action of employers regardless of the reasonableness or unreasonableness of their conduct. In a Missouri case an employer's refusal to hire a claimant with a contagious disease was said to be required by public policy and the claimant was held to be unavailable for work.[58] However, public policy, unless enacted into law, does not prevent a worker from legally performing work.[59] While employers, for what they think is in their best interests, or for any reason, may refuse to hire any worker, such refusal should not affect the availability of workers whom they refuse to hire, unless such refusal is required by law.

Conclusion.

Statutory requirements of ability to work and availability for work are stated in such general terms that only by interpretation are they given meaning. Whether the protection which workers have in an unemployment compensation law is more than illusory depends on the character of such interpretations. Only if it is understood that an unemployment compensation law is a broad public measure, designed by the payment of benefits to check and ameliorate the effects of unemployment among workers who are able, willing, and ready to work will workers be assured the reasonable protection which the states have provided for them. To paraphrase a statement by Justice Cardozo, an unemployment compensation law *interpreted* in such a way that the unemployed who look to it will be deprived of reasonable protection is one in name and nothing more.[60]

Refusal of Suitable Work

ARTHUR M. MENARD†

The Provision and Its Purpose.

WHEN legislation designed to liberalize benefit payments under state unemployment compensation laws is proposed, the opposition

58. Wolpers v. Unemployment Comp. Comm., 186 S. W. (2d) 440 (Mo. 1945).

59. In this connection, a Georgia appeals referee has aptly said, "There is nothing in the Georgia Unemployment Compensation Law which requires the claimant to be free from either contagious or infectious diseases. It may be that all working people should be free from contagious or infectious diseases before being permitted to work among other people, but the Statute we are here concerned with has no such provision." Ben. Ser. 9214-Ga. A (V8-3).

60. In Steward Machine Co. v. Davis, 301 U. S. 548, 593 (1937), Mr. Justice Cardozo said, "An unemployment law framed in such a way that the unemployed who look to it will be deprived of reasonable protection is one in name and nothing more."

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frequently expresses fear that individuals under the system will prefer idleness and benefits to available work. Yet a provision found in every state unemployment compensation law bars payments to a claimant who without good cause refuses to accept available, suitable work. The provision's universal existence is attributable, in part at least, to a generally held concept that the purpose of an unemployment compensation law is to compensate for a wage loss due to unemployment resulting from a lack of work.[1] Where a claimant without good cause refuses suitable work, his immediate unemployment is not due to the absence of suitable work opportunity.

Although the provision as it exists in the various laws does not differ widely, it is not uniform. The difference of most general consequence is in the result of a refusal. Some laws disqualify a claimant who has refused suitable work for the duration of the ensuing unemployment, [2] others for a stated number of weeks or for a period to be imposed by the agency within a minimum and a maximum set by statute.[3] In addition, some laws require that the maximum amount of benefits payable to the claimant during the benefit year be reduced.[4] Those laws which disqualify a claimant for a stated period, which in many instances will be shorter than the period of ensuing unemployment, were drafted on the theory that, as time intervenes, the efficient cause of unemployment changes from the original refusal to the lack of a suitable job opportunity. Examining the various types of provisions in relation to their broad purpose, it is apparent that there is no direct connection between this purpose and a requirement that the benefits payable during the benefit year be reduced. Such a reduction frequently will have effect in a period of unemployment following a period of employment after disqualification where no proximate causal connection exists between the refusal and the then prevailing unemployment.

The Offer.

Although the Wisconsin court in the *Doughboy Mills* case,[5] in holding that general knowledge of job openings was not a sufficient basis for disqualification, left open the "interesting question" of whether an offer

1. The Rhode Island Cash Sickness Insurance Act, 1942, c. 1200, exemplifies an act where compensation is payable for unemployment due to involuntary causes other than lack of work.

