Whether on or off the clock, performance of duties in the capacity of a representative of the business while drinking is misconduct.

Result: Benefits denied.

87 AT 5907 R BR

Facts: Claimant was discharged after he came to the employer's place of business after he had been drinking. He stopped by the employer's office to talk with the night dispatcher. The day dispatcher was there with her daughters. The claimant began kidding around with the daughters and engaging in rather boisterous behavior. At one point, he used an obscenity when addressing the younger daughter and at another, he rocked the chair in which the older daughter was sitting so forcefully that she had to put her hand on the floor in order to keep from toppling over. After it was reported to the yard manager, the claimant apologized to the day dispatcher. When it was reported to the employer, the claimant was discharged.

Held: Claimant acknowledged drinking prior to entering the workplace and acting inappropriately. Misconduct shown.

Result: Benefits denied.

87 AT 3446 BR

Facts: Claimant was a police department employee and was issued a police ID badge which he used to try to get into a closed club. He was denied and the police were called. Claimant left but was found nearby under the influence of alcohol. He was discharged.

Held: A police employee is held to a higher standard of conduct. His behavior was unacceptable and connected to work through his attempt to gain an advantage through the use of the ID badge.

Result: Benefits denied.

86 AT 10668 BR

Facts: Claimant was an off duty police officer. He was in a traffic accident and had been drinking. He was arrested, then discharged.

Held: Mere arrest is not misconduct.

Result: Benefits allowed.

81 AT 551; 81 BR 337

Facts: Claimant went to his foreman's home while off duty in an intoxicated condition and began cursing, yelling and making threats. The police had to be called to remove the claimant from the premises.

Held: Misconduct shown. Even though it occurred off duty, inappropriate acts directed toward the employer at any location are misconduct.

Result: Benefits denied.

Cross-reference:

## **ARREST AND/OR INCARCERATION**

It is generally accepted that when an employee is arrested and incarcerated for an extended period, exceeding 2 - 3 days, it is willful misconduct, even if the arrest and incarceration have nothing to do with the employee's work. An employer cannot be expected to keep a position indefinitely. Although there has been some application to the contrary, the fact that the employee may not have actually been convicted of the crime has no bearing in the issue of discharge for absenteeism due to arrest. Note that the discharge is actually for absenteeism in this case, or even for absence without notice, not for a crime or suspicion of crime. Discharge for criminal acts are covered elsewhere in this manual. Some cases turn on the basis of notice. Most employers require the employee to call in to report an absence, not allowing for notice from spouses or other parties. However, when an employer has actual notice regardless from whom provided that an employee is absent due to arrest that is considered adequate notice for the purposes of the Act. This takes in to consideration the fact that inmates of jails do not have the freedom to call the employer daily, and they will usually use their one phone call to phone relatives or an attorney. Notice or not, the employer is not required to hold the job open for the incarcerated employee. There may be times when an arrest and subsequent incarceration would severely injure the employer, as in crimes of moral turpitude, or crimes committed by an employee in a sensitive position. Even though those acts themselves had nothing to do with the employer, they may result in disqualification for benefits. Those cases are covered under the sections dealing with illegal or immoral acts and incarceration.

## ARREST

### *Arrest*

90 AT 109 BR

Facts: Claimant was arrested and jailed for thirty days. Two days after his arrest his mom called the employer to advise that claimant would be in jail for an unknown length of time. After a week when the release date was still unknown, the employer advised claimant's mom that the job would be held open until the end of the week. Claimant was not released until two weeks later.

Held: Claimant's extended absence was not justified; misconduct found.

Result: Benefits denied.

90 AT 9404 BR

Facts: Claimant was a nurse assistant and was arrested for distribution of drugs. She was placed on suspension without pay pending outcome of her legal case. She filed a claim for benefits. Claimant was found guilty and sentenced. Claimant was then discharged.

Held: Claimant was discharged when she was placed on suspension without pay. There was no proof of misconduct at the time of suspension.

Result: Benefits allowed.

90 AT 8329 BR

Facts: Claimant was discharged after failing to notify his employer while in jail for seven days. His uncle did notify the employer.

Held: By themselves, arrest and incarceration are not misconduct. Notice was given. However, misconduct is found because the jail stay was more than two to three days.

Result: Benefits denied.

90 AT 7576 BR

Facts: The employer learned that claimant was being investigated by the OSBI regarding some equipment being used outside the employer's place of business without authorization. The District Attorney filed charges. The claimant offered to resign but felt it was under duress. The charges were later dropped.

Held: Claimant was discharged without evidence of misconduct. The burden of proof was not met. Mere arrest is not misconduct.

Result: Benefits allowed.

Cross-reference:

- V-60            **Attitude**  
    (A)-1-2            Agitation of Other Employees  
    (B)-1              Complaint or Discontent  
    (C)-1              Uncooperative Attitude
- V-70            **Competition with Employer**  
    -1                  Case Law and Commission Cases
- V-80            **Dishonesty**  
    (A)-1-2            False Information on Work Application  
    (B)-1-2            Falsification of Work Records  
    (C)-1-3            Fraud  
    (D)-1              Incorrect or Improper Travel Claims  
    (E)-1              Lying to Employer  
    (F)-1-2            Theft  
    (G)-1-2            Unauthorized Use of Property
- V-90            **Disputes between Employees**  
    -1-2                Case Law and Commission Cases
- V-100          **Disruptive Behavior**  
    (A)-1-2            Abusive Behavior  
    (B)-1-3            Abusive and Foul Language  
    (C)-1-2            Altercation or Assault  
    (D)-1              Disloyalty to Employer  
    (E)-1-2            Rudeness and Abuse toward Customers
- V-110          **Forced Resignation**  
    -1-2                Case Law and Commission Cases
- V-120          **Garnishment**  
    -1-2                Case Law and Commission Cases
- V-130          **Health Standards**  
    (A)-1              Contagious Diseases  
    (B)-1              Physical Examination Requirements
- V-140          **Illegal or Immoral Acts**  
    (A)-1-2            Illegal Acts  
    (B)-1              Immoral Acts
- V-150          **Incarceration and/or Conviction**  
    -1-3                Case Law and Commission Cases

V-160        **Inefficiency or Inability to Perform Duties**  
              -1-4            Case Law and Commission Cases

V-170        **Insubordination**  
              (A)-1-3            Disobeying Order/Instruction of Supervisor  
              (B)-1-3            Dispute With Superior  
              (C)-1-2            Refusal to Perform Work Duties as Assigned  
              (D)-1             Refusal to Work Time Assigned  
              (E)-1             Refusal to Change Work Hours  
              (F)-1             Refusal to Transfer  
              (G)-1             Ridicule of Authority  
              (H)-1             Refusal to Sign Reprimand

## **ATTITUDE**

The employer is entitled to a pleasant, cooperative, positive workplace. While most employees and employers have good and bad days, an employee who continually causes disruption in the workplace or causes a degeneration in the general morale and atmosphere may be disqualified for willful misconduct. This includes employees who spread gossip and rumors which upset employees and morale, those who constantly complain but do not follow proper grievance procedures, and those employees who generally are uncooperative toward the employer or other employees. More serious altercations and harassment are covered in other sections of this manual.

## ATTITUDE

### *Agitation of Other Employees*

#### *Case Law:*

*Liggins v. OESC, Bd of Rev, City of Tulsa et al., CJ-87-05057 (Tulsa Co. D. Ct. 8-3-87)*

Facts: Claimant spread rumors about her coworkers. The coworkers were offended and morale suffered. When counseled, claimant indicated she would not change her behavior since she believed the rumors were true. She was discharged.

Held: Claimant's behavior was improper and in substantial disregard of the employer's interests.

Result: Benefits denied.

*McCall v. Bama Pie Co., Bd of Rev., OESC, CJ-87-00407 (Tulsa Co D.Ct. 3-10-87)  
85 AT 1316;85 BR 474*

Facts: Claimant was warned several times about gossiping and causing unrest among the employees. She was a lead lady and her action did not show support of company policy.

Held: Misconduct shown.

Result: Benefits denied.

*Case Applications:*

95 AT 5843 BR

Facts: Claimant made remarks about the use of guns in the workplace, in a private conversation. However, his comments were loud enough so that coworkers could and did overhear him.

Held: Claimant, a former police officer, should have been aware of the increase of random shootings at workplaces by employees and should have known that his statement could cause panic and fear among those who heard his conversation. As a counselor for individuals who are lawbreakers, claimant is held to a higher standard than employees in other types of work. Misconduct shown.

Result: Benefits denied.

89 AT 5947 BR

Facts: Claimant was fired for allegedly spreading rumors about his coworkers and other's use or distribution of drugs. Claimant denies spreading rumors and said he had not been allowed to present his version of the story.

Held: Claimant's testimony was uncontroverted because there was no evidence of wrongdoing. No misconduct shown.

Result: Benefits allowed.

79 AT 61551 79 BR 1259

Facts: While training employees, claimant counseled them regarding religious beliefs. The relentless badgering caused four employees to quit in two and one-half months. Fellow employees complained. Claimant was counseled and advised he would be fired if he continued. Claimant advised that he could not comply with the employer's request because of his religious beliefs.

Held: Claimant's religious beliefs hampered efficient operation of the business and upset fellow employees. Misconduct shown.

Result: Benefits denied.

Cross-reference:

## ATTITUDE

### *Complaint or Discontent*

96 AT 4713 BR

Facts: Claimant was supposed to receive subsistence pay while working out of town. He called to straighten out the fact that he was short two days pay. Claimant was told to stay at the job site and the problem would be fixed. He said if the problem was not fixed, he wouldn't be back. Claimant did not receive his check, so he returned home the next day and was fired. The employer had sent the check by Federal Express, but it was sent to the foreman who had quit, so the claimant never got his check.

Held: It is the employer's responsibility to pay claimant's subsistence pay in a timely manner. Claimant was not correctly paid so he returned home to get it straightened out. Both claimant's superintendent and foreman had left employment and there was no one in charge at the job site to assist the claimant. There is no showing of misconduct.

Result: Benefits allowed.

96 AT 7544 R-BR

Facts: The employer alleges that claimant was discharged because he violated policy when purchasing a vehicle, leaving work for long periods of time and having a bad attitude. Claimant made arrangements to purchase a car with the manager on duty, not the general manager, which did not violate policy. Claimant began taking hour lunches after having the time taken from each day the previous month even though he did not get a lunch break. Claimant told his supervisor that he gets one hour for lunch and was fired.

Held: No evidence of misconduct.

Result: Benefits allowed.

Cross-reference:

ATTITUDE

*Uncooperative Attitude*

90 AT 7515 BR

Facts: Claimant was told she was being discharged for poor work habits and attitude. No other explanation was given. Claimant denies any problems and was given no warnings about her conduct.

Held: Claimant's testimony was unrefuted. There was no evidence of misconduct.

Result: Benefits allowed.

81 BR 1228

Facts: A candy machine was burglarized at claimant's place of work. Several employees, including claimant, were to be questioned. Claimant refused to cooperate with the investigator even after he was offered legal counsel. He was given a certain amount of time to contact the investigator. When he did not, he was discharged.

Held: Guilt is not an issue. Claimant failed to cooperate in an investigation. Failure to abide by a reasonable request of the employer is misconduct.

Result: Benefits denied.

Cross-reference:

## **COMPETING WITH EMPLOYER**

Setting up a personal business or soliciting business in direct competition with the business of the employer is willful misconduct. This includes taking steps to set up a competing business without informing the employer, whether or not it is done on company time. It also includes using the employer's computers, contacts, client lists, equipment, time or resources to obtain clients for a competing business, including access to employer computer files from home computers with the intent of setting up a competing business. It makes no difference whether the competing business is ever actually realized. This applies without regard to the existence of a contract between the employer and employee, which contains a non-competition clause.

## COMPETITION WITH EMPLOYER

97 AT 0478 BR

Facts: Claimant was discharged because of poor sales and job performance, and because he was operating a personal business after hours that competed with his employer. This violated the employment agreement which claimant had signed. Claimant was also using his employer's calling card for personal telephone calls and using the truck and gasoline for personal business. There were discrepancies in the mileage reports and gas receipts. Claimant admitted to tree spraying after hours and weekends.

Held: Claimant violated the non-competition agreement. Misconduct shown.

Result: Benefits denied.

82 BR 90

Facts: Claimant was discharged when his employer saw an ad in the yellow pages for claimant's business that was in direct competition with the employer. Claimant admitted to placing the ad, but said it was placed earlier and he decided not to start the business. Claimant never told the employer of his original plans.

Held: Going into business in competition with one's employer and not revealing those plans is misconduct.

Result: Benefits denied.

81 BR 1842

Facts: Claimant failed to perform his duties and solicited Amway sales on company time. He violated the credit policy resulting in an unauthorized sale. Claimant was behind in his paperwork and talked with the employer's customers about buying Amway detergent.

Held: Soliciting customers away from the employer is misconduct.

Result: Benefits denied.

Cross-reference:

## **DISHONESTY**

An employer is entitled to employees who are honest and trustworthy in their dealings with the employer and its clients and customers. Any employee who knowingly enters false information on an application for employment is guilty of willful misconduct, unless the question asked is illegal. In addition, employees who falsify work records, time sheets and travel claims, whether or not they will receive additional remuneration as a result, are guilty of misconduct. Fraud committed by the employee which is connected to the work is a disqualifying act, as is theft or the unauthorized use of employer property. Employees may not “borrow” employer property without the employer’s permission. The claim that “everyone else does it” is no excuse. This includes pilfering of supplies as well as outright major theft or embezzlement. An employee who is found to have lied to the employer in other instances than work records and applications may also be disqualified for willful misconduct.

## DISHONESTY

### *False Information on Work Application*

#### *Case Law:*

*Arnold v. Bd. of Rev, St John Medical Ctr et al., CJ-89-6481 (Tulsa Co. D. Ct., 9-12-90)*

**Facts:** Claimant was discharged for giving a false response on her application for employment regarding whether she had been convicted of a felony. She had received a deferred sentence for a charge of obtaining controlled drugs by fraud. Claimant had been instructed by her attorney to answer it “no” because the claimant had pleaded guilty and the sentence would be expunged.

**Held:** The District Court reversed the Board of Review stating that a guilty plea was not the same as a conviction and a deferred sentence was not a conviction.

**Result:** Benefits allowed.

*Gore v. State of Oklahoma et al., CJ-88-753 (Okla. Co. D. Ct. 11-7-89)*

**Facts:** Claimant’s supervisor requested a background check on the claimant based on an anonymous call. Claimant had four arrests, two for DUI and two for public intoxication in Oklahoma and two in Texas for theft and possession of an illegal substance. Claimant stated on his application that he had no felony arrests or misdemeanor arrests in the last ten years. Claimant was told to resign or be fired.

**Held:** Claimant concealed his record. Misconduct found.

**Result:** Benefits denied.

*Case applications*

*90 AT 7738 UCFE*

Facts: Claimant lied on his employment application about being arrested and convicted. He also lied about being fired from a previous job. He was discharged for making false statements on the application.

Held: Making false statements on an employment application equals misconduct.

Result: Benefits denied.

*80 BR 1387*

Facts: Claimant said her traffic record was clean when she had six violations. The employer's insurance would not cover her and she was discharged.

Held: The employer was unable to get liability insurance on the claimant, a prerequisite for the job. Failing to disclose a poor driving record constitutes misconduct.

Result: Benefits denied.

Cross-reference: See also *Lying to Employer*, 96 AT 8173 BR; *Fraud, McMinn v. Dolese et al.*, CJ-86-13548 (*Ok. Co. D. Ct. 5-13-87*)/

## DISHONESTY

### *Falsification of Work Records*

#### *Case Law*

*Horton v. OESC, Bd. of Rev. of OESC, William E. Davis and Sons, Inc., No. 61,957(Okla. Sup. Ct. 1-22-86) Not for Publication*

Facts: Claimant was employed as a warehouseman. His production during his employment was consistently under the employer's required standards. Over nine months he received three verbal warnings and one written warning. He was discharged at the end of nine months. Claimant padded reports to make it appear that he was meeting the production standards. He was offered extra training but turned it down.

Held: Falsification of records is misconduct.

Result: Benefits denied.

#### *Case Applications*

*99 AT 02344 BR*

Facts: Claimant was a senior material management analyst. She was absent due to illness from November 30, 1998, to December 8, 1998. Claimant received a doctor's statement excusing her from work beginning November 30, 1998, with a return to work date of December 7, 1998. Claimant timely called her employer and advised that she was still ill on December 7, 1998. The doctor's statement did not include the date of December 7<sup>th</sup>. Claimant corrected the document and gave it to her employer. The employer called the doctor's office, which first confirmed the date, then denied it. The employer accused the claimant of falsifying a medical document and conducted an investigation. Claimant was discharged for falsifying the return to work date on a medical document. Claimant had no prior history of disciplinary action.

Held: This was one incident of carelessness in an otherwise discipline-free twenty-year history with the employer. No misconduct found by the Board of Review which reversed the Appeal Tribunal.

Result: Benefits allowed.

*96 AT 6826 BR*

Facts: Claimant was discharged for falsifying test information at his place of employment. The employer received reports that claimant was not performing the tests but recording the results. The supervisor went to claimant's work area and noted that the claimant was not present at the time the tests were recorded.

Held: Misconduct found.

Result: Benefits denied.

*96 AT 6236 BR*

Facts: Claimant was paying herself unauthorized overtime. The employer did not discover this until he took the checkbook home to figure out why there was not enough money to pay his own salary.

Held: It is not credible to believe that an employer would pay overtime to claimant equaling one-third of her salary. Intentional disregard of the employer's best interest is misconduct.

Result: Benefits denied.

*95 AT 1731 BR*

Facts: Claimant directed a subordinate to clock out for her when she left early. Claimant testified that it was the practice of other employees. The employer testified that they were unaware of the procedure and considered it falsification of time cards and grounds for termination.

Held: By using the time clock, employees should know that they are expected to report their time accurately. Falsification of time records is misconduct.

Result: Benefits denied.

*93 AT 000437 BR*

Facts: Claimant was discharged for misstating his hours on his time card, then later signing it as correct. Claimant says that he did not notice the error.

Held: The evidence fails to prove intent. The act was a mistake, not deliberate. Misconduct not shown.

Result: Benefits allowed.

## DISHONESTY

### *Fraud*

#### *Case Law*

*Walden v. St. Anthony Hospital et al., CJ-8704006 (Okla. Co. D. Ct. 5-15-1989)*

Facts: Claimant was discharged for filing an insurance claim on a “D&C” when the actual operation was an abortion, which was not covered by insurance. The employer contends that the claimant knew the policy and misrepresented her claim.

Held: The claimant’s act was against the employer’s best interest. Misconduct shown by the willful misrepresentation to the employer’s insurer.

Result: Benefits denied.

*McMinn v. Dolese et al., CJ-86-13548 (Okla. Co. D. Ct. 5-13-87)*

Facts: Claimant was discharged for falsification of work records. He improperly completed a stressing sheet, indicating the steel put into concrete beams had been properly stressed. He said when he completed the first stressing sheet, he felt he misread the gauge or wrote down the wrong number. He redid the sheet putting down the correct numbers. This was only done at the suggestion of an inspector.

Held: Claimant’s acts were against the best interest of the employer. Willful misconduct shown.

Result: Benefits denied.

*Myers v. OESC et al., SC-87-97(Seminole Co. D. Ct. 6-16-87)*

Facts: Claimant was terminated after she let relatives of two individuals sign marriage certificates.

Held: Claimant should have known that forged signatures were unacceptable. Claimant was guilty of misconduct.

Result: Benefits denied.

## Case Applications

### *97 AT 1059 BR*

**Facts:** The employer had a promotion where cards were given to customers and employees and punched each time a purchase was made. When the total equaled \$250, a place was scratched off and money awarded. Claimant discovered that darker cards were worth more. Instead of telling management, claimant shared her discovery with other employees.

