# Suitable Work Under Unemployment Compensation Statutes

The Unemployment Compensation Statutes were designed to provide security for workers during periods of involuntary unemployment. Involuntary is here used in the sense of industry's failure to provide jobs. This is evidenced by the presence in all the statutes of the requirement that an employee in order to be eligible for benefits be able to work and be available for work.

The question of availability, which is determined from a claimant's application, is essentially one of degree; that is, has the applicant restricted himself to such an extent as to render him unavailable? An individual must, of course, be able and willing to accept some type of work, but what is the minimum in this regard? A maxim often reiterated in this respect is to the effect that a claimant must be attached to the labor market. "A labor market for an individual exists when there is a market for the type of services which he offers in the geographical area in which he offers them."[1] Market, as here used, ". . . means only that the type of services which an individual is offering is generally performed in the geographical area in which he is offering them."[2] Thus, the criterion of availability should be not whether an individual has a reasonable opportunity of obtaining work in his restricted field, but whether the services which he is willing to render are generally performed in his area.

Assuming an applicant satisfies the availability requirement, he becomes eligible to receive benefits until he has refused an offer of *suitable* work. The offer, it should be noted, ". . . must be a bona fide attempt to secure the individual's services and not merely for the purpose of bringing about a disqualification."[3]

Like all other legislative pronouncements couched in general terms, the "suitability" provision has acquired meaning only through judicial and administrative interpretation. And as is to be expected in such cases, a marked lack of uniformity has resulted in the decisions as to what work is suitable.

In order to receive approval of the Federal Social Security Board, a state statute must incorporate the labor standards provision which enjoins disqualification of any otherwise eligible individual for refusal to accept work under any of three specified

[1] Freeman, *Able to Work and Available for Work*, 55 YALE L. J. 123, 124 (1945).

[2] *Ibid.*

[3] Menard, *Refusal of Suitable Work*, 55 YALE L. J. 134, 136 (1945).

conditions.[4] Since such approval is a condition precedent to a state's participation in the federal fund, all the statutes comply in this respect. The decisions also agree that in all instances an applicant must be ready and willing to accept some type of work and that in no case is he under a compulsion to accept any job that might be offered. Between these two extremes, however, lies a broad field of discretion in which courts and boards operate with what at times appears to be a total disregard of the social aims at which the act was directed.

Whether or not an employee has good cause for refusing any work would seem logically to depend on whether the work is suitable as to him. The determination of the latter question, in turn, necessarily involves the consideration of the applicant's personal circumstances. But, too often, it seems, these are entirely ignored.

Especially is this attitude apparent in the cases of married women with children who, because of family obligations, refuse work on the night shifts. A South Carolina court denied benefits when a woman refused to continue working on the third shift, such refusal being due to the fact that a relative who had previously cared for her two children during these hours was no longer available.[5] Many courts and boards deny benefits in similar situations.[6] According to the more liberal view, night work for such persons is deemed unsuitable.[7]

Considering the prevalence of married women in industry, it would seem that the result reached in the latter line of decisions is the more desirable from a social standpoint. If women with family obligations must continue in industry, they should not be compelled to do so at the expense of sacrificing the family home. The national interest as well as solicitude for the individual dictates such a policy.[8] If the motives of these women be so laudable, as most courts readily admit, should not their refusals be construed as being for good cause?

[4] 49 STAT. 640 (1935), 26 USC §1603(a) (5) (1948) ". . . (A) If the offered position is vacant due to strike . . .; (B) 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; (C) 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."

[5] Mills v. S.C. Unemployment Compensation Commission, 204 S.C. 37, 28 S.E. 2d 535 (1944).

[6] Dinovellis v. Danaher, 12 Conn. Supp. 122 (1943); Ford Motor Co. v. Appeal Board (*In re* Koski), 316 Mich. 468, 25 N.W. 2d 586 (1947); Ohio Ref. Dec., 665-Ref-44, C.C.H., U.I. Serv., ¶1950.25 (1944).

[7] 12802 Calif. R, Ben. Ser., Vol. 11, No. 10 (1948); New York App. Bd. Case No. 11,471-44, C.C.H., U.I. Serv., ¶8842.06 (1945).

[8] Altman and Lewis, *Limited Availability for Shift Employment: A Criterion of Eligibility for Unemployment Compensation*, 28 MINN. L. REV. 387, 22 N.C. L. REV. 189 (1944).