2. See, *e.g.*, 3 CAL. GEN. LAWS (Deering, 1944) Act 8780d, § 56(b), construed in Whitcomb Hotel, Inc. v. California Employment Comm., 24 Cal. (2d) 753, 758, 151 P. (2d) 233, 236 (1944); 43 PA. STAT. ANN. (Purdon, 1941) § 802(a).

3. See, *e.g.*, Maine Laws 1935, c. 192, § 5(c) (published with Laws 1937).

4. See, *e.g.*, Maine Laws 1935, c. 192, § 5(c), as amended by Laws 1939, c. 110.

5. Doughboy Mills, Inc. v. Industrial Comm., Wis. C. C., Dane Cy., Aug. 7, 1944, CCH Unemployment Ins. Serv.—Wis. ¶ 8190.

contained in a "Help-Wanted" advertisement was an "offer" within the statutory meaning, the statute appears to contemplate that the offer be directed to and communicated to the claimant and not be a general offer to all those qualified for the job.[6]

In addition to being particular, the offer should be definite; it should be clear to the claimant that he is being asked to take a job, what the conditions of the job are, and that acceptance or rejection is required.[7] The offer should also concern presently existing employment, not an employment prospect. Accordingly, where employees of a former plant owner were told at the time of a temporary shutdown incident to the sale of the plant that by filing application they might be hired again as new employees on the plant's reopening, their failure to file was held no refusal of an offer of work.[8] If, however, the employer is seeking the claimant as a replacement for a present job-holder, the fact that the job is presently filled does not necessarily vitiate the offer.[9]

Moreover, an offer must be a bona fide attempt to secure the individual's services and not merely for the purpose of bringing about a disqualification.[10] Questions of the bona fides of an offer normally will arise where a former employer has reoffered a claimant his prior job, since employers generally will not desire the services of one who has been a dissatisfied or an unsatisfactory employee. Careful attention should be paid to the genuineness of an offer by an employer to a former employee whom he has discharged or who has quit and who is without special qualification for a job for which there is an adequate labor supply, since an employer who has real need for a worker can generally fill a job requiring no special skill without rehiring such an employee. In this regard the timing and frequency of the offer may also be pertinent. The offer may have been made only after the em-

6. See Ben. Ser. 3224-Neb. R (V3–4). In some states the offer must be made by the employer through the public employment office. Under many laws, however, it may be communicated directly to the claimant.

7. Ben. Ser. 2761-Neb. R (V3–2) (holding that asking a job applicant if he thought he was capable of doing certain work was not an offer of employment). The same requirements apply to a referral. It must be definite and not a mere mention of job openings. Nelson v. Unemployment Comp. Bd. of Rev., Fla. C. C., Dade Cy., 1944, CCH Unemployment Ins. Serv.—Fla. ¶ 8082. Secondly, the claimant at the time of the referral interview should be made aware of the job's character in sufficient detail to be able to form a general though not a precise judgment of its suitability so that he may have grounds for refusing a referral to a patently unsuitable job without being required to seek a more exact description in a company personnel office at a more distant point. *Ibid.*

8. Muncie Foundry Div. of Borg-Warner Corp. v. Review Bd., 114 Ind. App. 475, 51 N. E. (2d) 891 (1943).

9. Ben. Ser. 6567-Ohio R (V4–10).

10. Ben. Ser. 6771-Ill. R (V4–12); *cf.* Ben. Ser. 4953-Mo. A (V3–12). On the other hand, an offer should not be found wanting where the employer wishes the claimant's services merely on the ground that the employer has good reason to believe that the claimant will reject the offer of employment which he is about to make.

ployer has learned that the individual has filed for unemployment compensation benefits, or it may have been made with such frequency that it is questionable if a reasonable employer would continue to offer a job to a former employee who had continually indicated his unwillingness to work for the employer.

It may be that a claimant has found that a job makes him ill. In such a case it seems that the fact of a claimant's refusal, unless there is strong expert evidence to show that his condition has so changed that illness would not result, should be deemed sufficient evidence of its unsuitability. The mere fact that he has regained his health is not, it would seem, a sufficient basis to hold the job suitable; the same conditions which caused the original illness may be present. Furthermore, there is some medical experience to prove that anxiety alone may be a primary cause of many sicknesses.