**Held:** By not advising the employer the claimant deliberately violated the employer's expected standard of behavior. Misconduct shown.

**Result:** Benefits denied.

### *87 AT 2166 BR*

**Facts:** The employer received allegations that claimant had falsified official college records. She changed her personal grades in four courses and falsified ACT scores on her college record. She utilized the false grades to gain a "certificate of mastery". Claimant admitted her computer access code allowed her to make some of the changes alleged, but said other employees made the changes in her record and gave false statements to implicate her.

**Held:** The claimant used unsubstantiated grades to apply for a certificate of mastery. Even if the trier of fact accepted the claimant's denial of wrongdoing in regards to the false entries, the ultimate question would still remain; why did the claimant use this information to apply for and be conferred a Certificate of Mastery? It is logical to assume the claimant would have known whether or not she had successfully completed those courses. The records of the employer indicated the claimant had been unsuccessful in some of the classes used to apply for and be conferred the Certificate. Misconduct shown.

**Result:** Benefits denied.

*87 AT 884 BR*

Facts: Claimant says his manager, who admitted to misappropriating substantial sums, instructed him to take a \$1500 check to the bank, cash it and bring the cash back, which he did. The claimant was discharged and not given a chance to defend himself. No criminal charges were filed against him.

Held: The only proof of intent to defraud was claimant's signature on the check. There was no showing of willful misconduct.

Result: Benefits allowed.

*86 AT 14629 BR*

Facts: Claimant was terminated for failure to follow the employer's specific instruction regarding the obtaining of cash with the use of a credit card and for abusing the privilege of using manufacturer's coupons to purchase goods in the store. Claimant assisted a co-worker in abuse of coupon privileges and obtained cash through the use of her credit card.

Held: Both actions caused her employer economic loss. Misconduct shown.

Result: Benefits denied.

Cross-reference: See also Falsification of Work Records, 96 AT 6236 BR

## DISHONESTY

### *Incorrect or Improper Travel Claims*

#### *Case Applications*

#### *90 AT 7801 BR*

**Facts:** Claimant was a teacher required to attend conferences provided by the Vo-Tech system twice a year. He received a stipend from the Vo-Tech for attending the conferences. After the first conference the superintendent told the claimant to keep receipts for all expenses and the school would reimburse him. The superintendent told him the situation was approved by the school administration. A new superintendent found out about the Vo-Tech paying a stipend. After investigating he told the claimant it was wrong to file a claim with the school and if claimant did not resign he would turn the matter over to the District Attorney. Claimant paid the money back, but was still required to resign.

**Held:** Since all teachers received the same stipend regardless of whether they lived in the city where the conference was held or had to travel and stay in a motel, it was logical for the claimant to think he would be reimbursed.

**Result:** Benefits allowed.

## DISHONESTY

### *Lying to Employer*

#### *Case Applications*

##### *96 AT 8173 BR*

Facts: The employer, a home health service business, by state law, cannot hire felons or people having committed misdemeanors involving larceny. Claimant was questioned and she said she had a misdemeanor. When the OSBI report was received, it showed claimant pleaded guilty to a felony. The employer discharged the claimant.

Held: Claimant lied about the felony. Misconduct shown.

Result: Benefits denied.

##### *89 AT 07826 R*

Facts: The claimant left an out of state job site to return home for what he told his supervisor was a personal family matter. He did not ask for permission to leave; he just left. The employer's witness testified that claimant told him two days before he left that he had a job interview in Oklahoma and was going regardless of the consequences. The employer fired the claimant for lying.

Held: The claimant's action in lying to employer was misconduct.

Result: Benefits denied.

See Also: Falsification of Application

## DISHONESTY

### *Theft*

#### *Case Law*

*Vogle v. OESC, 817 P2d 268 (Okla. App 1991)*

Facts: Claimant mistakenly took home a tester of perfume without performing the first step in the approval process, getting approval from the store manager. The claimant always obtained approval in the past. This was the only time she omitted a step. She returned the tester when she found out there was a problem.

Held: An isolated infraction is not misconduct.

Result: Benefits allowed.

#### *Case Applications*

*97 AT 4444 BR*

Facts: Claimant was discharged for petty theft of office supplies. Claimant was clearly counseled and warned by the employer to not take anything.

Held: It was a deliberate violation of the employer's wishes. Misconduct shown.

Result: Benefits denied.

*90 AT 8706 BR*

Facts: The employer had problem with food disappearing from the kitchen. Employees were allowed to consume leftovers in the kitchen, nowhere else. Claimant was fired for violating this rule. The employer did not see it happen, but was informed by their secretary. Claimant says she was given two pieces of chicken, which she did not feel like eating, so she gave them to her boyfriend who was at the back door of the kitchen.

Held: Claimant did not try to hide the food. There is no evidence of stealing. Misconduct was not shown.

Result: Benefits allowed.

90 AT 4562 R BR

Facts: Claimant was discharged after an audit showed the company was \$7,748 short on damage. After watching the dealing between claimant and a route driver, the employer decided they had been falsifying reports. The route driver was caught and said claimant was involved. Claimant's job was to assist the route driver in counting merchandise. It did claimant no good to misrepresent the amount of products since he gained nothing from it.

Held: There is no proof that claimant was cheating the company or was involved with the driver. No misconduct was proven.

Result: Benefits allowed.

90 AT 8624 BR

Facts: Claimant refunded a customer's money when the customer waited 45 minutes to receive his order. Service was guaranteed in thirty minutes. Claimant observed her manager refunding money when this occurred. Claimant did an over ring and had the customer sign the ticket. Employees are told in training they must satisfy the customer. Claimant was fired for alleged theft or mishandling of funds.

Held: Misconduct was not shown.

Result: Benefits allowed.

90 AT 8579 BR

Facts: The employer had a policy that employees pay for food before eating it. There was also a policy that management count waste products prior to discarding them. The claimant was observed picking up a bag of sandwiches and placing them in the waste area before it had been counted. He was later observed off work with a bag of sandwiches outside the back door. The incident was reported to the district manager. Before the district manager could talk to the claimant, the claimant was discharged for eating food before paying for it. He acknowledged eating a sandwich, but denied taking the bag of sandwiches. Claimant was discharged for stealing food.

Held: Theft is misconduct.

Result: Benefits denied.

DISHONESTY

*Unauthorized Use of Property*

*Case Applications*

*93 AT 6166 BR*

Facts: Claimant was discharged after consulting her employer's checkbook to find some information for a co-employee. The information was not privileged and the checkbook was not off limits to claimant. When the employer found out about the incident he became angry and fired her. Later the employer offered the claimant her job back and she declined.

Held: There is no evidence of misconduct.

Result: Benefits allowed.

*90 AT 7523 BR*

Facts: Claimant operated a company vehicle to deliver parts. She worked eight months. Shortly before her shift was to end, claimant received information that her fiancé threatened to commit suicide. Claimant sent word to the dispatcher and rushed home. Claimant told the dispatcher she would have the vehicle back by the end of her shift. The employer discharged her and told her the vehicle would be picked up by someone else.

Held: Claimant was discharged for unauthorized use of a company vehicle. This was an isolated incident due to an emergency, but not willful or deliberate.

Result: Benefits allowed.

*90 AT 7576 BR*

Facts: The employer received word that claimant was being investigated by the OSBI over equipment being used outside employer's place of business without authorization. Charges were filed by the District Attorney. Claimant said he called the administrator after he was released on bail and offered to resign, but felt the resignation was under duress. The charges were later dropped.

Held: Since the claimant had no choice but to resign, he is considered to have been fired. There was no conviction. The employer failed to show misconduct.

Result: Benefits allowed.

## **DISPUTES BETWEEN EMPLOYEES**

This section covers minor disputes between employees which may result from personality differences, jealousy, problems outside work, or minor incidents at work. An employee may not be disqualified just for having a dispute with or not getting along with other employees, unless it can be proven by a preponderance of the evidence that the employee is somehow at fault in the dispute or is acting upon the dispute in a negative or disruptive manner. An employee who spreads rumors about others in the workplace is being willfully disruptive and will be disqualified. An employee who continues to act on a dispute after being warned against such behavior by the employer is guilty of misconduct. Just not getting along with other employees is not willful misconduct. The allegation that other employees do not wish to work with said employee is not enough to establish willful misconduct. It should be noted that employees in supervisory positions may be held to a higher standard when their behavior is unprofessional and not in the best interest of the employer.

See also Attitude

## DISPUTES BETWEEN EMPLOYEES

### *Case Applications*

#### *90 AT 7058 BR*

Facts: Claimant was a grill cook. She attempted to complain to her supervisor regarding the performance of an employee taking orders. Claimant was unable to fill orders properly and asked her associate to pass the orders to her clearly. The associate became upset and began calling claimant a vulgar name. Claimant never said anything vulgar back. She had two witnesses. Claimant called her supervisor who determined both were at fault and fired them both.

Held: The employer did not provide proper supervision over his employees. Claimant tried to prevent the situation from happening. No willful misconduct found.

Result: Benefits allowed.

#### *89 AT 5947 BR*

Facts: Claimant was fired for allegedly spreading rumors about his coworkers and other's use or distribution of drugs. Claimant denies spreading rumors and said he had not been allowed to present his version of the story.

Held: Claimant's testimony was uncontroverted because there was no evidence of wrongdoing. No misconduct shown.

Result: Benefits allowed.

#### *88 AT 12706 BR*

Facts: Claimant was in a management position and was fired when he threw a pie at a coworker. In the sixty days before his discharge his attitude changed drastically. There was excessive tardiness and other incidents that caused the employer concern. Claimant claimed he threw the pie after being struck first.

Held: An employer has the right to expect employees working in management or upper level positions to conduct themselves in a professional manner. Misconduct found.

Result: Benefits denied.

*81 AT 9015*

Facts: Claimant was involved in a pushing match at work in which she was the aggressor. Both parties to the fight were terminated.

Held: Although claimant may have been provoked by the actions of a coworker, she acted in an imprudent manner by being the aggressor. Fighting on the job constitutes misconduct.

Result: Benefits denied.

*80 BR 427; 80 AT 0858*

Facts: Claimant was having personal problems with a coworker. The employer advised that the problems should be fixed on their own time, because the conduct was disrupting the office. A final confrontation caused the manager to warn them again. The claimant continued to argue. After being asked again to stop, the claimant was discharged.

Held: Disruptive conduct over non-work issues constitutes misconduct.

Result: Benefits denied.

Cross-reference: See also *Agitation of Other Employees, Liggins v. OESC, Bd of Rev, City of Tulsa, et al., CJ-87-05057 (Tulsa Co. D. Ct. 8-13-87)*

## **DISRUPTIVE BEHAVIOR**

This section covers not only disputes that may develop into something more serious, but also other employee behavior which adversely affects the employer's interest or lowers the morale and tranquility of the workplace. It includes negative behavior such as fits of anger or temper tantrums, threatening physical or verbal behavior, racial or ethnic slurs, harassment of any kind, abusive or foul language (even if "others use it"), threats or actual physical altercation or assault or threats, disparaging remarks regarding the employer to others, and rude or abusive behavior toward others. It also includes knowing of and not reporting incidents which are detrimental to the employer. It does not necessarily excuse the employee that these acts are not committed in front of customers.

## DISRUPTIVE BEHAVIOR

### *Abusive Behavior*

#### *Case Applications*

#### *95 AT 10231 BR*

**Facts:** Claimant had been harassed for several years by the same coworkers and had reported it to his supervisor. The coworkers' direct supervisor or "group leader" was involved in the harassment. Although the claimant did not tell his supervisor about every incident, the supervisor was aware of most of them. The week of the claimant's termination, he asked the "group leader" to talk to his employees about the continued vandalism of claimant's truck. Leader stated he was not involved, but did not stop the vandalism. In the last incident, garbage was dumped in the claimant's pickup and a tampon placed under his windshield wiper. When confronted, the coworkers laughed, whereupon the claimant lost his temper and either slapped or pushed the coworker, who fell and was slightly injured. Claimant's was the only first-person testimony offered about the incident. The employer did not call the other person involved.

**Held:** The coworker's actions went far beyond what claimant should be expected to ignore. They had even sent love letters to claimant's address with perfume and panties enclosed, which was very upsetting to the claimant's wife as well. Claimant's response was reasonable and foreseeable under the circumstances. The employer should have taken steps to contain the harassment before claimant was pushed to the breaking point. The harassment was even being conducted by a person in authority. The employer must take some of the responsibility for claimant's reaction to the continued harassment. Claimant's actions were not willful. No misconduct shown.

**Result:** Benefits allowed.

#### *95 AT 9623 BR*

**Facts:** Claimant was counseled several times and had been suspended on two occasions for a continuing pattern of disruptive and threatening behavior. The abuse continued.

**Held:** The claimant violated the employer's standard of expected behavior. Misconduct shown.

**Result:** Benefits allowed.

*95 AT 4116 BR*

Facts: Claimant was counseled several times about her attitude toward patients and her fellow employees. She was warned she would be fired if her attitude did not improve. In two final incidents, claimant raised her hand as if she was going to strike a patient and she spoke harshly to a staff person.

Held: Claimant was insubordinate to her supervisor. The action of raising her hand to a patient was unconscionable and constituted misconduct.

Result: Benefits denied.

*87 AT 5339 BR*

Facts: The claimant was involved in an altercation with her supervisor in which she used racial slurs.

Held: Claimant's actions and language were misconduct.

Result: Benefits denied.

Cross-reference: See also Uncooperative Attitude, *90 AT 7618 BR*

## DISRUPTIVE BEHAVIOR

### *Abusive and Foul Language*

#### *Case Law*

*Limke v. Bd. of Rev., et al, C-88-96 (Canadian Co. D. Ct. 11-14-88)*

**Facts:** Claimant was a truck driver. He failed to make a scheduled delivery. He was instructed by his immediate supervisor to take the freight back to the yard. Later in the day he was told by the general manager to deliver the freight. Claimant became upset and used profane language. He was discharged.

**Held:** The Commission, Appeal Tribunal and Board of Review all denied benefits. The District Court reversed, finding that although as a matter of law, the use of inappropriate language was misconduct, this was an isolated incident and did not amount to misconduct.

**Result:** Benefits allowed.

*Drakes. v. Morrison, Inc. et al., CJ-86-7876 (Tulsa Co. D. Ct. )*

**Facts:** Claimant was fired because he would not follow directions and did not complete his duties within the specified time. He refused to perform assignments and made racial remarks and used vulgar language with the manager when counseled.

**Held:** Claimant exhibited a hostile and insubordinate attitude which created an intolerable situation.

**Result:** Benefits denied.

## Case Applications

### *96 AT 2210 BR*

Facts: Claimant became upset when her truck was moved without her permission. Her truck was blocking another car and she could not be found, so her truck was moved without her. Claimant cursed the dispatcher, and threatened to “blow away” the next person that touched her truck. The incident was reported to the dispatcher’s supervisor, who reported to the main office. Claimant was discharged.

Held: Threats of violence measure to misconduct.

Result: Benefits denied.

### *96 AT 7766 UCFE BR*

Facts: Claimant was preparing his lunch when an employee from another area of the building approached him and began using Vietnamese obscenities. Claimant felt he was in danger so he pushed the aggressor into the hallway. The other employee then began yelling for help.

Held: Claimant was not the aggressor; he was defending himself. His actions are not considered misconduct.

Result: Benefits allowed.

### *96 AT 00703 BR*

Facts: Claimant used abusive language to a female coworker. He was reprimanded previously for using the same language and advised that if it happened again he would be fired. It happened again and claimant was discharged.

Held: Deliberate violation of the employer’s expected standard of behavior was misconduct.

Result: Benefits denied.

*93 AT 03416 BR*

Facts: Claimant was on 24-hour call and needed the telephone number of an employee. He was told to call a security guard. The security guard refused to give the number. Claimant became agitated and used bad language.

Held: Claimant showed bad judgment, but it was not sufficient to show a willful disregard of the employer's interests.

Result: Benefits allowed.

Cross-reference: See also Failure to Report to Work Without Notice, *95 AT 5896 BR*

## DISRUPTIVE BEHAVIOR

### *Altercation or Assault*

#### *Case Law*

*Arrow Trucking Co. v. OESC et al, CJ-89-0672 (Tulsa Co. D. Ct. 1-5-90)*

**Facts:** Claimant worked for the employer almost fourteen years. On his last day of work another employee was injured. Claimant took the employee to the employer who took him to the hospital. Claimant then spoke with an officer of the company. Claimant does not remember his actions toward the officer, but he remembers being yelled at by the officer and later finding out he struck the officer. Claimant was sorry about the incident and it was the only incident that was harmful to his employment in fourteen years.

**Held:** The Commission denied benefits, but was reversed on appeal. Both the Appeal Tribunal and the Board of Review allowed benefits. The Appeal Tribunal held that to be misconduct an action must be willful. Claimant was under extreme stress and his actions were beyond his control. The District court reversed.

**Result:** Benefits denied.

#### *Case Applications*

*90 AT 4610 BR*

**Facts:** Company policy calls for an employee involved in a fight on company time or at work to be terminated. The claimant engaged in an altercation with a coworker. Several witnesses state that claimant was an active participant.

**Held:** The claimant violated company policy. Misconduct shown.

**Result:** Benefits denied.

*90 AT 9135 BR*

Facts: Claimant was involved in two altercations with coworkers. In the second incident, the coworker threatened the claimant with a hammer. The claimant pulled a knife before the two were separated. Both were suspended and later discharged.

Held: Fighting on the job is obvious misconduct. Claimant's action placed himself and others in danger.

Result: Benefits denied.

*90 AT 3679 BR*

Facts: Claimant was reprimanded by a supervisor for refusing to perform a normal part of her job duties. An argument ensued and both had to be restrained. Claimant was discharged for insubordination and refusing to perform her assigned duties. Claimant denied having refused to carry out her duties or engaging in an altercation. She asserted that she was threatened by her supervisor.

Held: The employer did not establish that claimant's action constituted misconduct. Only hearsay evidence was available from the employer. No proof of misconduct.

Result: Benefits allowed.

Cross-reference: See also Disputes Between Employees, *90 AT 7058 BR*

## DISRUPTIVE BEHAVIOR

### *Disloyalty to Employer*

#### *Case Applications*

##### *84 BR 1541*

Facts: Claimant was discharged for casting disparaging remarks about the president of the bank while talking to another associate. The employer did not appear to testify in person, nor did he send any witnesses.

Held: Mere allegations of acts of misconduct without evidence are not sufficient to sustain the burden of proof. No misconduct proven.

Result: Benefits allowed.

##### *79 BR 1271*

Facts: Claimant worked as a bellboy. He was terminated for theft, prostitution and the results of a polygraph test. He denied involvement in any theft or prostitution, but admitted he was aware of the involved parties. He felt it was not his place to inform the employer.

Held: Claimant had direct knowledge of individuals involved in conduct detrimental to the employer. His failing to inform the employer makes him a party to the action. Misconduct shown.

Result: Benefits denied.

Cross-reference: See also *Competing with Employer, 97 AT 0478 BR*

## DISRUPTIVE BEHAVIOR

### *Rudeness and Abuse Toward Customers*

#### *Case Applications*

##### *95 AT 3084 R BR*

Facts: Claimant was discharged for allegedly mistreating a patient. A report done by the Department of Health and Human Services indicates that the patient was mistreated.

Held: Misconduct shown.

Result: Benefits denied.

##### *90 AT 268 BR*

Facts: Claimant drove a cement truck. While delivering some cement, he engaged in a verbal conflict with the customer. The customer reported the conflict to the employer. Claimant was discharged. Claimant denied any rude behavior. Neither the employer nor his witness had first hand knowledge of the event.