Another reason for rejecting proffered employment is a lack of transportation. The Ohio statute in this regard provides that a refusal of work will not disqualify an applicant if ". . . the work is at an unreasonable distance from his residence. . . ."[9] "The Board of Review has consistently held that 1½ hours is not an unreasonable time to travel to work. Beyond that it is assumed in the ordinary case to be unreasonable. . . ."[10] Nor is the work suitable if the cost of transportation to and from the place of employment is unreasonable. Recently, a claimant's refusal was held justified where she could not use public transportation to return home from the factory at 1:45 A. M.[11]

However, if an applicant resides outside of an industrial area, he must supply his own transportation to an area where jobs are available and the time needed for travel becomes immaterial.[12] The Supreme Court of Ohio had occasion to discuss such a situation in two recent cases.[13] In both instances, the claimants were residing some distance from Toledo where they had established their employment credits. In the *Leonard* case, claimant stated she had transportation to Toledo only between 8:30 A. M and 5:00 P. M. No referral had been given. In the *Kontner* case, claimant refused referrals to jobs in Toledo for the reason that she lacked adequate transportation. The court allowing benefits in the former case and denying them in the latter said, "If a person resides in a nonindustrial area and has no means of transportation to an industrial area, he cannot be said to be in the labor market. . . ."[14] Thus, a lack of transportation does not render work unsuitable if the claimant resides in a locality where there exists no reasonable opportunity for work.

Union membership under the Ohio law[15] and that of most other states does not justify a refusal of nonunion work even though acceptance would subject the member to suspension or expulsion from the union.[16] The syllabus of the *Chambers* case declares that

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[9] OHIO GEN. CODE § 1345-6(e) (3) (1946).

[10] Ohio Ref. Dec., 1829-Ref-45, C.C.H., U.I. Serv., ¶1950.51 (1945).

[11] Ohio Bd. or Rev. Dec., 27-BR-49, C.C.H., U.I. Serv., ¶8222.05 (1949).

[12] Copeland v. E.S.C., 197 Okla. 429, 172 P. 2d 420 (1946).

[13] Leonard v. Board, 148 Ohio St. 419, 75 N.E. 2d 567 (1947); Kontner v. Board, 148 Ohio St. 614, 76 N.E. 2d 611 (1947).

[14] Kontner v. Board, *supra* note 13 at 620, 76 N.E. 2d at 615.

[15] OHIO GEN. CODE §1345-6(e) (1). A refusal to accept work shall not disqualify if "As a condition of being so employed, he would be required to join a company union, or to resign from or refrain from joining any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization."

[16] Chambers v. Owens-Ames-Kimball Co., 146 Ohio St. 559, 67 N.E. 2d 439 (1946); Bigger v. Unemp. Comp. Com., 43 Del. 274, 53 A. 2d 761 (1947); Barclay White Co. v. Bd. of Rev., 356 Pa. 43, 50 A. 2d 336 (1947).

the words in the statute, "as a condition of being so employed," refer to a condition in the offer of employment, as where the employer refuses to hire unless the individual resign from the union, and not to a result flowing from the imposition of some union rule. Organized labor naturally has a stake in this line of decisions but its recourse would seem to lie with the legislatures. Such efforts have been successful in at least two states[17] where the words, "acceptance of such employment," are substituted for "as a condition of being so employed."

The converse of the above situation also holds true in Ohio. A refusal to accept work for the reason that such acceptance would require claimant to join a labor union other than a company union is grounds for disqualification.[18]

In many cases, an employee's health or physical condition compels his refusal of certain types of work. Although most courts and agencies consider the work unsuitable if it entails any danger to the employee's health,[19] the Ohio courts, until recently, had been requiring the claimant to be available for the work he had been doing regardless of his physical condition. With the decision in *Hinkle v. Lennox Furnace Co.*,[20] which held that a refusal of one's former work does not necessarily render the employee unavailable, Ohio finally capitulated to what would seem the more logical view.

Perhaps the least litigated question in this field is that concerning the eligibility of a claimant who rejects a referral for religious reasons. The problem arose in Ohio when an applicant refused a job which would require him to work on Saturdays, his Sabbath.[21] The court, holding that such refusal rendered the claimant unavailable, rejected the contention that such construction of the law was a violation of the constitutional right to religious freedom or the right to equal protection of the laws. The determination of this problem would seem a proper subject for the legislature, and at least one state has so considered it. An Illinois statute provides that "An individual shall be considered to be unavailable for work . . . on days which are holidays in his religion or faith. . . ."[22]

The labor standards provision safeguards prevailing wage rates by enjoining disqualification for refusal to accept employment if

[17] MASS. ANN. LAWS, c, 151A §25 (c) (3) (1942); N.Y. LABOR LAW, §593 (2) (a) (1946).

[18] Ohio Bd. of Rev. Dec., 429-BR-48, C.C.H., U.I. Serv., ¶1965.24 (1948).

[19] Fannon v. Federal Cartridge Corp., 219 Minn. 306, 18 N.W. 2d 249 (1945); New York App. Bd. Case No. 11,501–44, C.C.H., U.I. Serv., § 35,556 (1945).