In other instances, claimants may refuse jobs from which they had previously voluntarily quit or from which they were laid off for lack of work or from which they were discharged because of misconduct. Certainly the mere fact that a claimant has voluntarily quit without good cause or has been discharged for lack of work should not be considered sufficient evidence that the job is suitable on a reoffer; the circumstances may have so changed that the job is no longer suitable. Moreover, where an individual voluntarily quit an employer's service, this fact alone may make any future relationship strained and result in a finding that any job with that employer is unsuitable.

The Refusal.

Although the disqualification is conventionally referred to as that for "refusal of suitable work," the claimant is disqualified

> "if the commissioner finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner." [11]

Furthermore, a claimant must exercise diligence in accepting an offer or in applying for a job to which he is referred; otherwise he is considered as having failed to act or as having refused.[12] Even the

11. That portion of the typical section which includes the so-called "labor standards provision" and the factors to be adverted to in determining suitability will be found at page 139.

Failure to return to self-employment, however, will not be discussed. Disqualifications rarely are imposed by reason of this requirement, for directions to return to self-employment seldom are given.

12. He is not expected, however, to maintain himself in a state of constant and absolute preparedness. Ben. Ser. 5086-Conn. R. (V4-1).

taking of a required action may not be sufficient. True compliance is necessary; disqualification cannot be avoided by action designed to prevent hiring or a referral. Thus one who misrepresents his training and experience to avoid an offer or referral should be disqualified.

On the other hand, the statute makes it clear that when the failure to act is due to good cause the claimant will not be disqualified. Thus, one employed at the time of an offer of work normally may refuse suitable work with impunity and, upon the later loss of existing employment, be held for the purpose of the provision to have had good cause for refusal, since the purpose of the provision is to disqualify one who elects to be or to remain unemployed. Where a termination notice has been given, however, a different result may well obtain. Similarly, disqualification may be imposed where one refuses a transfer to other suitable work with his employer knowing that discharge will result.[13] In these instances the existing employment may not be good cause for refusal, and the individual, although employed, may be said to have elected to be unemployed.[14]

Suitability and the Labor Standards Provision.

Unless the work offered a claimant or to which he is referred is "suitable," a failure to accept the offer or to pursue the referral will not bring about disqualification.[15] Most state laws contain a list of factors to be considered in determining suitability. The typical state law provision reads:

13. It is not clear in all decisions that the employee who was disqualified for refusing a transfer knew the refusal would bring about discharge or knew that his present job was terminated. It would seem that a finding of disqualification would not be justified unless one of these two conditions obtained, for only then can he be said to have elected to be unemployed.

14. Some administrative decisions have held that an offer prior to actual termination of employment is not effective to disqualify a claimant since the provision is construed to require that the person be unemployed in order to be disqualified. That conclusion is based upon those portions of the provision which state that a claimant may be directed to return to customary self-employment and that in determining suitability the length of the claimant's unemployment and prospect of securing local work are to be considered. Ben. Ser. 9075-Mich. A (V8-1).

15. Moreover, as has been previously pointed out, disqualification will not result unless the refusal is "without good cause." The concepts of suitability and "without good cause" are not identical. See page 138 *supra* for an example of a situation where an offered job may be entirely suitable for an individual, but he will have good cause for refusing it. In many situations, however, no sharp line of distinction can be drawn between them; that which makes a job unsuitable will also constitute good cause for refusal. Since this is true of the situations subsequently discussed, the terminology used in decisions will not be strictly adhered to and work, the refusal of which will bring about a disqualification, will be referred to as suitable, or if disqualification will not result, as unsuitable. It should be borne in mind, however, that "good cause" is a broader term than "suitable," and although an individual may have "good cause" for refusing all "unsuitable work," all work that he has "good cause" for refusing is not necessarily unsuitable.