Held: The employer only provided hearsay testimony. The employer's discharge of the claimant for business reasons may have been valid, but there is no proof of misconduct.

Result: Benefits allowed.

##### *90 AT 7498 BR*

Facts: The claimant was discharged for several allegations that he was rude to customers. The complaints resulted in discipline and two suspensions. The incident that precipitated the discharge was a customer complaint that claimant rudely dropped her change. Claimant recalled the incident but stated he was unaware that the customer considered him rude until he was advised by the manager.

Held: Mere allegations of rudeness are not proof. The claimant's denial of rude behavior is not refuted by firsthand testimony. Willful misconduct was not proven.

Result: Benefits allowed.

*91 AT 15 BR*

Facts: Claimant's overall work performance and attitude were considered to be poor. He was issued frequent verbal warnings that his deliveries were too slow and were resulting in too many call backs from customers. The final day of employment the claimant was overheard by the manager using profane language in front of coworkers and near customers. The manager criticized the claimant, who smiled and walked off. Claimant was fired. Claimant did not appear at the Appeal Tribunal hearing, so the employer's testimony was unrefuted.

Held: The use of profanity in the workplace in front of customers measures to misconduct.

Result: Benefits denied.

*88 AT 12386 BR*

Facts: Claimant was discharged for a confrontation with a customer. As claimant was leaving work, he observed a man and two women drinking from mugs belonging to the restaurant. Claimant advised the people that they could not drink outside because the restaurant could lose its liquor license. The women handed over the mugs, but as the claimant was going into the restaurant the man hit the claimant in the jaw, then drove away. The co-manager saw the incident. Claimant had never been counseled about any customer complaints. Claimant called the police and reported the incident. The co-manager reported the incident to the district manager. Claimant was fired.

Held: There is no evidence that claimant goaded the customer into hitting him. Claimant was doing his best to protect the employer's interests. No misconduct.

Result: Benefits allowed.

Cross-reference: See also, Abusive Behavior, *95 AT 4116 BR*

## **FORCED RESIGNATION**

Many employers will offer to allow an employee to resign rather than face discharge. They may feel that this frees the employer from having to prove acts of misconduct and allows the employee to save face. In some cases it is also implied that the employee will receive a favorable recommendation from the employer, and the employer will not contest unemployment benefits if the employee agrees to resign. Any separation which is initiated by the employer is a discharge, sometimes referred to as a constructive discharge for purposes of the Act. It is implied in most of these cases that if the employee does not agree to resign they will be discharged. The fact that the employee agreed to sign a resignation does not change the character of the separation. It will still be treated as a discharge and the employer must still prove willful misconduct by a preponderance for the employee to be disqualified.

Cross-reference: Constructive Quit

## FORCED RESIGNATION

### *Case Applications*

#### *96 AT 2846 BR*

Facts: The claimant and employer signed a one-year contract. Claimant advised the employer that she would not be signing a contract the following year. Seven months later claimant was told that the employer had hired a replacement and her last day would be the following month. Claimant was discharged before her contract was completed.

Held: The discharge was not for misconduct.

Result: Benefits allowed.

#### *90 AT 9324 BR*

Facts: Claimant was a long time employee who had entered a drug treatment center, but was unable to complete it because of problems with her daughter. She was told not to miss any more work. During her absence she was recommended for termination and a hearing was scheduled. The employer told the claimant she should resign. Claimant resigned saying that she was moving out of state.

Held: The employer solicited the resignation, so it was a constructive discharge. There is no evidence to establish misconduct connected to the work.

Result: Benefits allowed.

#### *90 AT 9207 UCFE BR*

Facts: The claimant was unable to pass a test required to keep his job. He was advised that he would be dismissed and he resigned to avoid discharge.

Held: When an individual resigns to avoid being discharged, the separation is a constructive discharge. There is no evidence of willful misconduct.

Result: Benefits allowed.

90 AT 7215 BR

Facts: Claimant was employed as executive director, but her primary job duties were secretarial in nature. The employer decided to revise the job description for her position to include more responsibility. He told her she could apply for the position, but she declined and submitted her resignation.

Held: Claimant was constructively discharged when she was informed that applicants for her position were being sought. The change in her job duties constitutes good cause for her resignation. No misconduct.

Result: Benefits allowed.

Cross-reference: See also Unauthorized Use of Property, *90 AT 7576 BR*; Incorrect or Improper Travel Claims, *90 AT 7801 BR*

## **GARNISHMENT**

Regardless of company rules to the contrary, garnishment of an employee's paycheck is not willful misconduct connected to the work. Garnishment is a legal proceeding to collect a debt owed and is sanctioned and sometimes ordered by the courts. It results from conduct or circumstances occurring outside the workplace; therefore, it does not comply with the "connected to the work" requirement. It may, in some cases, be excessive and it may, in some cases, be prohibited by company rules. The fact that the employer has a rule against it does not govern the implementation of the Act. However, in some extreme instances, where the employer has counseled the employee regarding excessive garnishments which create an undue burden upon the employer, willful misconduct may be found.

## GARNISHMENT

### *Case Applications*

#### *90 AT 7826 BR*

Facts: Claimant had his payroll check garnished in the past. He was told by the employer that if anymore of those problems occurred, he would be fired. The employer received another garnishment. He called the claimant in and suggested the claimant take off work for a while to correct the problem. He was told he could come back when he was ready. Claimant left and when he tried to return to work later he was told someone else was hired in his place.

Held: Claimant was on a leave of absence suggested by the employer. When he tried to return he found he had been replaced. Claimant was discharged, but not for misconduct.

Result: Benefits allowed.

#### *87 AT 14695 BR*

Facts: The employer received six garnishments from May 27 to August 4. Claimant was discharged because the problem was a nuisance for the employer. No formal disciplinary warnings had been issued. Claimant stated he had contacted the creditors with little success.

Held: The Appeal Tribunal and Board of Review held that excessive garnishments measured to misconduct. The District Court remanded to the Board of Review for a hearing. The Board on rehearing determined that the employer had a responsibility to make the claimant aware of its rules concerning garnishment. The Board found that the claimant was not sufficiently made aware of the endangerment to his employment for receiving garnishments.

Result: Benefits allowed.

*1943 AT 75; 455 BR 75*

Facts: Claimant's salary was garnished three times for the same debt resulting in his termination according to plant rules which stated that garnishment would result in immediate discharge. Federal Wage Garnishment Law prohibits discharge of a person so long as the garnishments stem from one debt. Claimant said he was unfamiliar with the plant policy regarding garnishment.

Held: Garnishment three times was not misconduct, but claimant's failure to take reasonable action to stop the garnishments is misconduct.

Result: Benefits denied.

## HEALTH STANDARDS

This section covers contagious disease. As stated before in this manual, illness itself is not misconduct. However, there may be certain situations where, due to the nature of the contagious disease acquired by the employee, the employee cannot be allowed to work due to the type of work and risk of infection to others, such as health care, hospital, or due to risk of loss of license or closure by state inspectors. To be considered is whether a period of recovery is feasible or allowed. An employer may be allowed to take appropriate steps to protect others in its employ. If the employee fails or refuses to comply with reasonable rules enacted by the employer to protect other employees and clients, then willful misconduct may be found.

## HEALTH STANDARDS

### *Contagious Diseases*

#### *Case Law*

*Stewart v. St. Francis Hospital, et al., CJ-87-02322 (Tulsa Co. D. Ct. 7-87)*

**Facts:** Claimant worked in a hospital and was diagnosed as suffering from a respiratory tract infection. She was told to go home because hospital policy said she could not work around hospital patients. She failed to clock out and waited one hour before leaving. She waited to receive a call from her physician prescribing medication.

**Held:** Claimant knew company policy and her failure to leave immediately violated that policy. Misconduct shown.

**Result:** Benefits denied.

#### *Case Applications*

## HEALTH STANDARDS

### *Physical Examination Requirements*

*See the ADA (Disability Act) for guidelines and compliance standards in employment situations.*

#### *Case Law*

*Arkle v. Independent School Dist. No. One of Tulsa Co., 784 P2d 91, 1989 Ok. Civ. App. 78, No. 70,048 (Okla. Civ App. 11-21-89)*

**Facts:** Claimant was required to have a physical exam and drug screening before returning to work as a school bus driver. An appointment was made, but claimant was unable to go in because he planned to visit his sick mother out of town. He arranged with his own physician to have the test. He found out he had hepatitis. Claimant was hospitalized and the doctor notified the associate superintendent that claimant would be hospitalized for thirty days. While in the hospital claimant drug tested negative. His health was otherwise good. The day that claimant entered the hospital he was recommended for termination. At his hearing copies of his tests were presented but the discharge was upheld.

**Held:** The Appeal Tribunal and Board of Review reversed the Commission and denied benefits. The District Court reversed and allowed benefits. On appeal to the Court of Appeals, the Court held that there was no proof of willful disregard of employer's interests. Although the test results were not sent in to the employer, the claimant's illness and mother's illness were factors to be considered. No misconduct found.

**Result:** Benefits allowed.

## **ILLEGAL OR IMMORAL ACTS**

Unlawful acts committed in the course of business or in the execution of an employee's duties are willful misconduct and grounds for disqualification. Those who are in a special position of fiduciary or professional responsibility are held to a higher standard, and it is not excusable to claim that the acts were committed on the order of a supervisor. Illegal acts are detrimental to the employer and are willful misconduct.

Immoral acts committed in the workplace are undoubtedly detrimental to the employer's interest and are willful misconduct. Immoral acts committed outside the workplace may also be detrimental to the employer and may be found to be willful misconduct. Some factors to be considered are the extreme nature of the acts, the job duties conducted by the employee, the clients of the business, and the nature of the business and the resulting perception of the business by the public, as in positions of public trust or high visibility.

## ILLEGAL ACTS

### *Case Law*

*Mohaney v. OESC et al., No 65,405 (Okla. Ct. of App. 4-22-87)*

**Facts:** Claimant was Vice President of a bank and worked for the bank for 21 years. A discrepancy of \$174,000 was found in the bank books. The amount was traced back to the 1970's to overdrafts withdrawn from the banking system as dead items. Claimant was involved in the procedure, but was following orders. After the discrepancy was found, claimant was fired for his participation.

**Held:** Claimant was guilty of misconduct as defined by *Tynes* and *Uniroyal*. The case was distinguished from the *Haynie* case because in that case the claimant was merely an employee. In this case, the claimant was management and should have known better.

**Result:** Benefits denied.

*Haynie v. OESC et al., No. 65,406 (Okla. Ct. of App. 4-7-87)*

**Facts:** Claimant was employed by a bank for 21 years. There was a discrepancy of \$174,000 in the bank's books and she was advised to take a leave of absence until the audit and investigation could be finished. The evidence reflected the discrepancy came about as a result of overdrafts over a period of years. The President and Vice President of the bank knew of the bookkeeping procedure and it was authorized by them.

**Held:** An employee's actions cannot constitute misconduct if the actions complained of were authorized or condoned by the employer. No misconduct shown.

**Result:** Benefits allowed.

*87 AT 11762 BR*

Facts: Claimant was employed as a plant manager and controller. He was fired when it was discovered that over an eight month period he signed checks payable to the president of the company totaling \$530,000. The checks were issued on the president's verbal order. Claimant said that the president was his boss and he did what he was told.

Held: As a CPA claimant has financial responsibility to insure the financial well-being of the employer. Failing to do so is a willful disregard of the employer's interest. Misconduct shown.

Result: Benefits denied.

Cross-reference: See also Theft, *87 AT 7350 BR*

## IMMORAL ACTS

### *Case Law*

*Roberts v. Sinclair Oil Corp. et al., CJ-88-7094 (Ok. Co. D. Ct. 9-22-89)*

Facts: A customer alleged that claimant approached three teenage girls and offered them money to pose in short nighties, bikinis, etc. The mothers of the girls alerted the police when they found out about the offer.

Held: Claimant engaged in solicitation of minors on company time. These actions were not in the best interest of the employer. Misconduct shown.

Result: Benefits denied.

### *Case Applications*

*89 AT 6983 BR*

Facts: Claimant failed to report three occurrences of sexual acts performed in front of herself, her supervisor and another employee by a male employee from another company.

Held: An individual participating in immoral acts on duty is guilty of misconduct.

Result: Benefits denied.

*81 BR 211*

Facts: Claimant was a police scout car patrolman. He was fired after an investigation verified that he 1) had permitted an unauthorized passenger in his vehicle; 2) was out of his assigned area; and, 3) was involved in immoral, indecent and obscene behavior with two female civilians.

Held: Engaging in immoral acts while on duty is misconduct.

Result: Benefits denied.

## **INCARCERATION AND/OR CONVICTION**

As stated in the section on Arrest and Incarceration, absence caused by incarceration may be considered to be willful misconduct, if the absence is extended (more than 2-3 days). Although most employers require the employee to call, actual notice by a spouse or relative is sufficient for purposes of the Act. However, newspaper accounts are not sufficient notice. Failure to report to work as a result of incarceration is willful misconduct if it is the result of the employee's own willful acts. A no contest plea resulting in a conviction is still a conviction and does not mitigate the misconduct. A conviction which results in absence from work is willful misconduct per se.

## INCARCERATION AND/OR CONVICTION

### *Case Law*

*Warehouse Market, Inc., v. Bd. of Rev. of OESC, OESC and Bobby Patterson, No. 77,910 (Okla. Civ App, Div. 2, 8-4-92)*

**Facts:** The claimant was discharged after missing work for two days because he was in jail for driving without a license. The employer said that claimant knowingly drove without a license.

**Held:** For this to be misconduct the off duty action must directly affect the employer. The employee's incarceration and failure to secure bond does not amount to misconduct.

**Result:** Benefits allowed.

*Pratt v. OESC, No. 63620 (Okla. Ct. of App. 2-11-86)*

**Facts:** Claimant was incarcerated and required to serve a misdemeanor jail sentence. The offense was unrelated to his employment. He notified the employer ten days prior to his incarceration that he would be off the job and told the employer he would need to be replaced. He was discharged for misconduct.

**Held:** Incarceration upon a valid conviction constitutes an unjustified absence from work, especially when it is unexcused by the employer.

**Result:** Benefits denied.

*Dept. of Human Services v. Veach, et al, CJ 91-598 (Garfield Co. D. Ct. 1-29-92)*

**Facts:** Claimant pleaded no contest to a felony charge and was discharged from his employment as a recreation therapist.

**Held:** The Appeal Tribunal reversed the Commission and allowed benefits finding no evidence that the discharge was work related as the claimant stated the felony took place at his home while off duty. The Board of Review affirmed. The District Court held that claimant worked in a school for mentally retarded and disabled children. Claimant's plea of no contest to the felony charge of lewd molestation of a minor child was work related and was misconduct.

**Result:** Benefits denied.

*Frazier v. Hardwall Fabricators, Inc. and OESC, C-85-539 (Ottawa Co. D. Ct.)*

Facts: Claimant was incarcerated for 63 days and not allowed to use the phone to call his employer. The charge was not employment related and was dismissed. He was freed after the preliminary hearing.

Held: Claimant could have relayed a message through mail or through his attorney. His failure to contact his employer was misconduct.

Result: Benefits denied.

## Case Applications

### *98 AT 1040 BR*

Facts: Claimant was arrested and incarcerated for possession of marijuana. Claimant was told that the employer might not be able to hold his job, but to call once he was out of jail. When claimant was released, he was advised that he would not be rehired. Claimant was absent from work for two weeks due to the incarceration.

Held: Absence over three days due to incarceration is misconduct.

Result: Benefits denied.

### *80 BR 171*

Facts: Claimant was a resident of the state corrections work release center. He signed out as if going to work even though the plant was closed that day. His action was a violation of the minimum security rules. He was deemed a security risk and returned to prison. He was unable to tell the employer and was fired for failure to report in a three-day period.

Held: Claimant's unemployment was attributable to his negligence in violating the work release center rules and failure to report to work constitutes misconduct.

Result: Benefits denied.

### *80 AT 7254; 80 BR 1537*

Facts: Claimant was placed in jail by his wife and missed three days of work. His mother called in for him and when he was released he called the employer. He was told he had been replaced.

Held: Claimant was making an effort to keep his job by keeping the employer informed. No misconduct found.

Result: Benefits allowed.

## **INEFFICIENCY OR INABILITY TO PERFORM DUTIES**

The Commission has consistently held that mere inefficiency or inability to do one's job is not willful misconduct within the meaning of the Act. The key is whether the employee has the knowledge and training sufficient to complete the tasks assigned correctly and has exhibited the ability to do so in the past. The fact that an employee is within a trial or probationary period with the employer does not disqualify the employee from benefits. While it may be in the best interest of the employer not to retain that employee, there is no showing of willful misconduct. When an employee has demonstrated the ability to do the job and fails to correctly do it in spite of warnings from the employer, willful disregard of the employer's interest is shown and benefits will be disallowed. Poor judgments made in good faith are not misconduct. An isolated mistake even by someone who has demonstrated the ability to do the job, is not misconduct. Key elements are whether the incident is isolated or consistent, whether the employee has been made aware of the deficiencies, and whether the employee has been given the opportunity to correct the deficiencies.

See Section 3-106.

## INEFFICIENCY/INABILITY TO PERFORM DUTIES

### *Case Law*

*Square One-Suburban, Ltd. v. Duncan & OESC, CJ-87-5301 (Okla. Co. D. Ct. 1-3-90)*

**Facts:** Claimant was hired as the activities director. She was discharged for not providing enough activities for the residents. She failed to plan activities and to implement the planned activities. She was counseled several times. Although the claimant's primary responsibility was to provide activities for the residents, she was also required to help with the patients during breakfast and lunch, and to provide fingernail and toenail care for the patients. She was unable to manage her time in such a way as to be able to conduct activities for the residents. She asked for help from the employer, but was given only suggestions for activities, not help with restructuring her time.

**Held:** The employer did not establish misconduct.

**Result:** Benefits allowed.

*Clark v. Wal-Mart Stores et al., No. 71,669 (Okla. Ct. of App. 5-29-90; Not for Publication)*

**Facts:** Claimant worked for a large department store. She was reprimanded eight times during her last year. The alleged misconduct included ordering deleted merchandise, improper scanning and failure to enter proper bar codes on price tickets, failure to set out sale merchandise, poor department maintenance, improper merchandise shelving and threatening to slap a co-worker. These incidents resulted in bookkeeping problems, customer complaints and affected the inventory.

**Held:** The Appeal Tribunal and Board of Review denied benefits. The District Court reversed. The Court of Appeals held that violations don't have to be deliberate or with evil intent; but can also include willful disregard of the standard of behavior which an employer has the right to expect or a carelessness of such degree as to measure to misconduct. Claimant failed to heed numerous warnings and to observe company policy and procedure. Reversed.

**Result:** Benefits denied.

*Case Applications*

*96 AT 0275 BR*

Facts: Claimant failed to fulfill the duties required of her position. She claimed she had too much to do and some things were overlooked.

Held: Claimant's carelessness and negligence were of such a degree that they showed substantial disregard of her duties and obligation to her employer. If there was too much work she should have asked for help. Misconduct shown.

Result: Benefits denied.

*96 AT 5462 BR*

Facts: Claimant was the director of patient care and was discharged for improperly scheduling and charting patient visits. Claimant was counseled and given two weeks to change her ways. The problem was still there and there were severe charting deficiencies in the files. The claimant was discharged.

Held: Because of the possibility that improper patient care could be life-threatening and because the claimant was a nurse and should have been aware of the importance of correct charting and scheduling, misconduct was established.

Result: Benefits denied.

*96 AT 7803 BR*

Facts: Claimant was a custodian and was discharged for failing to properly perform her duties. Claimant was counseled several times. She was transferred to a different school, but her work did not improve.

Held: Failure to complete basic daily tasks is considered carelessness and negligence of such a degree as to establish misconduct.

Result: Benefits denied.