[20] Hinkle v. Lennox Furnace Co., 150 Ohio St. 471, 83 N.E. 2d 521 (1948), 10 OHIO ST. L. J. 113 (1949).

[21] Kut v. Albers Super Markets, Inc., 146 Ohio St. 522, 66 N.E. 2d 643 (1946); appeal dismissed, 329 U.S. 669 (1946).

[22] ILL. REV. STAT., Ch. 48, §222(c) (1945).

the wages are below those prevailing for similar work in the locality.[23] However, there still exists the question as to whether a claimant is justified in refusing employment the remuneration of which is below that received in his prior employment. If the claimant's unemployment has not been unduly extended and prospects of obtaining work at his prior salary are reasonable, he does not disqualify himself by refusing work at a substantially lower rate of pay.[24]

Where an employee has been temporarily laid off and has good prospects of returning to his regular job in a short time, other employment of a permanent nature becomes unsuitable.[25] A reasonable policy in such situations would seem to be that expressed by the Vermont Unemployment Compensation Commission: "If the claimant has been temporarily laid off for a verified period of not more than four weeks, he should be exposed to job openings, but no offer of permanent employment will be considered as a referral within the meaning of this policy."[26]

Unlike the statutes in most states, that in Ohio has no "suitability" provision. The analagous section of the Ohio code renders an applicant ineligible if he ". . . has refused to accept an offer of work for which he is reasonably fitted. . . ."[27] The Ohio Supreme Court has said that the phrase, "reasonably fitted," refers to training and experience and not to whether the work is suitable as to the individual.[28] Although the personal circumstances of the claimant are not entirely ignored by the Ohio Bureau of Unemployment Compensation in determining whether a refusal of work is justified, it would seem that such a course would not violate the provision as so narrowly interpreted.

Such a construction of the law demonstrates the desirability of the statutory enactment of a "suitability" provision as is contained in a bill[29] now pending in the Ohio Legislature. This bill disqualifies any individual who has refused an offer of "suitable

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[23] See *supra* note 4.

[24] Mich. App. Bd. Dec., Dkt. B4-2927-1627, C.C.H., U.I. Serv., ¶1965.912 (1945) ($1.45 to $1.20); Ohio Ref. Dec., 730-Ref-41, C.C.H., U.I. Serv., ¶1965.35 (1941) ($32.00 a week to $19.50 a week).

[25] Berthiaume v. Christgau, 218 Minn. 65, 15 N.W. 2d 115 (1944); Ohio Bd. of Rev. Dec., 514-BR-46, C.C.H., U.I. Serv., 1950.23 (1946).

[26] C.C.H., U.I. Serv., Treatise ¶1950 (1947).

[27] OHIO GEN. CODE §1345-6(d) (2) (1946).

[28] ". . . the Ohio statute requires the bureau to consider and determine whether the applicant is so qualified by training and experience for the work offered and refused as to preclude unemployment benefits, rather than his suitability or appropriateness for the work or the suitability of the work for him as measured by his appraisal of it." Chambers v. Owens-Ames-Kimball Co., 146 Ohio St. 559, 563, 67 N.E. 2d 439, 442 (1946).

[29] Amended S.B. 142 (1949).

work"[30] and directs the Administrator, in determining whether any work is suitable, to ". . . consider the degree of risk to the claimant's health, safety, and morals, his physical fitness for the work, his prior training and experience, his prior earnings, the length of his unemployment, the distance of the available work from his residence and his prospects for obtaining local work."[31]

What is suitable work for an individual must, of course, depend on the particular facts, but, too often, it appears, a narrow legalistic attitude destructive of the broad aims of the social security program is adopted in applying the law to these facts. A fair interpretation of the suitability provision, it would seem, should embrace the following principles: 1. Involuntary unemployment is to be given a broad meaning. "The pressure of necessity, of legal duty, or family obligations, or other overpowering circumstances and his capitulation to them transform what is ostensibly voluntary unemployment into involuntary unemployment."[32] 2. Its interpretation is not to be influenced by the effect it may have on an employer's merit rating. As was said in a Connecticut case, "That the purpose of the act is remedial in character is clear. It is therefore to be construed liberally as regards beneficiaries, in order to accomplish its purpose."[33]

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[30] Amended S.B. 142 § 1345–6(d) (2) (1949).

[31] Amended S.B. 142 § 1345–6(f) (1949).

[32] Bliley Electric Co. v. Unemployment Compensation Bd. of Review, 158 Pa. Super. 548, 557, 45 A. 2d 898, 903 (1945).

[33] Waterbury Savings Bank v. Danaher, 128 Conn. 78, 82, 20 A. 2d 455, 458 (1940).