90 AT 8846 BR

Facts: Claimant was discharged for making numerous mistakes, the most harmful of which was failing to document all customer contacts and taking inadequate phone messages. The employer insurance agency was concerned about liability. Claimant had been repeatedly counseled. Claimant admitted the problems occurred when she was in a hurry, but she was making an effort.

Held: The Board of Review reversed the Appeal Tribunal's finding of misconduct. There was no evidence of willful or intentional acts designed to harm the employer. To discharge the claimant may have been a good business decision, but it was not for willful misconduct.

Result: Benefits allowed.

90 AT 8294 BR

Facts: Claimant worked as a temporary employee for six weeks and did satisfactory work. She was hired as a permanent employee and was satisfactory. Her performance deteriorated, resulting in complaints from customers and co-workers. Claimant received two warnings, after which a brief improvement was seen. She was discharged when it declined again.

Held: When an employee fails to perform to the employer's satisfaction and has previously shown the ability to perform and warnings have been given, it is misconduct.

Result: Benefits denied.

90 AT 7306 BR

Facts: When claimant was hired, she was told she would be expected to produce 100 trays per day. After three months, she was only up to 65 trays per day. She was counseled and one month later she was given a warning that failure to improve would result in her termination. Her speed increased but the quality deteriorated. She was again counseled and she slightly improved. Then her work deteriorated again and she was discharged.

Held: Claimant's failure to succeed was the result of her inability, not willful misconduct. She had not shown the ability to do the job as expected by the employer.

Result: Benefits allowed.

*90 AT 1284 BR*

Facts: Claimant worked as a personnel manager for a temporary employment company and was an excellent employee. A major part of her job was telemarketing surveys. She preferred her own method over the employer's which took longer. Claimant was discharged for failure to make the assigned number of contacts. Claimant was not warned.

Held: The Appeal Tribunal denied benefits because claimant deliberately chose not to follow the employer's procedures. The Board of Review reversed because claimant was never counseled or told her job was in jeopardy.

Result: Benefits allowed.

Cross-reference: See also Errors in Handling Money, *95 AT 9711 BR*.

## **INSUBORDINATION**

Insubordination by an employee toward an employer is willful misconduct. It may take several forms, including outright refusal to obey an order or instruction of a supervisor, a dispute with a superior, refusal to perform assigned work duties, refusal to work the time assigned or to change work hours, refusal to transfer, or a ridicule of authority. The operative criterion is whether the order or request is reasonable. Reasonableness may be judged by both the average reasonable person standard and by the contract of hire between the parties. Refusal need not be the obvious verbal rejection of an order or assignment. Refusal may also be inferred by the action or inaction of the employee. A distinction should be made between refusal to perform a duty and an error in omission by mistake. Reasonableness should also be determined in the light of all the circumstances of each case. It is not insubordination if an employee refuses an unlawful or immoral order. If the circumstances indicate that the employee refused the request because of conditions or unacceptable circumstances of which the employer was made aware, then the refusal may not be insubordination.

## INSUBORDINATION

### *Disobeying Order/Instruction of Supervisor*

#### *Case Law*

*Stagner v. Bd. of Rev. of OESC, 792 P.2d 94 (Okla. App. 1990)*

Facts: Claimant refused to use the time clock that was installed by the employer. Claimant was fired seven months later for never using the clock.

Held: Claimant's actions were a willful refusal to follow the employer's reasonable work rules. Misconduct shown.

Result: Benefits denied.

*Courtney v. August Apartments et al., CJ-88-5889 (Okla. Co. D. Ct. 9-22-89)*

Facts: Claimant was discharged from her position as assistant manager at an apartment complex. Claimant was on call, but called the employer's residence and informed him she was going to the circus and would call the answering service every thirty minutes. Permission was denied because the company would incur extra charges from the answering service. The claimant called the answering service and was told there would be no extra charges. Claimant called the employer back to tell him and was discharged. Claimant testified that it had previously been acceptable to use the answering service this way. The employer states that claimant had been told that when on call, she must remain by the phone.

Held: It was the employer's prerogative to direct his work force as he sees fit. The employee may not abridge that right. Claimant was clearly informed that night that she did not have permission. Her continued insistence was misconduct.

Result: Benefits denied.

## Case Applications

### *99 AT 7134 BR*

**Facts:** Claimant was discharged after she failed to follow specific instructions given by her supervisor. She had been given one prior warning for refusing to follow instructions and being hateful to her co-workers. Claimant says she did not understand the supervisor's instructions. At the hearing the hearing officer asked the claimant what the instructions were and how they should have been carried out. Claimant was able to explain.

**Held:** The ability to explain indicated that claimant willfully disregarded the supervisor's instruction. Misconduct shown.

**Result:** Benefits denied.

### *98 AT 7742 BR*

**Facts:** Claimant was terminated for refusal to go to a workers compensation physician after reporting an injury to his eye, which he thought may have been caused by getting salt dust in his eye while loading bags for a customer. He had noticed a spot in his eye and thought it possible the salt dust caused the spot so he asked to be allowed to file an incident report. He already had a doctor's appointment that day with his own physician, but wanted the report on file in case that was the cause of the problem. When he went to the personnel office, the employee who regularly handled the reports was not there. The assistant manager tried to find the right paperwork. When the personnel employee returned she saw that the assistant manager had a workers comp form, so she gave additional forms for the claimant to complete. The claimant told her that he did not want to complete the form, since he was not sure the eye problem was related to the incident and told her he was going to his own doctor. She gave them to him anyway, but he never filled them out. After claimant left to go to his doctor, the manager contacted the regional human resources manager who told him that claimant was required to go to the company physician to have a drug test after reporting an on-the-job injury. He told the manager to instruct the claimant that refusal to take the drug test would subject him to immediate termination. Claimant returned to work after seeing his physician when he learned it was not a work-related problem. When he returned to work he was told that he needed to see the worker's compensation doctor, but claimant refused because he had already been to his own physician and the problem was not work related. He was fired.

**Held:** Refusal to go to the employer's doctor for a non-work-related health problem cannot be considered misconduct.

**Result:** Benefits allowed.

*90 AT 7605 BR*

Facts: Claimant worked as a laborer for five months. The foreman could not get claimant to follow instructions. He lacked the desire to work and seemed preoccupied. Claimant was repeatedly counseled for standing around smoking. On the last day claimant was told three times to stop smoking and get to work, but claimant ignored the foreman. Claimant was discharged.

Held: The employer is entitled to a days work for a day's wage. Claimant ignored the foreman, which was a direct refusal to comply with reasonable orders. Misconduct shown.

Result: Benefits denied.

*90 AT 5836 R BR*

Facts: Claimant was employed by a domestic crisis center. Claimant was discharged for refusing to divulge the content of an obscene phone call she received. The call was made by the director's boyfriend. Other employees received the calls and divulged the contents. Claimant could not bring herself to repeat it. The police were not called; the director was fired.

Held: Claimant refused to obey an order, but the employer was aware of the content from questioning the other employees. Claimant's refusal was ill-considered but not misconduct.

Result: Benefits allowed.

Cross-reference: See also Excessive Contacts on Job, 96 At 3137 BR; Neglect of Duties/Errors in Performing Duties, 96 AT 1028 BR

## INSUBORDINATION

### *Dispute With Superior*

#### *Case Law*

*Day v. Oklahoma Osteopathic Hospital et al., CJ-86-06386 (Tulsa Co. D. Ct. 3-18-87)*

Facts: Claimant had been counseled for poor work performance and attitude toward co-workers. Claimant had signed three disciplinary reports in one month. She was placed on ninety days probation. Claimant was requested to take an x-ray of a patient and she refused, saying she didn't have the film. The supervisor gave claimant the film. Claimant asked the supervisor why the supervisor could not do it herself. This occurred in front of other employees.

Held: Claimant's failure to follow instructions of the supervisor in disregard of prior warnings is misconduct.

Result: Benefits denied.

#### *Case Applications*

*96 AT 5952 BR*

Facts: Claimant was singled out for harassment by her supervisor, albeit it was disguised as practical jokes. Claimant reported the harassment and the reason for it to management, who did nothing. The supervisor's immediate decision to suspend or fire the claimant was an overreaction.

Held: Claimant's actions do not measure to misconduct.

Result: Benefits allowed.

*95 AT 9388 BR*

Facts: Claimant was discharged by her employer when she objected to the employer cursing at her in front of a customer when she asked him a question to help the customer. Claimant had objected to such profanity in the past.

Held: Claimant has the right to be treated with respect. No misconduct shown.

Result: Benefits allowed.

*95 AT 7478 BR*

Facts: On April 28, claimant was relieved of his duties as sewer plant superintendent, but he continued to work for the employer. A report was to be mailed to the Federal EPA on May 10. A final test needed to be completed and was to be performed on May 3. Claimant said he was not instructed to complete the report; the responsibility belonged to the new superintendent. On May 9, the claimant was called into the City Manager's office and told to complete the report. Claimant said that he could not. The City Manager advised the claimant to do the report or write a letter to the EPA explaining his failure to provide the report. Claimant said he would not take the responsibility. Claimant was fired.

Held: It was the new superintendent's responsibility to complete the report. No misconduct shown.

Result: Benefits allowed.

*90 AT 8259 BR*

Facts: Claimant returned to work after a one-week absence to find the work piled up. She wanted to work overtime, but the manager did not schedule her to work the upcoming holiday. When she complained, she was told to "shut up". She wrote to the manager's supervisor in accordance with the open door policy to complain. The supervisor called a meeting with all parties. The employer said that claimant was belligerent. Claimant admits raising her voice when untrue accusations were made. Claimant was discharged.

Held: There was insufficient evidence to find willful misconduct.

Result: Benefits allowed.

*90 AT 7564 BR*

Facts: Claimant worked as a caregiver. The supervisor had problems with the claimant because she ignored the rules. Claimant received numerous warnings for failure to cooperate. When the supervisor posted the rules, claimant removed them - twice. When confronted by phone, she challenged the change in rules and patients' medications. She said she was tired of posted rules.

Held: Claimant was insubordinate She repeatedly questioned the authority of the supervisor, argued and disregarded the rules. Misconduct shown.

Result: Benefits denied.

*90 AT 7416 BR*

Facts: During a production meeting, the claimant complained about the other employees' work habits. The supervisor responded that the meeting was not the appropriate place to discuss the matter. Claimant became angry and said he would go to the plant manager. The supervisor instructed the claimant to come to his office to discuss the incident. Claimant twice refused. He was sent home. Claimant asserts that policy allows him to go to the plant manager and that the supervisor had refused to talk about his concerns.

Held: The supervisor did not refuse to address claimant's concerns, but pointed out that a public meeting was not the place. Claimant did not show a substantial reason to refuse the order to report to the supervisor's office. Misconduct shown.

Result: Benefits denied.

## INSUBORDINATION

### *Refusal to Perform Work Duties as Assigned*

*97 AT 8327 BR*

Facts: Claimant was asked to take on another job in addition to her current assignment. Claimant said that she could not and would have to resign. The employer said that the claimant would not be held responsible for the extra work. About two and one-half weeks later, claimant was asked by the employer about the work pertaining to the new job. When claimant said she did not have to do it she was fired.

Held: The work was not claimant's responsibility. No misconduct shown.

Result: Benefits allowed.

*97 AT 6033 BR*

Facts: Claimant was asked to alternate with another supervisor and provide on site supervision to a demolition crew of non-violent inmates. The assignment would last 6-10 weeks. Claimant was chosen because of his background in building construction. Claimant refused the assignment. He was advised he would be fired if he did not take the job. He still refused and was fired. Claimant refused the job because his grandmother had been murdered thirty years earlier by an inmate of the prison which provided these non-violent inmate workers.

Held: Claimant's reason for refusing to accept the assignment given to him by his supervisor was personal in nature. The murder of his grandmother happened approximately 34 years prior. Claimant was not being asked to supervise her murderer, nor any other inmate convicted of a violent crime. He was only asked to supervise a crew of non-violent inmates for three hours each day on a job that would last approximately six to ten weeks. Claimant's refusal to accept this assignment was insubordination and showed a substantial disregard of the employer's interest. Misconduct shown.

Result: Benefits denied.

*90 AT 7873 BR*

Facts: Claimant's work required traveling, but no more than one week per month. When the company hired a new manager, he discontinued claimant's work and told her they needed her to be out of town 2-3 weeks per month. Claimant said she could not be gone that much and was discharged.

Held: Claimant was fired for saying she could not travel three weeks per month; which was a substantial change in her job duties. No willful misconduct found.

Result: Benefits allowed.

*90 AT 7310 BR*

Facts: The employer received complaints from customers regarding claimant's alleged rudeness. Claimant was told any further rudeness would result in her discharge. Two weeks later the employer brought her grandchildren to the store to work. The younger child did not work and sassed the claimant, telling her he did not have to mind her. Claimant told the employer not to leave the children for her to baby sit again. The claimant was discharged.

Held: Claimant was imposed upon to handle the employer's grandchildren and baby sit. Claimant's request was justified. There was no willful misconduct.

Result: Benefits allowed.

*90 AT 3 BR*

Facts: Claimant was assigned to work in the furnace area, since there was no work to be done in his area. Claimant reported to the service area, but left after a short time because he felt ill. He reported to his supervisor and informed her that he had hypertension and could not work in the heat of the furnace area. The supervisor denied being told the reason for his refusal to work in the furnace area. Prior to going home, the claimant and the supervisor both went to the personnel office. The supervisor told the personnel office that the claimant had quit, which the claimant denied stating he could not work there because of his health problem. The employer had received no medical evidence to preclude claimant working anywhere. The personnel office recorded claimant as discharged for refusal to complete a work assignment.

Held: No effort was made by the employer to determine the validity of the health of the claimant. No misconduct proven.

Result: Benefits allowed.

## INSUBORDINATION

### *Refusal to Work Time Assigned*

#### *Case Applications*

##### *82 BR 1048*

Facts: Claimant's employer required occasional overtime from the employees. Claimant refused to work overtime in several instances.

Held: Claimant was advised of the overtime requirements but refused to comply. Misconduct shown.

Result: Benefits denied.

##### *81 BR 56*

Facts: Claimant worked weekends as a cook. Her son started working in the oilfields and came home only on weekends. Claimant wanted to do his laundry and spend time with him. She refused to work on Sundays. She was discharged.

Held: Claimant's refusal to work on Sundays was a direct violation of her hiring agreement and was misconduct.

Result: Benefits denied.

##### *82 BR 364*

Facts: Claimant was a bookkeeper who worked 40 hours per week. She was paid time and a half for overtime. Two months before her discharge, her supervisor requested that she work no more than 35 hours per week. This caused a backlog in her work and temporary help was hired to assist her. On her last day, claimant was again asked to work no more than 35 hours and she refused, stating she would work the hours necessary to stay current. She was fired.

Held: It is the employer's prerogative to schedule employees in the manner he feels will best serve his business needs. Claimant was insubordinate since she refused to work the hours assigned. Misconduct shown.

Result: Benefits denied.

## INSUBORDINATION

### *Refusal to Change Work Hours*

#### *Case Applications*

##### *90 AT 7156 BR*

Facts: Claimant was instructed by the manager to work seven days per week, twelve hours a day. This was a change in the hire agreement and claimant refused. She was discharged.

Held: The supervisor's demand was unreasonable. No misconduct shown.

Result: Benefits allowed.

##### *90 AT 5491 BR*

Facts: Claimant worked six and one-half years from 9 to 5, Monday through Friday. She seldom worked Saturdays which had been agreed by her employer. When claimant told the employer she was pregnant, he asked her to quit. When she did not, he transferred her to cashier, which required her to work on Saturday. Claimant told him she could not work on Saturday. She was scheduled to work Saturday anyway and did not report for work. She was discharged.

Held: Claimant was justified by the situation. The employer's actions were vindictive and violated the contract of hire. No misconduct.

Result: Benefits allowed.

##### *90 AT 3503 BR*

Facts: Claimant worked for the employer for three and one-half years. When a new manager was placed in charge, claimant was told she would have to work some night shifts. Claimant advised the manager that her husband was out of town and he did not like her to work at night by herself. The manager agreed to schedule her around the night shift. Three days later at 6 p.m. the claimant learned she was scheduled to work from 11 p.m. to 7 a.m. that day. She called the manager to tell her she could not work that night. Claimant was fired.

Held: This was an isolated incident. Claimant had made the manager aware of her situation. No willful misconduct.

Result: Benefits allowed.

INSUBORDINATION

*Refusal to Transfer*

*Case Applications*

## INSUBORDINATION

### *Ridicule of Authority*

#### *Case Applications*

*81 BR 271*

Facts: Claimant was a custodial worker. The employer had difficulty with the claimant opposing a change in anything that differed from the past. On the last day, the employer was interviewing a prospective employee when claimant entered and asked where a desk was to be moved. The employer stated that he had changed his mind and told claimant where to put the desk. Claimant yelled for the desk to be put down as the employer had “changed his mind again”. Claimant shook his finger at the employer and said a cafeteria door was broken and needed to be replaced that day. The employer asked the claimant to resign. Claimant stated that he would have to be fired. Claimant left and then turned in his keys. Claimant showed up for work the next day, although the employer thought the claimant had quit. Claimant said he was too upset to work the previous day. The employer told the claimant to find another job.

Held: The claimant’s acts were insubordinate and willful. Misconduct shown.

Result: Benefits denied.

## INSUBORDINATION

### *Refusal to Sign Reprimand*

#### *Case Applications*

##### *94 AT 9630 BR*

**Facts:** Claimant was hired as a delivery driver. One day he was asked to bus a table. Before bussing the table the claimant noticed a delivery was ready so he delivered it. Upon returning the claimant was issued a counseling form for neglecting to clear the table. Claimant indicated he did not want to sign the form. He was fired for failing to sign the form.

**Held:** Employees have the right to refuse to sign a counseling form that they, in good faith, believe to be incorrect. Counseling forms are nothing more than written opinions, and as such are subject to various interpretations. This conduct, in and of itself, does not constitute misconduct. The employer did not prove misconduct as a reason for claimant's discharge.

**Result:** Benefits allowed.

##### *91 AT 2571 BR*

**Facts:** Claimant was employed for three years and was discharged for refusing to sign a warning notice. Claimant refused to sign because he felt it was incorrect and if he signed it would be an acknowledgment of wrongdoing., the notice states that signing only indicated that certain items had been discussed. It does not state that failure to sign will result in discharge.

**Held:** This was an isolated incident and was not misconduct as defined in *Vester*.

**Result:** Benefits allowed.

**Cross-reference:** See also *Ryan v. Harps Food Stores*, 90 AT 05720 BR (7-30-90); *J.D. Johnson v. Tom Hock Interior Designs, Inc.*, 90 AT 8890 BR (10-31-90).

- V-180      **Insufficient Checks**  
           -1                    Case Law and Commission Cases
- V-190      **Lack of Work**  
           -1-6                    Case Law and Commission Cases
- V-200      **Licenses, Failure to Secure or Loss of**  
           -1-3                    Case Law and Commission Cases
- V-210      **Neglect of or Inattention to Duties**  
           (A)-1-2                Errors in Handling Money  
           (B)-1-4                Errors in Performing Duties  
           (C)-1                    Excessive Personal Contacts on Job  
           (D)-1-2                Failure to Improve After Counseling  
           (E)-1                    Failure to Maintain Equipment  
           (F)-1                    Leaving Assigned Work Area  
           (G)-1-2                Sleeping on the Job
- V-220      **Off Duty Misconduct**  
           -1-2                    Case Law and Commission Cases
- V-230      **Personal Appearance**  
           -1-2                    Case Law and Commission Cases
- V-240      **Polygraph Test, Failure to Pass or Refusal to Take**  
           (A)-1                    Failure to Pass  
           (B)-1-2                Refusal to Take
- V-250      **Religion**  
           -1-2                    Case Law and Commission Cases
- V-260      **Safety Violations**  
           -1                      Case Law and Commission Cases
- V-270      **Sexual Harassment**  
           -1                      Case Law and Commission Cases
- V-280      **Third Party Disturbance**  
           -1                      Case Law and Commission Cases
- V-290      **Uninsurable Driver**  
           -1                      Case Law and Commission Cases

- V-300      **Union Activities**  
-1              Case Law and Commission Cases
- V-310      **Violation of Company Rules or Policies**  
-1-4            Case Law and Commission Cases
- V-320      **Burden of Proof/Procedure**

## **INSUFFICIENT CHECKS**

Writing insufficient funds checks to one's employer to obtain cash is as illegal as it would be to write them to any other business or institution. An employer is not a bank and should not bear the burden of advancing cash to an employee if the employee does not have sufficient funds to cover the check. It is willful misconduct per se. An employer is not required to have a policy against it.

## INSUFFICIENT CHECKS

### *Case Applications*

#### *86 AT 11371 BR*

**Facts:** Claimant was a beauty school instructor. She was discharged for cashing checks at her place of employment which were returned for insufficient funds, for suspicion of theft, student complaints, working on her personal hobby at work, and talking baby talk. Claimant said she cashed checks because her paycheck did not arrive on time. Claimant's bad checks did not correspond to paydays. The paychecks were late only once. There was no evidence to support the employer's other allegations.

**Held:** The insufficient checks were written over a period of time with the last one written two months prior to claimant's discharge. The policy stated that employees could not cash checks at work after two of their checks were returned. The policy was not followed by the employer and claimant's discharge was not for bad checks since the occurrence was too remote in time from her discharge. The employer condoned the conduct by not taking action earlier. No proof of misconduct.

**Result:** Benefits allowed.

#### *7 BR 79*

**Facts:** Claimant was discharged for writing insufficient checks to the store where she worked. In one week, the employer said claimant wrote \$125 in bad checks. The claimant made good on them right before her discharge. Claimant said she worked long hours and did not have time to make bank deposits. There was no company policy against cashing checks.

**Held:** Even if the employer does not have a policy against it, claimant's actions were still not right. Claimant's excuse was not valid. She could have used a night depository. Misconduct shown.

**Result:** Benefits denied.

## **LACK OF WORK**

If an employee is laid off for lack of work, there is no willful misconduct, and benefits are allowed. If an employee is employed by a temporary employment agency and is not placed upon the termination of an assignment, the employee is laid off for lack of work. It is of no consequence that the employee subsequently moved out of the area. The employee was already separated by lack of work, not by job abandonment. In instances where work was available but the employee has been led to believe otherwise and failed to show up for work, the employee is allowed to rely on the statements or actions of a supervisor which led the employee to believe that work is not available.

## LACK OF WORK

### *Case Law*

*Pope v. Bd. of Rev. et al., C-86-688 (Grady Co. D. Ct. 3-30-87)*

**Facts:** Claimant was employed by the federal government as a contract teacher at an Indian school. He was paid an annual wage based on the number of hours worked. He was not a contract teacher, but a year-round employee. Claimant was notified that he was furloughed from July 13 through September 6 due to a lack of funds. Claimant filed for benefits during that time. The Commission held he had a reasonable assurance of being reemployed the next term and benefits were denied.

**Held:** The District Court held that claimant was employed on a 52-week basis and was furloughed without pay. While contract teachers observed a vacation, claimant had not in previous years had summer vacation as he was a GS-9 year-round employee. Section 2-209(2) does not apply. Claimant was laid off for lack of work.

**Result:** Benefits allowed.

### *Case Applications*

*02 AT 3124 BR*

**Facts:** Claimant was employed manufacturing air conditioners. He was laid off due to lack of work. Claimant had begun work there through another temporary agency. A new staffing company obtained the contract with the air conditioner manufacturer and transferred the claimant to their payroll. When claimant was laid off he was told that he would be recalled when production resumed. Claimant contacted the new staffing company to seek other assignments, but was told that if he accepted another assignment he would not be recalled to the air conditioner manufacturer. Claimant stated that he would wait to be recalled.

**Held:** Claimant's job was not a temporary position. He did not obtain the job through the staffing company, but was hired directly. The staffing company merely provided payroll service for the manufacturer. Claimant had no obligation to seek other work through the staffing company. No offer of work made by the staffing company was suitable under the restriction of not being able to return to his previous employment. Claimant was laid off for lack of work. He did not voluntarily quit.

**Result:** Benefits allowed under Section 2-406.

01 AT 02841

Facts: Claimant was employed as a temporary on-call instructor filling in for permanent instructors who are absent from work for various reasons. Claimant worked only on as needed basis but was limited to working 1000 hours per calendar year. When claimant filed for benefits he had exhausted his 1000 hours for the calendar year 2000. He worked intermittently in 2001. Claimant was aware of the terms of the contract when he accepted the job. Claimant has not indicated he did not desire permanent employment or that he would not accept further employment after the end of the temporary contract.

Held: Claimant is unemployed as defined in Section 1-217. He is unemployed involuntarily because no work is available to him, either because no instructors are absent or because he has worked the maximum amount of hours permitted. Therefore, he has been constructively discharged. *Wright v. Edwards* does not apply because in that case the claimant was hired to substitute for a particular person for a specified period of time and had indicated that she did not desire and would not accept further employment after the temporary contract ended. Section 2-209 regarding school employees who are between terms does not apply because it applies only to the period of time during a scheduled break between school terms.

Result: Benefits allowed.

00 AT 04280

Facts: Claimant was employed as a temporary employee for a temporary help firm. His last assignment ended due to a lack of work. Claimant contacted his employer to collect his check. He did not advise the employer that he was ready for assignment because he did not know it was necessary and he was scheduled to have surgery the next week. He is eligible for reassignment.

Held: Claimant's employment ended due to lack of work. He contacted his employer and remains eligible. The fact that he could not accept another assignment due to medical reasons does not disqualify as his separation was due to lack of work.

Result: Benefits allowed.

*97 AT 3498 BR*

Facts: Claimant was terminated by the employer to whom she had been assigned by a temporary agency because of a lack of work. Claimant did not contact the agency for further assignments. Claimant said she was not aware she was required to report back to the agency since she was seeking permanent employment.

Held: There is no evidence claimant was advised of her obligation to contact the agency on completion of her assignment and she might be denied unemployment benefits if she did not do so.

Result: Benefits allowed.

*95 AT 5813 BR*

Facts: Claimant was hired by a nursery, then leased by an agency. The business was sold and claimant was told he was no longer needed.

Held: Claimant was discharged due to a lack of work.

Result: Benefits allowed.

*95 AT 6144 BR*

Facts: Claimant was hired as a temporary worker. She terminated an assignment due to illness. Claimant contacted the employer to notify of her absence due to illness. When she went to the temporary agency to look for an assignment nothing was available.

Held: Claimant was separated due to a lack of work.

Result: Benefits allowed.

90 AT 8317 R BR

Facts: Claimant worked on a 45% commission. He had not had any work for a week so he took a week of vacation of which the employer was aware. When claimant returned he was advised work was slow and the employer was going to do most of it himself. Claimant assumed that he was discharged and left. There was no agreement when he was hired that he would work a certain number of hours. He worked only when work was available. The employer alleges that claimant quit and that there was work available.

Held: Claimant was laid off for lack of work. Claimant's assumption was logical. There was no misconduct.

Result: Benefits allowed.

90 AT 8267 R BR

Facts: Claimant worked for a temporary employment service. She told her supervisor that her husband was being transferred, but that she was willing to stay and complete her assignment. Claimant's husband moved on Sunday and claimant's supervisor at the place where she worked told her the next day that her job would end in two weeks. Claimant notified her employer and was not offered another assignment. Claimant moved.

Held: Claimant completed the temporary assignment and was not offered another. She then moved. She did not voluntarily quit. She was discharged for lack of work.

Result: Benefits allowed.

90 AT 3994 BR

Facts: Claimant was employed as a general laborer. He worked on an out of state job on December 27 and 28. He and two other workers returned home on December 29 for an appointment for unemployment benefits for which they had earlier filed. The two other workers, who were the employer's sons, told claimant they would see him on January 2 to complete the out of state job. On December 29, it was raining and claimant's employer said he need not call in. His spouse was told by the employer and his two sons that they would see claimant on January 2. On the Tuesday, the employer gave claimant his final check and claimant was asked to resign for not showing up for four days. Claimant refused to sign.

Held: Claimant was discharged. He was usually picked up by the employer and had been instructed to return on January 2. No misconduct shown.

Result: Benefits allowed

*90 AT 686 BR*

Facts: Claimant was a truck driver. He was granted two weeks off per his request. He was instructed to contact the employer on return. When he reported he was told that he would be called when work was available. He was never called. The employer accused claimant of being unreliable; that several times he did not report as expected and the employer had to pick up his truck. He replaced claimant because he did not know when claimant would return and he needed someone immediately.

Held: The employer granted claimant two weeks off. There is no evidence that claimant was warned he would be replaced if he took the time off. There is no evidence that claimant was ever warned or reprimanded for the other allegations. No misconduct shown.

Result: Benefits allowed.

*89 AT 9180 BR*

Facts: Claimant worked for a temporary employment service. She was told by the manager at the jobsite that there was only one more week of full-time work available. Claimant called her employer and said she wanted to leave the assignment a week early. Claimant was told there were no other full time assignments available. Claimant has maintained contact to ask about further assignments. The employer states that claimant is still carried on their records as available for assignment.

Held: Claimant was not an employee of the company where she worked, but of the temporary agency. There is no separation from employment. Claimant is laid off for lack of work, pending future assignment.

Result: Benefits allowed.

*89 AT 05290 BR*

Facts: Claimant was a display assistant. She quit work due to pregnancy and returned four months later to seek reemployment. She had not been promised reemployment. When she reapplied, no work was available. Claimant had requested and been granted maternity leave, but the personnel department failed to do the proper paperwork to make it official. Claimant told no one that she would not return. She told the employer at the time of applying for reemployment that her husband might be transferred in the future.

Held: Claimant followed the proper procedure required to protect her employment. She was involuntarily separated from work. No misconduct.

Result: Benefits allowed.

*89 AT 02933 BR*

Facts: Claimant was hired by a temporary service employer to work as a sheet metal worker for another employer on a contract basis. Claimant was injured in a car accident. Claimant called the contractor to report the absence. Claimant was told he would need a medical release to return to work. Claimant was released and again contacted the contractor. Claimant was told that the employees hired through the temporary service had been terminated. Claimant only applied with the temporary service to get work with this contractor. This had been his only assignment. All his contacts were with the contractor. He only called the temporary service to report hours worked to get paid. The employer only got information regarding the claimant from the contractor.

Held: Claimant took proper and adequate steps to protect the employment relationship. When claimant reported back after his release he was terminated for lack of work. There was no misconduct.

Result: Benefits allowed.

*89 AT 367 BR*

Facts: Claimant lived in Moore but worked in Edmond. She had a full time job with a grocery and a part time job at a liquor store. In late November she was told by the full time job that she would be laid off by the end of the year. Without the full time job it was not economically possible to remain in the part time job because of the distance. Claimant agreed to work through the New Year to help the employer. Claimant's last day of work at the grocery was December 26 and she filed a claim the next day against the grocery. Claimant worked part time through December 31 at the liquor store.

Held: The grocery was the last employer because the separation constructively occurred in November when she was given notice.

Result: Benefits allowed.

## **LICENSES, FAILURE TO SECURE OR LOSS OF**

When an employee is required to have a license to perform the duties of his job, the failure to secure the license, maintain or renew it, or to avoid loss of the license is an act detrimental to the employer's interest and is willful misconduct. The failure to obtain and keep a license makes an employee unable to perform the duties of his job and of no use to the employer. When the loss of a license occurs because of willful or unlawful acts of the employee even while on personal time and renders the employee unemployable, such as loss of a driving license for a truck or delivery driver, it is willful misconduct. If an employee fails to renew a license by ignoring the requirements and not taking steps to renew the license in a timely manner, it is misconduct. Loss of or failure to renew a license through mistake or ignorance is not willful and therefore, not misconduct. The failure of an employee to be insurable because of his driving record is willful misconduct if driving is a prerequisite to the job. If an employee attempts to acquire the license, but is unable to, such as in passing a certification test, the employee may be unemployable, but there is no willful misconduct.

## LICENSES, FAILURE TO SECURE OF LOSS OF

### *Case Law*

*Tulsa County/City Library System v. Pack, et al., No. 69,088 (Okla. Ct. of App. 11-1-83)*

**Facts:** Claimant's license was suspended for DUI. He obtained a permit allowing him to drive to and from work and during work hours. Claimant's employer received a notice from its insurance company saying they could not cover claimant because his license had been cancelled. Claimant was discharged, but went and paid a fee to have his license reinstated.

**Held:** The Appeal Tribunal reversed the Commission and allowed benefits. The decision was upheld by the Board of Review and the District Court. The Court of Appeals held that there was no evidence that claimant knew that he was driving illegally. No misconduct shown.

**Result:** Benefits allowed.

### *Case Applications*

*96 AT 6401 BR*

**Facts:** Claimant was off work for four months due to an automobile accident. When he was released for work he did not have his driver's license. The employer asked him to secure verification that his license would be returned. He never did. Claimant was discharged.

**Held:** It was claimant's responsibility to secure a license. He showed a disregard of his duty to his employer. Misconduct shown.

**Result:** Benefits denied.

*90 AT 7092 BR*

**Facts:** Claimant was unable to renew his liquor license due to a previous felony conviction. Claimant asked for another job from the employer but was denied. Rather than be fired he resigned.

**Held:** Claimant was required to have a license to perform his job. Failure to secure a license due to his own actions was misconduct.

**Result:** Benefits denied.

*90 AT 8802 BR*

Facts: Claimant was a per diem court reporter and had to pass a shorthand test to continue with the employer. She tried several times but was unable to pass the test.

Held: Claimant's inability to meet the employer's standards was not misconduct.

Result: Benefits allowed.

*90 AT 9188 BR*

Facts: When claimant was hired she was told that FDIC regulations required all bank employees to be bondable. The bonding company refused to secure the claimant. The bank gave the claimant two weeks to convince the bonding company to reconsider. Claimant became hospitalized and unable to pursue the bonding.

Held: Claimant was aware of the requirement and it was her responsibility to take care of the requirement. Misconduct shown.

Result: Benefits denied.

*90 AT 7059 BR*

Facts: Claimant was a truck driver. He was in an accident in his own vehicle and was charged with driving without a license and DUI. Claimant was allowed to work in the employer's warehouse until the outcome of his license revocation hearing. After one month and no news, the claimant was discharged.

Held: Failure to maintain a license left the employer with no choice but to discharge the claimant. Misconduct shown.

Result: Benefits denied.

*89 AT 6557 BR*

Facts: Claimant's license was suspended and he had no knowledge of it. He had obtained an attorney to help him with a citation he received in his personal vehicle and the attorney told him the problem was solved. The DOT mailed a notice of the suspension to claimant's old address.

Held: There is no evidence that claimant knew his license was suspended. There is no evidence of willful misconduct.

Result: Benefits allowed.

*88 AT 12403 BR*

Facts: Claimant was an RN. While on medical disability leave the claimant failed to renew her license and could no longer be considered an RN.

Held: Claimant's separation from employment was a direct result of her own lack of appropriate action. Misconduct shown.

Result: Benefits denied.

*82 BR 1031*

Facts: Claimant was employed as a teacher but only held a temporary teaching certificate. When the certificate expired she was required to present evidence of having completed eight hours of college credit toward the requirement for a standard certificate in order to obtain a new temporary one. She had completed twelve hours but did not qualify for a second temporary certificate. She applied for a provisional certificate. The school board asked her to resign and when she refused, she was fired. The provisional certificate was later approved.

Held: Claimant did everything possible to obtain certification. No misconduct.

Result: Benefits allowed.

## **NEGLECT OF OR INATTENTION TO DUTIES**

This section includes errors in handling money, performing duties, excessive personal contacts on the job, failure to improve after counseling, failure to maintain equipment, leaving the assigned work area, and sleeping on the job. Errors in handling money and performing duties are misconduct only if the employee has demonstrated the ability to perform the job, has had adequate training and experience and the errors occur as a result of a level of negligence that can only be determined to show a substantial disregard for the interests of the employer. Excessive personal contacts on the job can include personal phone conversations, visits, and any number of personal distractions that prevent the employee from doing his assigned tasks. The key to this infraction is whether the employee is made aware of the policy and rules and is given a chance to correct the situation. Failure to improve after counseling for any infraction can be found to be willful misconduct if the employee has shown the ability to do the job properly but continually fails to correct the problem after repeated counseling. Failure to take care of and maintain company property is willful misconduct if the maintenance is within the employee's job description and expertise. Ignoring safety rules enacted to protect the employer's property is also a willful violation if it can be shown that the employee had knowledge of and training in those rules. Willful and deliberate destruction of company property is misconduct. If an employee leaves the assigned work area without the approval of the employer or without justification, and especially if he repeatedly does it after counseling, it is willful misconduct. Sleeping on the job when not on an authorized break is willful misconduct, unless it is the result of a verified illness.

## NEGLECT OF OR INATTENTION TO DUTIES

### *Errors in Handling Money*

#### *Case Applications*

##### *97 AT 0555 BR*

Facts: The employer alleges that claimant exceeded the \$750 limit in purchasing materials or items for individual projects. Claimant says he did not have any training in purchasing and any mistakes were unintentional. The employer states that claimant should have known the rules as a fourteen-year employee.

Held: The violation was not intentional; therefore, no misconduct is shown.

Result: Benefits allowed.

##### *95 AT 9711 BR*

Facts: Claimant's continued negligence and disregard for the employer's interest caused a loss of over \$1300.00. Claimant was warned verbally and in writing over two years. Claimant attributed his inability to meet the employer's standards to his age and physical condition. There was no medical evidence to support this allegation.

Held: Claimant's negligence rose to the level of misconduct.

Result: Benefits denied.

##### *93 AT 12696 BR*

Facts: Claimant violated a company rule against borrowing money from the store funds by failing to deposit a check written for a cash loan. The check was dated one day prior to the audit. The claimant denied purposely withholding the check from deposit stating that it was not deposited due to an oversight. Claimant was employed nine years with no other problems until this. The employer's rules of conduct prohibited borrowing money from store funds, which included IOU's and personal checks held for future deposits or redemption.

Held: While the claimant did violate the rules of the employer, this was an isolated single incident in nine years of employment and does not measure to misconduct.

Result: Benefits allowed.

*79 BR 1041*

Facts: Claimant was a checker at a grocery store. She was fired for two instances of selling items and failing to ring them up. Claimant said she had no knowledge of the two instances, but often when people wished to purchase a small item and the register was in use for another customer the money would be accepted and the transaction rung later. This was common practice in the store.

Held: Claimant may have used poor judgment, but the evidence does not indicate that she acted in a willfully improper manner.

Result: Benefits allowed.

Cross-reference: See also *Illegal Acts*, 87 AT 11762 BR

## NEGLECT OF/INATTENTION TO DUTIES

### *Errors in Performing Duties*

#### *Case Law*

*The Nordam Group, Inc. v. Bd. of Rev. of OESC and Randy Wright, 925 P2d556, 1996 Ok 110 (Okla. 1996)*

Facts: Claimant was responsible for shipping parts manufactured and sold by Nordam for use in the aviation industry. Certain parts were shipped by the claimant, then returned. In the shipment was one part that claimant was told was rejected and not to be included in the previous shipment. Claimant shipped the part again. When this was discovered, the shipment was returned. Claimant said he was not aware or provided with paperwork stating that the shipment required FAA specification or inspection.

Held: No willful misconduct. The District Court affirmed the Board of Review.

Result: Benefits allowed.

*Morse v. Oklahoma Osteopathic Hospital et al., CJ-86-6835 (Tulsa Co. D. Ct. 5-27-87)*

Facts: Claimant was an RN assigned to pediatrics. She was discharged for accumulating disciplinary points in excess of the employer's maximum allowable nine points involving neglect of patients. Her termination stemmed from her failure to promptly answer an alarm involving an infant patient who needed aid in ICU.

Held: Claimant was guilty of neglect of duty. Misconduct shown.

Result: Benefits denied.

## Case Applications

### *00 AT 4493 BR*

Facts: Claimant was employed as a bookkeeper for about three months. Claimant was discharged for excessive tardiness, no call/no show absences and failure to get her work completed. The corporate office called the manager to let her know that claimant had not provided the necessary information. As late as over one month later, the work still was not completed. The employer had even hired another bookkeeper to assist the claimant. They were to work 8-5 but claimant was late every day. She was counseled and warned. Her start time was changed to 8:15 on weekdays and 8 a.m. on weekends. The manager called the claimant at home on March 31 and left a message reminding claimant to work the next day, a Saturday, to complete the end of the month data. Claimant did not show. She worked on Sunday but left early without finishing her duties. On Monday she arrived late and was discharged.

Held: Misconduct shown.

Result: Benefits denied.

### *98 AT 06032 BR*

Facts: Claimant was discharged for mistakes and customer complaints. Job performance errors included failure to collect a security deposit from a new customer, and losing a customer's check used to pay his bill. A few mistakes were due to the confusion caused by loud disruptive customers.

Held: Mistakes do not constitute misconduct. There is no evidence that claimant's actions were intentional.

Result: Benefits allowed.

### *96 AT 5962 BR*

Facts: Claimant was responsible for stopping traffic at a construction site. Claimant was not watching oncoming traffic and did not stop a semi truck resulting in a collision between the truck and a scraper on the jobsite. The scraper was completely dependent on the flagman to control traffic.

Held: Claimant did not intentionally cause the accident but his negligence caused damage to both vehicles and showed a disregard of the employer's interest.

Result: Benefits denied.

*96 AT 5197 BR*

Facts: Parents or guardians of patients in the group home where claimant worked were to meet with and approve any nurse assigned to that home. Claimant assigned nurses three times that had not been approved. Claimant was discharged for not following the guidelines set out by his employer.

Held: Claimant exhibited a deliberate disregard of the employer's interest.

Result: Benefits denied.

*96 AT 3548 BR*

Facts: Claimant was a radiation therapist and was discharged when he set up a patient with the wrong tattoo and the entire lung was treated when only a sliver should have been. The mistake was discovered by his supervisor. Claimant was counseled twice before the incident. The employer decided to discharge the claimant because he could not afford another similar mistake.

Held: Claimant is held to a higher standard than employees in other fields. The mistake could have caused harm or death. Misconduct shown.

Result: Benefits denied.

*96 AT 1028 BR*

Facts: Claimant was fired when he refused to assist the hospital risk manager in erecting barricades to keep hospital employees from parking in an area that was leaking oxygen.

Held: Claimant's conduct evidenced a negligence of such a degree to manifest a substantial disregard of the employee's duties and obligation to his employer. Misconduct shown.

Result: Benefits denied.

*90 AT 5053 BR*

Facts: Claimant had extended absences during business hours, failure to finalize client arrangements and contracts and excessive customer complaints over an extended period of time. There was no evidence that claimant was unable to perform the duties of the position. She was qualified, understood the responsibilities of her position and did improve temporarily after counseling.

Held: Careless negligence or continuing neglect of duty is misconduct. Claimant disregard of the employer's interest is misconduct.

Result: Benefits denied.

*90 AT 1534 BR*

Facts: Claimant was terminated for neglect of duty. Claimant was issued several verbal and written warnings about his failure to properly service his accounts.

Held: The Appeal Tribunal held that the claimant's termination was not due to inefficiency or inability, but was due to continued negligence. The Board of Review reversed stating that there was no evidence of deliberate violation of company policy. No misconduct shown.

Result: Benefits allowed.

## NEGLECT OF/INATTENTION TO DUTIES

### *Excessive Personal Contacts on Job*

#### *Case Applications*

##### *96 AT 3137 BR*

Facts: Claimant was discharged for excessive use of the telephone and because she brought her daughter to work with her after she had been told not to. Then employer had two witnesses to excessive phone use. Claimant was counseled about the excessive phone use but continued to use the phone.

Held: Claimant showed a substantial disregard for the employer's interests. Misconduct shown.

Result: Benefits denied.

##### *87 AT 6048 BR*

Facts: The claimant was put on a 45-day probation for talking on the phone for extended periods of time and had been warned that a violation would lead to discharge. Less than two months later the claimant used the phone for personal business for nearly half an hour. Claimant was discharged.

Held: Excessive personal telephone use is misconduct.

Result: Benefits denied.

##### *86 AT 15200 BR*

Facts: Claimant was discharged when he "talked back" to his supervisor when being reprimanded for excessive use of the telephone. On claimant's day off the employer answered five personal calls for the claimant.

Held: Claimant had been told to limit personal phone calls to personal time. He did not and misconduct was shown.

Result: Benefits denied.

## NEGLECT OF/INATTENTION TO DUTIES

### *Failure to Improve After Counseling*

#### *Case Applications*

##### *90 AT 8294 BR*

**Facts:** Claimant worked as a receptionist for the employer on a temporary basis for six weeks and did well. She was hired as a permanent employee and did satisfactory work for several months. Her performance began to deteriorate resulting in complaints from her coworkers and customers. Two warnings were given and her performance improved. Then it declined again, so claimant was discharged.

**Held:** Claimant was given sufficient warning and opportunity to correct the deficiencies in her performance. She was able to do the job; failure to do it was misconduct.

**Result:** Benefits denied.

##### *90 AT 3105 BR*

**Facts:** Claimant was discharged for poor work performance after being warned about her actions and unacceptable behavior on at least four different occasions. Claimant was repeatedly warned about her lack of respect toward clients and the firm's attorneys and her poor attitude when given assignments as well as her failure to complete routine job assignments such as proofreading briefs, and personal phone calls during business hours. Claimant continued such actions after being counseled and warned.

**Held:** Claimant engaged in willful, wanton, and deliberate behavior disregarding the employer's best interest. Misconduct shown.

**Result:** Benefits denied.

*86 AT 4558 BR*

Facts: Claimant was the assistant manager of a restaurant. He had been counseled for failing to execute his duties, gambling, watching TV, reading newspapers and refusing to assist employees under his supervision. In the final incident claimant was discussing point spreads. Claimant was discharged.

Held: Claimant was aware that his gambling activities were unauthorized while on duty and were not in the employer's best interests.

Result: Benefits denied.

Cross-reference: See also Inefficiency/Inability to Perform Duties, 96 AT 7803 BR

## NEGLECT OF/INATTENTION TO DUTIES

### *Failure to Maintain Equipment*

#### *Case Applications*

*90 AT 0603 BR*

**Facts:** Claimant was supposed to have repaired a machine before he left work for the day. The general manager made an inspection of the machine after claimant left and discovered serious errors in the work. The claimant was discharged. Claimant alleges that he did not have correct tools to fix the machine, and was going to report it to management the following morning. He felt he did a great job since he was doing the work of two people.

**Held:** There was no evidence that claimant had ever been counseled or warned about his work performance during his one and a half year's service. This was an isolated incident. There was no willful intent to harm the employer.

**Result:** Benefits allowed.

NEGLECT OF/INATTENTION TO DUTIES

*Leaving Assigned Work Area*

*Case Applications*

*90 AT 1512 BR*

Facts: Claimant was discharged for spending an excessive amount of time in the employee break room. Claimant was counseled three times. The last time claimant was warned that if he was late to work or missed time without a sufficient excuse in the next ninety days he would be fired. Claimant evidently improved after each counseling because no action was taken against him. The employer said he had a videotape of claimant in the break room. Claimant brought a witness who testified that it was the witness not the claimant in the video.

Held: There was no evidence of willful disregard of the employer's interest. Claimant made an effort to improve after counseling. No misconduct.

Result: Benefits allowed.

## NEGLECT OF/INATTENTION TO DUTIES

### *Sleeping on the Job*

#### *Case Law*

*Calvin v. Firestone, et al., CA-65093 (Okla. Ct. of Appeals 5-23-87)*

**Facts:** Claimant was not feeling well and was taking an over-the-counter flu medication which allegedly made her drowsy. She went to sleep on her lunch break, overslept and was fired.

**Held:** There is a company policy against sleeping on the job. Her actions constituted a willful disregard of the employer's best interests and of claimant's duties and obligation to the employer.

**Result:** Benefits denied.

*Castello v. Guthrie Greenhouses, Inc. et al., No. (Payne Co. D. Ct. 3-6-87)*

**Facts:** Claimant had been warned and counseled about not keeping records accurately and sleeping on the job. When he was found sleeping on the job again, he was fired.

**Held:** Claimant knowingly and intentionally failed to heed the employer's warnings. His conduct was in disregard of his duty to his employer.

**Result:** Benefits denied.

*Case Applications*

*98 AT 0191 BR*

Facts: Claimant was fired for sleeping on the job. It had happened before and claimant had been reprimanded. Claimant testified that he was on one of two fifteen-minute breaks that he was allowed when he was caught sleeping. The employer said claimant violated company policy but no policy was offered as evidence. The employer did not dispute that claimant was on break.

Held: It was not unreasonable for claimant to feel like he could use his break anyway he wanted. No misconduct shown.

Result: Benefits allowed.

*97 AT 8425 BR*

Facts: Claimant was allowed a thirty minute unpaid break. She took a twenty-minute nap because she had been working double shifts for three days. When she reported it, she was terminated.

Held: Claimant believed herself not on duty since she was not paid for her break. No evidence of willful misconduct.

Result: Benefits allowed.

## **OFF DUTY MISCONDUCT**

Misconduct occurring while the employee is on personal time and which is not connected to the work, may not be disqualifying. Such behavior would be disqualifying if it affected the employee's ability to report for work or if the nature of the misconduct and the job are such that the employee's behavior causes damage to the interest of the employer. Generally, the employer does not have the authority to regulate behavior of the employee while not on duty. However, if the employee is engaging in misconduct while off duty but while on the employer's premises, then willful misconduct is established. Off duty misconduct toward another employee connects the misconduct to the work and affects the morale of the workplace, and therefore qualifies as willful misconduct.

Public and state employees are held to a higher standard of conduct. They must not engage in any conduct unbecoming a state or public employee, whether or not on duty. It is misconduct to use one's position as a public employee to obtain advantages to which the employee is not otherwise entitled. Even though misconduct may occur on personal time, the fact that a public employee is involved adversely affects the legitimate interests of the employer and is willful misconduct.

See also Drugs.

## OFF DUTY MISCONDUCT

### *Case Applications*

#### *90 AT 7282 BR*

**Facts:** The employer asserts that claimant was discharged due to failure to pay her debts and for being convicted of a crime while off duty. The debts were incurred the previous year and earlier. The employer received numerous calls from claimant's creditors and claimant was reprimanded twice. Claimant had been convicted of shoplifting the previous year, but the employer did not learn of it until the current year as well as three arrest warrants for unpaid traffic tickets. Claimant asserts that she told the employer of the conviction when it happened and she did not know of the warrants.

**Held:** The events occurred a substantial time before claimant's termination. The employer was aware of the debts and conviction and had acquiesced. There was no misconduct unknown to the employer and it was therefore accepted by the employer.

**Result:** Benefits allowed.

#### *90 AT 7180 BR*

**Facts:** Claimant signed a last chance agreement with her employer stating she would refrain from any future use, on or off the job, of any illegal drug or alcohol. One year later she had a positive drug test and was discharged. There was no evidence presented as to the procedures used in the drug test or of the chain of custody. Claimant said she was taking Tylenol 3 and anxiety medicine and had one or two cans of beer each night the week before the test. There was no evidence of job impairment.

**Held:** Claimant took prescribed medication and used a very moderate amount of alcohol off work. The employer cannot dictate the private lives of his employees when no illegal activity is involved. Any agreement to the contrary is invalid. No misconduct.

**Result:** Benefits allowed.

*87 AT 5907 R BR*

Facts: Claimant was discharged after he came to the employer's business after hours. He had been drinking and used abusive language to a fellow worker. The employer asserts that claimant was a complainer and did not care for his truck. Claimant stated he had been to a dinner of pizza and beer and just stopped by to talk with the dispatcher. The day dispatcher with whom he did not get along was there with his daughters. The claimant used obscene language toward one daughter and nearly knocked over the chair of the other daughter. Claimant apologized, but was later discharged.

Held: Claimant admitted drinking and using inappropriate behavior. Misconduct shown.

Result: Benefits denied.

*87 AT 3446 BR*

Facts: Claimant was a police department employee and had a police ID badge. While off duty, he used his badge to try to gain entrance to a club that had been closed for the night. He was denied entry, argued with the club employee and police were called. Claimant left but the police found him a few blocks away. He failed a Breathalyzer test.

Held: A public employee has an obligation to set a good example and is held to a higher standard than an ordinary citizen. Claimant was discharged for misconduct.

Result: Benefits denied.

*82 BR 1163*

Facts: Claimant and his wife continually phoned and harassed a black female who also worked for the employer. The employer met with the claimant several times to resolve the matter. Claimant kept making the calls. After a leave of absence the employer met again with the claimant, but the claimant refused to stop harassing the other employee. He was given one day to reconsider and he refused. He was then asked to resign.

Held: Claimant was discharged. His conduct outside of work affected the other employees and was disruptive to employee morale. It adversely affected the work performance and atmosphere. Misconduct shown.

Result: Benefits denied.

## **PERSONAL APPEARANCE**

An employer has the right to enact reasonable rules of personal appearance of its employees, including personal hygiene, dress and grooming. The continued violation of those reasonable rules after counseling is determined to be a willful and deliberate violation of company rules and is misconduct connected to the work.

## PERSONAL APPEARANCE

### *Case Law*

*Lleight, Ltd. v. True et al., CJ-86-2568 (Tulsa Co. D. Ct. 4-87)*

Facts: Claimant was employed in a dress shop. There had been a number of complaints against the claimant and she was guilty of a poor appearance. She had received three written warnings regarding her appearance, mistakes and her disregard of rules. She was discharged.

Held: Misconduct shown.

Result: Benefits denied.

### *Case Applications*

*96 AT 2285 BR*

Facts: Claimant was discharged because of an offensive smell. He was counseled and even sent home to bathe with no better results. Several coworkers complained of the smell.

Held: Claimant violated the standard of behavior that an employer has a right to expect of employees.

Result: Benefits denied.

*OAT 81 1114*

Facts: Claimant refused to shave his beard and was discharged. Claimant asserts there was no written policy against facial hair. He worked outside and claimed the beard protected him against the weather. The magazine published by the company showed other employees with beards. Claimant said he was singled out.

Held: Claimant was not guilty of misconduct. Reasonable rules of employment must apply to all.

Result: Benefits allowed.

*80 BR 689*

Facts: Claimant's employer forbade beards. This was to comply with OSHA regulations. Claimant began growing a beard and was told to shave. He was suspended for ten days when he refused. He was discharged after his continued refusal.

Held: Claimant violated the employer's reasonable rules. Misconduct shown.

Result: Benefits denied.

## **POLYGRAPH TEST, FAILURE TO PASS OR REFUSAL TO TAKE**

Polygraph examination results are not admissible in court and are not sufficient, absent corroborating competent evidence, to support the allegations of misconduct. Failure to pass a polygraph is not misconduct. Refusal to take a polygraph is not misconduct unless it is part of the original hiring contract and the employee is aware of the potential future requirement. If it is made a part of the hiring agreement at a later date, the employee must be made aware of the requirement and failure to protest the requirement at that time may result in the assumption that the employee consents.

Cross-reference: Quit for Refusal to Take Polygraph

See: Polygraph Protection Act

## POLYGRAPH TEST

### *Failure to Pass*

#### *Case Law*

*Clint Garret and Ben Curtis dba J. Food Mart v. Bd. of Rev. of OESC, OESC and Jm. Mattox, C-87-226 (Dist Ct, LeFlore Co, 7-13-87)*

Facts: Claimant was discharged because the polygraph test indicated that she had taken inventory home without paying for it. She had not done this.

Held: There was no proof of misconduct.

Result: Benefits allowed.

#### *Case Applications*

*84 At 04867; 84 BR 1549*

Facts: Claimant was discharged for dishonesty after being given a polygraph test. Claimant allegedly admitted to the polygraph operator prior to the test that she had eaten \$1.00 worth of food per week during her employment without paying for it. Claimant denied taking food or stealing merchandise. She said the supervisor never advised her of the reason for her discharge.

Held: Allegations unsupported by competent evidence by those personally familiar with the actual situation are insufficient to sustain the burden of proof. The employer's witness relied on the polygraph report. The examiner was not present so the report was hearsay.

Result: Benefits allowed.

*83 AT 7641; 83 BR 2012*

Facts: Claimant was discharged for failure of a polygraph test given when money was found missing from the owner's desk.

Held: Polygraph results are not admissible in court and a discharge based on those tests is a discharge not for misconduct unless corroborated by other competent evidence. The employer did not accuse the claimant of stealing the money and did not prove misconduct.

Result: Benefits allowed.

## POLYGRAPH TEST

### *Refusal to Take*

#### *Case Law*

*Virginia B, No. 144701-C, MC-255.1-389, Virginia Employment Comm. 2-12-81, Employment & Training Administration Report 332-47 (3-1981)*

**Facts:** Claimant was one of twelve employees working on the day a shotgun was found missing from a police vehicle in the employer's shop. Claimant cooperated with the police and allowed a search of his home, but refused to take a polygraph test. Claimant was suspended. He later agreed to take the test, but failed to show for the exam and then notified them he would not take it since he was the only employee required to do so.

**Held:** Polygraphs were not included in the original hire agreement. Failure to take the test was not misconduct.

**Result:** Benefits allowed.

#### *Case Applications*

*83 AT 5085; 83 BR 1340*

**Facts:** Claimant was discharged for refusing to take a polygraph test. The requirement was not part of the original hire agreement, but had been made a part of the employment policy one year before the final incident. Claimant knew of the requirement.

**Held:** Claimant was aware of the policy and continued to work under the terms of the policy. Refusal to take the test was a willful violation of the employment agreement.

**Result:** Benefits denied.

*79 AT 8532; 80 BR 41*

**Facts:** Claimant was asked to take a polygraph and agreed. The results were inconclusive and he refused when asked to take another. He was discharged.

**Held:** Unless it is shown that taking a polygraph test is part of the terms of hire, then the refusal to take the test is not misconduct.

**Result:** Benefits allowed.

*79 AT 1033; 79 BR 954*

**Facts:** Claimant's store was purchased by new owners, who had a policy that all employees are required to take a polygraph when requested to do so. This was not initially mentioned to claimant. After six months claimant was told about the policy and that she would have to take one. Claimant refused. The owner's wife said claimant would not be required to take this one, but if any future incidents occurred she would have to take it. When cash shortages occurred, all employees were asked to take a polygraph. Claimant quit rather than take it. The owner asked her to return and she did; then claimant was told that to continue her employment she would have to take the test. She refused and was discharged.

**Held:** If an employee is aware of a requirement, then it is a reasonable rule of employment, especially if they indicate expressly or impliedly, their consent. If the employee states they will never submit, it does not become part of the employment agreement and cannot be used as misconduct. Here there was a material change in the employment agreement. However, the claimant implied agreement to future exams, so subsequent refusal was misconduct.

**Result:** Benefits denied.

## **RELIGION**

If an employee makes an employer aware of restriction upon work hours or other conditions of work for religious reasons, the refusal of the employee to perform duties or work days which violate those religious beliefs is not willful misconduct connected to the work. The key is that the employee must have made the employer aware. If time off is desired, an employer is only required to make reasonable accommodation to the employee's religious beliefs, but the employee must also act reasonably by giving adequate notice to the employer of the leave request. Further, the restrictions must be based on the tenets and requirements of the religion, not just upon the personal desire of the employee.

## RELIGION

### *Case Applications*

*84 AT 9078; 84 BR 2448*

Facts: Claimant was discharged because he would not work on Sunday due to his religious beliefs. Two written warnings had been issued to him concerning his refusal to work.

Held: The Supreme Court has held that the eligibility provisions of unemployment law may not be applied so as to constrain a worker to abandon his religious conviction affecting the day of rest. Claimant's conscientious religious scruples do not act as a bar to benefits.

Result: Benefits allowed.

*82 AT 4760; 82 BR 6596*

Facts: Claimant was discharged for failing to wear the proper uniform to work although he was warned twice that he must do so. New uniforms included a red apron. Claimant's father had recently died and according to claimant's religious beliefs no red should be worn for a period of time. Claimant did not tell the employer about his beliefs.

Held: An employer cannot make arrangements if they do not know about the beliefs. The claimant willfully refused direct orders. Misconduct shown.

Result: Benefits denied.

*81 AB 143*

Facts: The employer twice posted a calendar for employees to schedule their vacations. Each time the claimant did or said nothing and his vacation was scheduled for him. Thereafter, claimant asked to have a particular week off for religious reasons. He was denied and told he was given ample time to respond. He did not show up for work and was discharged.

Held: Claimant was given a chance to schedule his vacation according to his religious services and did not. This was a willful violation of the employer's expected standards of behavior and was misconduct. Honoring claimant's request would have caused undue hardship on the rest of the employees.

Result: Benefits denied.

*80 AT 6634; 80 BR 1508*

**Facts:** Because of her religious beliefs, the claimant was opposed to working on Sunday. For a while this belief was honored by the employer. Then the employer decided that claimant should begin working on Sundays. Claimant refused and was discharged.

**Held:** Because the employer honored the claimant's beliefs for a time, changing her to working on Sundays was a violation of her contract of hire. No misconduct.

**Result:** Benefits allowed.

*76 AT 4098; 79 BR 1110*

**Facts:** Claimant asked for the Saturday off before Easter to prepare lamb for Sunday dinner. Claimant assumed he would have the day off since his requests were honored in the past. Claimant was told he did not have the day off and was supposed to work. Claimant said he was taking the day off and it was understood that if he left he would be fired.

**Held:** The desire to cook lamb was a personal desire, not religious. There was no dogma of religion requiring claimant to not work on Saturday. His failure to report to work was a willful act of misconduct.

**Result:** Benefits denied.

**Cross-reference:** See also Absenteeism, Personal Illness, 87 AT 11971 BR; and Attitude, Agitation of Other Employees, 79 AT 6155; 79 BR 1259.

## **SAFETY VIOLATIONS**

The employer has a valid interest in a safe and accident-free workplace. Consistent failure to abide by safety rules and regulations of the employer qualifies as willful misconduct if the employee has knowledge of and has been trained in those rules.

## SAFETY VIOLATIONS

### *Case Applications*

#### *83 BR 903*

Facts: Claimant worked for the employer clearing brush and trees under power lines. He was required to wear safety goggles when operating the chipper and a hard hat at all times. He was observed violating the safety rules. He was warned that failure to comply would lead to discharge. He ignored the warnings and was fired.

Held: Consistent failure to abide by reasonable safety rules and policies constitutes misconduct.

Result: Benefits denied.

#### *82 BR 373*

Facts: Claimant was a machinist and was discharged because he refused to perform a job assigned to him by his supervisor. Claimant said he refused to perform the procedure because he felt the procedure was unsafe. He offered two alternative methods but the supervisor did not approve. The supervisor's method was the norm, but on the date of discharge, one of the machines was determined to be unsafe by OSHA.

Held: Claimant refused to perform the job for fear of injuring himself and others. The fear was justified. He was not terminated for misconduct.

Result: Benefits allowed.

#### *79 AT 8351; 80 BR 48*

Facts: Claimant was a structural iron worker. It had been raining at the job site. Claimant felt it unsafe to work. He presented a letter from the safety inspector on the job indicating the work could be hazardous on that day. Claimant was discharged.

Held: Refusal to work was justified under the conditions. No misconduct shown.

Result: Benefits allowed.

## **SEXUAL HARASSMENT**

Sexual harassment of any kind, either by the employer or one of its employees, toward anyone is misconduct and prohibited in the workplace. This includes sexually suggestive language, jokes, or any unwelcome act or language. An employer who fails to take action to stop such behavior is found to condone and further such behavior, thereby creating a hostile environment for the victim. Any employee found to have sexually harassed another employee, and who refuses to stop such behavior or who has been made aware of a company's policy against sexual harassment, is guilty of willful misconduct connected with the work

## SEXUAL HARASSMENT

### *Case Applications*

#### *92 AT 03164 BR*

Facts: Claimant was the assistant manager and complaints were being made to management that he was putting his hands on the female employees. Claimant admitted his actions.

Held: Claimant had no reason to put his hands on the employees and did not stop when asked. Misconduct shown.

Result: Benefits denied.

## **THIRD PARTY DISTURBANCE**

Behavior which disrupts the workplace and is caused by a third party known to or related to the employee is not necessarily misconduct per se. An employee cannot control the behavior of others. However, if the disruptions caused by the third party are caused by the actions of the employee at work, or in some cases, outside of work, then misconduct can be found. Use by a third party of the employer's assets and equipment to obtain benefit for an employee has been found to be willful misconduct.

## THIRD PARTY DISTURBANCE

### *Case Applications*

#### *88 AT 9248 BR*

**Facts:** The claimant was discharged for submitting a letter on the employer's letterhead which contained false information. The letter was requesting assistance for claimant. Claimant denied knowledge of the letter. Claimant's wife wrote the letter.

**Held:** The Appeal Tribunal reversed the Commission and allowed benefits. The Board of Review reversed and denied benefits holding that since the letter was written to benefit the claimant, claimant could not escape culpability. Misconduct shown.

**Result:** Benefits denied.

#### *83 BR 2403*

**Facts:** Claimant's husband had a problem with the claimant's manager. The husband was not an employee. He created a disturbance in the store embarrassing the manager and customers. Claimant was later discharged for misconduct.

**Held:** Claimant could not control the actions of her husband. No misconduct shown.

**Result:** Benefits allowed.

#### *80 AT 9534; 81 BR 267*

**Facts:** Claimant was at her place of employment while off duty when she was asked by a coworker to take the cash report to the office. She was accompanied by her boyfriend. While in the office she spoke with the employer about withdrawing from her pension/profit sharing plan that was being deducted from her check. She told the employer if it was too much trouble to forget it. The claimant's boyfriend stepped in and exchanged words with the employer. The employer felt intimidated and fired the claimant for letting her boyfriend interfere.

**Held:** Claimant was bound by her boyfriend's actions since he had implied the authority to represent her in her demands. Misconduct shown.

**Result:** Benefits denied.

## **UNINSURABLE DRIVER**

As indicated previously, if driving is a prerequisite to employment and an employee renders himself uninsurable by his actions, then that employee is also unemployable. If the employee's own negligence has made him uninsurable then it is willful misconduct. If the employer has prior knowledge of the employee's driving record at the time of hire, then there is no misconduct, absent further acts by the employee to render himself uninsurable. Failure to comply with a reasonable request of the employer to comply with insurance requirements is also willful misconduct.

Cross-reference: Licenses

## UNINSURABLE DRIVER

### *Case Applications*

#### *87 AT 3195 BR*

Facts: Claimant had worked for the employer twice before. When claimant was hired again the employer knew about claimant's driving record. When the insurance company said they would not insure the claimant, he was fired.

Held: The employer knew about the claimant's driving record. There was no willful misconduct.

Result: Benefits allowed.

#### *86 AT 8104*

Facts: Claimant had a poor driving record and the employer's insurance refused to cover him. He was required to sign an exclusion form. Claimant's job duties were changed so he would not need to drive a car. Claimant refused to sign the form and to stop driving the company cars. The insurance company said the insurance for the whole fleet would be dropped if the exclusion was not signed. Claimant was fired.

Held: Refusing a reasonable request by the employer as in not signing the form is misconduct.

Result: Benefits denied.

#### *82 BR 148*

Facts: Claimant was discharged because the employer's liability insurance carrier would no longer insure him due to his poor driving record.

Held: The claimant's own negligence caused his uninsurable state. Misconduct shown.

Result: Benefits denied.

## **UNION ACTIVITIES**

Membership in a union is not misconduct. Organizing employees in a union is willful misconduct if done by a management employee. Note that Oklahoma is now a right-to-work state, so decisions issued before the passage of this law may be invalid.

## UNION ACTIVITIES

### *Case Applications*

#### *83 BR 2071*

Facts: Claimant was vice president of group sales for the employer and received a number of benefits not enjoyed by other employees. He was terminated for participating in union activities.

Held: It is unfair to the employer for a member of management to be allowed to use his position to organize employees.

Result: Benefits denied.

#### *79 BR 1175*

Facts: Claimant was discharged for violating the employer's rules concerning union petitions. The union and employer state that claimant was made aware of the rule. Claimant said she was unaware of the rule and would not have done anything to jeopardize her job.

Held: The employer had put claimant back to work so her actions could not be considered to be misconduct.

Result: Benefits allowed.

## **VIOLATION OF COMPANY RULES OR POLICIES**

Violation of company rules or policies is willful misconduct connected to the work if it can be shown that the rules are reasonable, the employee has been made aware of and trained in the rules and furnished a copy of the rules or had them made easily available to him. It is the burden of the employer to provide proof of the reasonableness of the rule, of the policy and that the employee was aware of the rules. An isolated incident of rules violation which is the result of poor judgment or ordinary negligence in a given situation, particularly when unusual circumstances are involved, will not be misconduct. Violation of the rules by a third party when not noticed or allowed by the employee is not misconduct.

## VIOLATION OF COMPANY RULES OR POLICIES

### *Case Law*

*Anderson v. Fas-Trax Jiffy Stop et al., C-87-7 (Lincoln Co. D. Ct. 2-87)*

Facts: Claimant was discharged for permitting her boyfriend behind the counter while handling company funds, which was against company rules. It was an isolated incident. Claimant did not invite him. She was counting money and not paying attention to where he was.

Held: There is no evidence of a willful disregard of the rules.

Result: Benefits allowed.

### *Case Applications*

*00 AT 2030 BR*

Facts: The claimant was aware of a strict company policy that required employees to clock out when they left work and to get permission from the supervisor if it was not at the end of their shift. Claimant agreed that she was away from her workstation for approximately one hour without clocking out or contacting a supervisor. She had started her period and messed up her clothing. She looked for a supervisor in her area but no female supervisor or lead person was available. She was too embarrassed to go to a male supervisor. She left without clocking out and without permission and went to her car in the parking lot. When she returned she went directly to her own area and began working instead of reporting to a supervisor because there were too many people in the other areas and she was embarrassed because of the spots on her clothing.

Held: Claimant did break the rules, but it was an isolated incident, and claimant's actions were understandable. It did not rise to the level of misconduct as defined in *Vester*.

Result: Benefits allowed.

*98 AT 1333 BR*

Facts: Claimant was fired for trying to take a video tape from the store where he worked without paying the rental fee. Store policy prohibited removing any time from the store without first paying for it. The claimant stated he was not aware of the policy.

Held: Any reasonable employee would know not to remove an item without first paying for it. Misconduct shown.

Result: Benefits denied.

*97 AT 5983 BR*

Facts: Claimant and her husband received a mortgage loan from her employer. They were unable to make the payments and the loan went into default. The employer was forced to fire the claimant as prescribed by the Comptroller of the Currency's Office.

Held: The defaulted note was the only reason for discharge. There was no proof of misconduct.

Result: Benefits allowed.

*96 AT 3490 BR*

Facts: Claimant was employed for over fourteen years. During Christmas the claimant accidentally caught a customer's Christmas lights on his truck and pulled them off. The customer was not upset and claimant had a heavy delivery load, so he did not report the incident at the time. The next day, the customer turned in a claim for the lights and claimant was terminated for failing to report the incident.

Held: This was an isolated incident and does not rise to the level of misconduct.

Result: Benefits allowed.

96 AT 3227 BR

Facts: Claimant was aware he was not supposed to sell beer to anyone under 21. He had been warned twice that if it happened again he would be discharged. He was also told to check the ID of anyone he was unsure of. Claimant sold beer to a nineteen year old who the supervisor sent in as a test. Claimant did not check his ID.

Held: If claimant was unsure of age, he should ask for ID. Claimant negligence could have caused the employer to lose its liquor license.

Result: Benefits denied.

96 AT 3012 BR

Facts: Claimant was given a handbook covering the employment rules and policies. It was claimant's responsibility to review the manual. Claimant violated the policy that she should have known. The reasons for immediate dismissal included violation of commission policies and procedures, including fraud.

Held: Claimant followed a course of conduct which showed a disregard of the employer's interests or policies. Misconduct shown.

Result: Benefits denied.

95 AT 7780 BR

Facts: The claimant was discharged for ringing up a family member's purchase in violation of the employer's written policy. The claimant said he was aware of the policy but the policy was never enforced. At least twice claimant rang up family purchases with the manager's permission. The manager denied giving permission.

Held: If the claimant thought he was doing wrong he would not have done it in front of the manager. No misconduct shown.

Result: Benefits allowed.

*90 AT 6409 BR*

Facts: Claimant worked as a waitress for a restaurant for 23 years. A new owner took over and made policy changes and changed prices. Claimant sometimes forgot to follow new policies and used old prices. The employer argued that claimant was deliberately refusing to follow new policies and put additional butter on the plate of a customer because she knew the patron needed more butter. The new policy required that she wait till he asked for it.

Held: This was an isolated incident of mistake, not misconduct. Claimant acted in good faith.

Result: Benefits allowed.

*87 AT 2618 BR*

Facts: The employer's policy prohibited relatives from working under the same operations manager. The relative with the least seniority would be terminated. When two employees got married, the employer would try to transfer one. Claimant married a coworker, but they did not tell the employer or request a transfer. When the employer found out, claimant was discharged.

Held: Claimant's life away from work is of no concern to the employer without a showing that it affects the work performance. No misconduct shown.

Result: Benefits allowed.

Cross-reference: See also Inefficiency or Inability to Perform, *Clark v. WalMart Stores, et al.*, #71, 668(Okla. Ct. of App. 5-29-90); Errors in Handling Money, 93 AT 12696 BR; Drug/Alcohol, Intoxication on the Job, 90 AT 8804 BR; Dishonesty, Theft, 90 AT 8579 BR; Disruptive Behavior, 90 AT 4610 BR.

## BURDEN OF PROOF/PROCEDURE

### *Case Applications*

#### *91 AT 9288 BR*

Facts: See Sleeping on the Job

Held: Claimant has the burden of proof to prove that his being demoted due to sleeping on the job was unreasonable and that his leaving employment voluntarily was for good cause.

#### *90 AT 5821 BR*

Facts: See Inefficiency

Held: The employer did not meet the burden of proof to show that claimant was given warnings or told his job was in jeopardy.

#### *89 AT 7666 BR*

Facts: See Disobeying Orders

Held: The employer did not appear at the hearing. There was therefore no evidence to support the allegation of insubordination.

#### *84 BR 1549*

Facts: See Failure to Pass Polygraph

Held: Polygraph reports alone are not sufficient to establish misconduct.

#### *80 AT 9940; 81 BR 69*

Facts:

Held: Five days in jail resulting in missing work is excessive and amounts to misconduct.

## **SECTION VI – SEEK AND ACCEPT WORK / REFUSAL OF WORK**

### **VI-1            Definition of Seeking and Accepting Suitable Work**

#### **VI-10          Search for Work**

- (A)            Commission Required Contacts
- (B)            Lack of Transportation
- (C)            Moving to Different Area
- (D)            Newspaper Advertisements
- (E)            Telephone Contacts Only
- (F)            Undue Restrictions
- (G)            Union

#### **VI-20          Refusal of Referral**

- (A)            Commuting Distance
- (B)            Different Shift
- (C)            Part-Time or Temporary Work
- (D)            Personal Reasons
- (E)            Relocation
- (F)            Union Hiring Hall Referral
- (G)            Unsuitable Work

#### **VI-30          Refusal of Employment**

- (A)            After Receipt of 50% of Benefits
- (B)            Before Filing for Benefits
- (C)            Child Care
- (D)            Commuting Distance
- (E)            Humiliation or Embarrassment
- (F)            Job Offered to Deny Claimant Benefits
- (G)            Medical Limitations
- (H)            Same Job/ Different Shift
- (I)            Seasonal Work
- (J)            Undue Restrictions
- (K)            Unsuitable Work
- (L) -1-2      Wages
- (M)            With Former Employer

## **SECTION VII- PROCEDURES FOR OBJECTIONS AND APPEALS**

## **SECTION VIII - MISCELLANEOUS**

## SEEKING AND ACCEPTING SUITABLE WORK

A claimant's search for work and willingness to apply for and accept suitable work is a good indication of continuing availability for work as required in Sec. 2-205 and is closely linked to the adjudication of that issue. A claimant for UI benefits is expected to demonstrate continued availability for work measured by what one does in an attempt to become reemployed in a reasonable time. Reemployment of unemployed workers is an important part of the original mission of the Employment Security system; involving both the job placement/training and UI components of that system. The goal is to encourage and assist in that reemployment before the exhaustion of benefits in order to maintain or restore the economic security of the worker. The applicable provisions of the Act requiring a search for work and requiring a claimant to apply for and accept suitable employment are:

### **Section 2-417. Seek and accept work—Week of occurrence disqualification**

**A.** An individual shall be disqualified to receive benefits for each week in which the individual shall have failed to do any of the following:

1. Diligently search for suitable employment at a pay rate generally available in that area of the state in keeping with his or her prior experience, education and training;
2. Make application for work with employers who could reasonably be expected to have work available;
3. Present oneself as an applicant for employment in a manner designed to encourage favorable employment consideration; or
4. Participate in reemployment services, such as job search assistance services if the individual has been determined likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the Oklahoma Employment Security Commission. An individual will not be disqualified under this paragraph for failure to participate in reemployment services if;
  - a. the individual has previously completed reemployment services, or
  - b. there is justifiable cause for the individual's failure to participate in reemployment services

**B.** The requirements of subsection A of this section shall be waived if the individual has been summoned to appear for jury duty before any court of the United States or of any state. The waiver will continue for as long as the individual remains on jury duty pursuant to the original summons.

**Section 2-418. Seek and accept work – Indefinite disqualification**

**A.** An individual shall be disqualified to receive benefits for the full period of unemployment next ensuing after the individual shall have failed to do any of the following:

1. Accept an offer of work from an employer including any former employer;
2. Apply for or accept work when so directed by the Employment Office of the Commission; or
3. Accept employment pursuant to a hiring hall agreement when so offered. Such disqualification shall continue until the individual has become reemployed and has earned wages equal to or in excess of ten (10) times his or her weekly benefit amount.

**B.** Any individual who shall have failed in any of the requirements of subsection A of this section due to illness, death of a family member or other extenuating circumstance beyond his or her control shall be disqualified for regular benefits under this section only for the week of the occurrence of such circumstance beyond his or her control. Any individual who is disqualified under this subsection only for the week of the occurrence of such circumstance beyond his or her control shall not thereafter be or become eligible for extended benefits for the purposes of Sections 2-701 through 2-724 of Title 40 of the Oklahoma Statutes until such individual has become reemployed and has earned wages equal to at least ten times his or her weekly benefit amount.

*Definition*

Section 2-417 above covers the claimant's responsibility to search for work in a manner designed to accomplish reemployment and to participate, when scheduled, in reemployment services established by the OESC. In previous years the Commission required a set number of employer contacts each week to establish compliance with the work search requirements of the Act. The same work place changes mentioned earlier in reference to applying the able and available provisions of Sec. 2-205 have also required the OESC to adopt a new work search policy effective October 1, 2006 and revised June 5, 2007. The new policy and agency rule establishes a more realistic definition of a sufficient search for work in the modern labor market; focusing not on how many contacts a claimant makes, but rather did the claimant engage in those activities a "[r]easonably prudent person would be expected to do to secure work using any means that are appropriate and customary each week." OAC 240:10-3-20(b). Agency policy provides that a claimant who takes part in two activities meeting the above definition satisfies the requirements of Sec. 2-417. In addition to the statutory waiver provided for jury duty in subsection (b), special circumstances which relieve the claimant of the required two activities and are:

- Union members who are searching for work through their union must be registered with the hiring hall or placement facility of their labor union and be a member in good standing.
- If an employee is involved in a verified temporary layoff, is receiving partial unemployment insurance, or is receiving supplemental unemployment benefit payments through an approved plan based on a temporary layoff, the work search requirement is met if the employee maintains an attachment to the employer and remains available to return to work for the employer.
- Attending the six hour Job Search Workshop sponsored by OESC will satisfy the work search requirement for that week.
- Unemployed workers who secure employment will be considered to have met their work search requirements up to three weeks before the job begins.

Section 2-418 provides for disqualification when a claimant refuses to apply for suitable work when directed to do so by the OESC or refuses an offer of suitable work from an employer, including a former employer. Work offered must be suitable as defined by Sec. 2-408 and even suitable work may be refused under certain circumstances defined in Section 2-409.

**Section 2-408. Suitable work**

(1) In determining whether or not any work is suitable for an individual, there shall be considered among other factors and in addition to those enumerated in Section 2-409 the length of his unemployment, his prospects for obtaining work in his customary occupation, the distance of available work from his residence and prospects for obtaining local work.

(2) Suitable work shall be defined as employment in an occupation in keeping with the individual's prior work experience, education or training, or having no prior work experience, special education or training for occupations available in the general area then, employment for which the individual would have the physical and mental ability to perform.

(3) Upon receipt of fifty percent (50%) of his benefits, suitable work shall not be limited to his customary or registered occupation.

Part (3) of Section 2-408 does not require a claimant to accept a lessor wage in their usual occupation, but does require that the work search be expanded to include work other than the customary or registered occupation of that claimant.

**Section 2-409. Conditions exempting otherwise suitable work**

Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
- (4) If the new work involved a substantial degree of risk to his health, safety or morals.

*Burden of Proof*

Generally speaking, a party will not be required to prove a negative; therefore, the burden of proof belongs to the party who has the best access to the information. In most cases, the claimant will bear the burden of proof to show that they have made the required search for work since only the claimant would have access to that information. That burden belongs to the Commission if the claimant has failed to follow up on a Commission referral. The Commission would have the information regarding the referral and its validity. The same would apply to an employer making an offer of work. The employer would have the best access to the information on the terms of the offer and its suitability.

## SEARCH FOR WORK

### *Commission-Required Contacts*

#### Case Applications

#### *87 AT 6055 BR*

**Facts:** Claimant was found ineligible for benefits for three different periods because he did not make his work search as required. Claimant appealed. The Appeal Tribunal addressed the three periods, but only made a decision on one. The Claimant and the Commission appealed to the Board of Review.

**Held:** Claimant signed an “individual work search affidavit”, which said he would make a certain number of contacts each calendar week. Claimant testified it was his signature on the form and that he should have read the instructions better. The Board of Review upheld the Commission’s decision.

**Result:** Benefits denied.

*Lack of Transportation*

80 BR 2068

Facts: Claimant was unemployed for a long time. She received a referral from the Commission. Claimant did not contact the employer until two days later at 3 p.m. at which time the employer said the position had been filled. Claimant said she could not contact the employer until then because she did not have transportation and her parent's phone was not working.

Held: An individual that fails to apply for or accept work when so directed by the Commission shall be disqualified. The employer held the job open for two days. Claimant did not timely apply.

Result: Benefits denied.

*Moving to Different Area*

*80 AT 2262; 80 BR 1320*

Facts: Claimant was terminated and moved to Texas. She did not actively seek employment for five weeks due to the move. Once she moved to Texas she began looking for and found employment.

Held: Claimant must make a diligent effort to find suitable employment. Claimant did not make any attempt for five weeks.

Result: Benefits denied.

*Newspaper Advertisements*

*76 AT UCX 205; 693 BR 76*

Facts: Claimant was unemployed for over one year. He sought employment by checking the newspapers.

Held: Merely checking newspapers to find suitable employment is not a diligent search for employment.

Result: Benefits denied.

*Telephone Contacts Only*

*76 AT 8135: 342 BR 77*

Facts: Claimant was unemployed for several months. There was a question whether claimant was diligently searching for employment. Claimant had not made personal contacts in a few weeks. The Commission denied benefits. On appeal the claimant stated she had accepted a referral from the commission but did not result in a job. Prior to the hearing she contacted a pizza parlor and two grocery stores. The Appeal Tribunal denied benefits.

Held: Claimant did not make any contacts during the week of October 10, 1976, and for several weeks prior, except by telephone. This is not a diligent search for work.

Result: Benefits denied.

*Undue Restrictions*

*89 AT 01932*

Facts: The claimant worked in maintenance and sanitation for the past year as well as a few days each month as a substitute teacher. The claimant is searching for work other than substitute teaching, but is restricting his available work hours to after 4:30 p.m. because he wants to remain available for substitute teaching in hopes of getting a full-time teaching position.

Held: A claimant must not place restrictions on his availability for work relating to hours, salary or type which conflicts with his work experience. By restricting his availability only to evening or nighttime employment, he placed undue restrictions on his availability. Decision cites *Atterberry v. Bell Glass Containers*, 898 BR 76.

Result: Benefits denied.

*92 AT 01451*

Facts: The claimant attends school from 7:45 a.m. to 12:30 p.m., Monday through Friday. She is willing to withdraw from or rearrange her class schedule in order to obtain and accept full-time work.

Held: The claimant has not restricted her ability to seek or accept work.

Result: Benefits allowed.

NOTE: The Commission denial was based on the claimant's negative response to questions on whether she would be willing to withdraw or rearrange her school schedule. The claimant was not informed of the consequences for that negative response. The standard requires a full understanding of the questions posed and the consequences of the answers.

*Union*

*306 BR 78*

Facts: Claimant is a union member. He must go through the union to obtain work. The union assigns work as it is available. When the job is finished he goes back to the union hall for another job. Claimant contacted the union once a week.

Held: Claimant was somewhat restricted in his search by his union membership. He was making a reasonable job search and is available for employment.

Result: Benefits allowed.

## REFUSAL OF REFERRAL

### *Commuting Distance*

#### Case Applications

*79 BR 366*

**Facts:** Claimant was employed as an operator. The office closed and there was no other work for her. She was offered work in Oklahoma City, Lawton, Tulsa or Muskogee. All were too far to commute and she did not want to relocate.

**Held:** Claimant would have had to relocate her home a great distance from where she resides. Claimant is not bound to accept an offer of work of this type.

**Result:** Benefits allowed.

*Different Shift*

*80 AT 5424; 80 BR 1214*

Facts: Claimant was employed as a practical nurse. The Commission offered her a referral to a job as a nurse with the same pay. Claimant said she did not want to work the 3 p.m. to 11 p.m. shift, and that she could not drive in downtown traffic. Also she complained that the 52-mile round trip was too far from home.

Held: The same job on a different shift is suitable work. Claimant cannot refuse to drive in traffic. Claimant did not have good cause for refusing the referral.

Result: Benefits denied.

*Part-time or Temporary Work*

*218 AT 61; 52 BR 61*

Facts: Claimant's last job was \$140 per month plus commission as a sales clerk. The Commission referred the claimant to a position making \$160 per month plus commission. Claimant refused the job because she was told the job was temporary for the Christmas season and she did not want to hurt her chances of obtaining permanent employment.

Held: Temporary work is acceptable unless a person has an imminent possibility of permanent employment. The work was suitable; the refusal was not acceptable.

Result: Benefits denied.

*Personal Reasons*

*Case Applications*

*82 AT 0243; 82 BR 292*

Facts: Claimant was referred to employment by the Commission. She never contacted the employer and, when asked, she said she had a house full of company that she did not trust alone in her house. Claimant never did contact the employer.

Held: Claimant did not have good reason for her failure to apply for the job.

Result: Benefits denied.

*Relocation*

2954 AT 61

Facts: Claimant was working as a lab tech in a film photo processing plant. He was laid off and filed for benefits. The Commission referred him to a company that advised he would have to leave Oklahoma for six weeks of training in New York and that he might not be assigned back to Oklahoma. Claimant refused. Benefits were denied based on refusal of a suitable offer of work. On appeal the claimant stated that he would have accepted the job if he could stay in Oklahoma.

Held: One that has established a residence in an area where there is a likelihood of finding a job need not be ready to accept employment that would require a change of residence. The offer was not suitable. Claimant would have been required to move.

Result: Benefits allowed.

*Union Hiring Hall Referral*

87 AT 7496

Facts: Claimant went to his union hall to inquire about work. He was given the name of a prospective employer. Claimant did not call the employer for a while and then had his aunt call the employer. Next, claimant paid someone to call the employer for him. Claimant finally called the employer saying he was having trouble reaching the employer and that he was having too many problems at that time to accept employment.

Held: An individual who fails to accept employment pursuant to a hiring hall agreement when so offered is disqualified from receiving benefits.

Result: Benefits denied.

*Unsuitable Work*

*83 AT 2013; 83 BR 501*

Facts: Claimant was laid off and receiving benefits when his former employer notified the Commission that claimant was eligible for rehire in its janitorial department. The Commission sent claimant a letter at the last address advising him to report to the local office in five days or his benefits would be stopped. Claimant did not report. On appeal claimant said he did not receive the notice until seventeen days later because it was given to his children, not him. Claimant was not interested in working for the company since he had not tried to contact them.

Held: Claimant failed to properly apply for or accept work. When directed by the employment office, he failed to contact the prospective employer about a job.

Result: Benefits denied.

*79 AT 852; 79 BR 596*

Facts: Claimant was last employed as a counter clerk at the cleaners. On referral she was offered a position in management. Claimant declined to interview because she did not have experience and did not desire the duties.

Held: Because the job offered was not suitable employment in keeping with claimant's prior training, claimant's refusal to accept the position did not disqualify her.

Result: Benefits allowed.

*79 BR 594*

Facts: Claimant worked as a waitress for a fraternal club. Claimant was offered two referrals for jobs in coffee shops or fast food establishments. Claimant had specific schooling to learn how to waitress in a formal restaurant. Claimant refused the offers saying she would not work below her qualifications.

Held: There is a drastic difference between fast food and formal restaurant. The positions offered were below claimant's training. Claimant was justified in refusing the offers.

Result: Benefits allowed.

## REFUSAL OF EMPLOYMENT

### *After Receipt of 50% of Benefits*

#### *Case Applications*

*79 AT 1674; 80 BR 456*

Facts: Claimant was separated due to lack of work. She was given the classification of pie maker. After the Claimant received half her benefits, the Commission referred her to a job as a food service worker making more than she did on her previous job. Claimant refused, because the wages were too low and the job was not in her classification. Claimant argued that the wages needed to be higher to justify the additional driving. The claimant was requiring a beginning wage of \$4.00 per hour despite the fact that she had been making only \$2.95 per hour on her last job. The claimant had received over 50% of her benefits.

Held: Upon receipt of half of benefits, suitable work shall not be limited to the customary or registered occupation. Food service is closely related to a pie/pastry maker.

Result: Benefits denied.

*Before Filing for Benefits*

*88 AT 04416*

Facts: Claimant was hired as a warehouse supervisor. When hired, he told the employer he had heart problems and was unable to lift over 40-50 pounds. After working for a year, the claimant suffered a heart attack. Six months later the claimant was working 35 hours per week. The next month it was reduced to twenty hours per week. Claimant was then laid off for lack of work, but was later offered the job of a warehouseman. Claimant was advised that the lifting requirements were the same as the old job.

Held: Claimant refused the job offer before he filed for benefits.

Result: Benefits allowed.

*Child Care*

*78 AT 1801; 80 BR 91*

Facts: Claimant was laid off then offered the same job on a different shift. Claimant refused saying she could not find suitable care for her children if she worked a different shift.

Held: The same job at a different shift is suitable employment. Claimant must accept suitable employment. Adequate daycare was available during the second shift.

Result: Benefits denied.

*Commuting Distance*

*84 AT 9199; 84 BR 2447*

Facts: Claimant was laid off due to lack of work. He received benefits. All base period employers were notified of the charging of benefit wages. The employer protested saying claimant was eligible for rehire. Work was available if the claimant commuted 80 to 90 miles per day. Claimant refused.

Held: Claimant would have had to move or commute 80 to 90 miles to work. He had good cause for refusing employment.

Result: Benefits allowed.

*Humiliation or Embarrassment*

*83 BR 1039*

Facts: Claimant began work as a graduate nurse. She failed the State Nursing Board exam and was made a senior assistant at the same salary and shift. Claimant failed a second time and her pay was reduced by \$.97. She failed the third time and she was offered a job as a nurse technician making \$5.68 per hour. Claimant refused because she was embarrassed and the job paid less.

Held: Any embarrassment caused by reduction in salary was not the fault of the employer. The job offer was in keeping with the employment agreement.

Result: Benefits denied.

*Job Offered to Deny Claimant Benefits*

*97 AT 5349 BR*

Facts: The employer offered the claimant an assignment described as one week plus. The employer asserts clients never agree to commit to more than a week, but if they are satisfied with the work, the employment will continue indefinitely. Claimant told the employer she could not accept it at the time because she had doctor, dentist and employment service appointments. The Appeal Tribunal held the claimant did not refuse an offer of work, and allowed benefits.

Held: The Board of Review held that claimant failed to accept an offer of work, which was not due to extenuating circumstances beyond her control.

Result: Benefits denied.

*Medical Limitations*

79 AT 8485; 80 BR 483

Facts: After a shut down due to a fire, the claimant was called back to work according to seniority. Claimant refused stating he had problems with his back and the job required heavy lifting. Benefits were allowed. The employer appealed and benefits were denied. At the Appeal Tribunal hearing the employer said he had been presented with medical statements releasing claimant to work.

Held: The employer acted in good faith using information available to him at the time claimant was called back to work.

Result: Benefits denied.

*Same Job/ Different Shift*

*81 AT 01626; 81 BR 582*

Facts: Claimant was employed as a wrapper. Claimant's shift was abolished and she was offered at 6 a.m. to 2 p.m. or 2 p.m. to 11 p.m. shift. Claimant had been working 12 p.m. to 6 p.m. Claimant did not accept either because she said she had two teenage daughters that she did not want to leave at home alone early in the morning or late at night. Claimant testified she was available from 8 a.m. to 5 p.m. or 9 a.m. to 5 p.m.

Held: The work offered was suitable. The mere changing of shifts was not good reason for claimant to refuse employment.

Result: Benefits denied.

*Seasonal Work*

*83 BRD 13915*

Facts: Claimant was offered work during the opera season as a musician. He had been under contract and had performed the same job for the employer for three prior seasons. He refused the offer because the job was seasonal.

Held: Claimant had a history of seasonal work with this employer. He refused a suitable offer of work.

Result: Benefits denied.

*Undue Restrictions*

*97 AT 5349 BR*

Facts: The employer offered the claimant an assignment described as “one week plus”. The client employer never agrees to commit to employment of anyone longer than one week, but that if the client is satisfied, the employment may be indefinite. The claimant requested a delay of one week as she had medical appointments scheduled that week as well as appointment with the employment service. The employer withdrew the offer because the client needed someone immediately. The Appeal Tribunal held that the claimant did not refuse the offer but just requested a delay; however, she was not available for work that week.

Held: The Board of Review reversed finding that the claimant refused a legitimate offer of work; but not due to circumstances beyond her control.

Result: Benefits denied.

*Unsuitable Work*

*80 AT 10832; 81 BR 641*

Facts: Claimant had previously worked as a grocery checker. She was offered a night job for six days per week, 36 hours per week, and thirty cents less per hour. Her previous job was forty hours per week, five days a week. Claimant refused the job. The Commission denied benefits and the Appeal Tribunal affirmed.

Held: The job offered was materially different. The day job claimant had held was five days and thirty cents more per hour, while the night job offered was six days and thirty cents less. The job offered was one in which claimant had no experience. The work offered was not suitable.

Result: Benefits allowed.

*77 AT 3026; 1317 BR 77*

Facts: Claimant was a teller in a bank. She took maternity leave and when she returned was offered employment in bookkeeping since there were no teller positions available. The hours and pay were the same. Claimant saw it as a demotion and refused employment.

Held: Claimant was offered a bank job with the same hours and pay and a promised to return to her old job when a position was available. This is suitable employment. Claimant did not have good cause to refuse the offer.

Result: Benefits denied.

*Wages/ Duties / Status*

02 02130

Facts: The claimant was employed as an electrical inspector earning \$10.17 per hour. She was notified her employment was terminated due to a reduction in force that resulted in the number of electrical inspector positions being cut. The claimant filed a claim for benefits. After her termination, the employer offered the claimant a new position as an assembler earning \$9.65 per hour. Claimant refused the position because of the cut in pay and status of the new position and because the pay scale for an inspector topped out at \$14.30, but the assembler position offered was at the highest level of wages possible.

Held: The offer was a new offer of work after she was terminated due to layoff and was made after the effective date of her claim. A substantial reduction in wage makes an offer unsuitable. The offer would have resulted in pay of 52 cents per hour less. While it was less than 15%, it was a substantial reduction, as well as a substantial change in job status and work duties. The combination of the reduction in wage and change in duties and status made the offer unsuitable.

Result: Benefits allowed.

83 AT 2126; 83 BR 03

Facts: Claimant worked for the employer for \$4.30 per hour. He quit that job for a better-paying position and was laid off for lack of work. He began receiving benefits. The employer notified the Commission that they had work for the claimant at a salary of \$3.35 per hour. Claimant refused because the salary was less than his last salary. The Commission denied benefits for refusing a suitable offer or work. The Appeal Tribunal reversed and allowed benefits.

Held: The Board of Review held that the wages offered were substantially less than what the claimant had been making from the employer previously and that the offer was not suitable.

Result: Benefits allowed.

82 BR 615

Facts: Claimant was terminated because her husband's illness interfered with her work attendance. Claimant made \$4.75 per hour. She was offered the same job at \$3.35 per hour. She refused.

Held: The \$1.40 pay reduction was substantial and made the offer unsuitable.

Result: Benefits allowed.

*With Former Employer*

*80 AT 8220; 80 BR 1723*

Facts: Claimant worked for the employer for \$2.90 per hour. She left this employment for another job making \$5.36 per hour. She was laid off from the second job. She said she would accept a job making \$4.50 per hour. The previous employer offered a job at her previous wages and claimant refused.

Held: The wages offered would be less than claimant's benefit amount. She was on the better paying job for a longer time. Claimant was willing to accept \$1 less per hour in order to become employed. Claimant had good cause to refuse the offer.

Result: Benefits allowed.

*79 BR 1002*

Facts: Claimant was mailed a notice by a former employer that work was available on the day or night shift. The work and pay were the same as before. Claimant refused because she did not want to work for the employer. Claimant lived in an area of the state where unemployment is high and jobs are few.

Held: Claimant refused a suitable offer.

Result: Benefits denied.

# **PROCEDURES FOR OBJECTIONS AND APPEALS**

## MISCELLANEOUS