> "In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence."

In addition, all state laws contain provisions corresponding to those in Section 1603(a)(5) of the Internal Revenue Code,[16] commonly referred to as the "labor standards provision." A typical provision reads:

> "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: (a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (b) if the wages, hours, or other conditions of the work offered are 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." [17]

The suitability provision should be considered as specifically directing attention to the enumerated factors, but not as precluding other relevant elements from the determination. Such an interpretation gives full effect to the fact that that which is to be determined is the suitability of the job for the claimant.[18] Some elements generally adverted to by state agencies, the administrative tribunals, and the courts in determining suitability will be discussed below, with stress being laid upon those which, it seems, will be of greatest importance in the postwar period.

1. *Working Conditions, Hours of Work, Safety and Health.* The second clause of the labor standards provision in effect renders a job

16. 49 STAT. 640 (1935), 26 U. S. C. § 1603(a)(5).

17. Section 1603(a)(5) of the Internal Revenue Code begins: "Compensation shall not be denied in such state to any otherwise eligible individual for refusing to accept new work under any of the following conditions: . . . ." The labor standards provision appearing in most state laws differs from the federal provision by providing that "no work" shall be suitable if one of the conditions specified attaches to such work. The large difference between the labor standards provision and the suitability provision is that the former prohibits disqualification and in effect makes a finding of unsuitability mandatory if one of the conditions specified attaches to new work, or in states with the broader clause to any work, whereas the latter enumerates factors to be scrutinized in judging suitability. No relative weight, however, is given to these factors; each must be assigned its own importance in the particular circumstance.

18. The wording of some state laws requires this construction by the addition of a phrase "there shall be considered among other factors." See, *e.g.*, 5 N. D. REV. CODE (1943) § 52-0636.

unsuitable if the wages, hours, or other working conditions are substantially less favorable to the individual than those prevailing for similar work in the locality. State laws do not usually, other than in this provision, specifically refer to working conditions or hours of work, but the suitability provision does require consideration of the effect hours and other working conditions may have on the individual. Thus, the claimant's health may indicate that work out-of-doors is unsuitable, or that a job requiring overtime is too exhausting. In the same manner, the claimant's safety may demand a broader scrutiny of hours or other working conditions than does the labor standards provision since, although these conditions may be better for the individual than conditions prevailing for similar work in the locality, they may not be compatible with the security of one in the claimant's condition.

Consideration of the enumerated factors of risk to the claimant's health and safety and of his physical fitness for the job may be largely interrelated in the case of handicapped individuals. Even in the case of one in good physical condition, the circumstances attendant on the job may be such that considerations of health or safety will preclude its being held suitable. Unless, however, the work is of a special character, such as highly hazardous work [19] or work which generally requires performance under unfavorable conditions, the decision in such a circumstance normally will rest on the second clause of the labor standards provision, for the conditions of work usually will be substantially less favorable to the individual than those prevailing for similar work in the locality.

2. *Wages, Experience, Prior Training, and Loss of Skill.* The second clause of the labor standards provision also enjoins disqualification if wages are substantially less favorable to the individual than those for similar local work. As in the case of hours and working conditions, the suitability provision sets up a different basis of comparison: the individual's "prior earnings." "Prior earnings" should be construed as requiring comparison of the net earnings over the usual pay period of the job offered with the net earnings of the individual's prior employment over the same period. It should not be construed, however, as precluding a finding that a job is unsuitable if it will be necessary for the individual to work substantially longer hours than he had previously worked to acquire the same net earnings. In other words, the true meaning of the wage to the claimant should be considered.

When the suitability of a job which will result in lower earnings is to be determined, other elements detailed in the suitability provision

19. Although highly hazardous work may be found unsuitable for most claimants, where a claimant has pursued such an occupation and acquired such skill in the application of its techniques that the danger is negligible or reduced to a minimum, a job offered him in such occupation generally it seems, would be held suitable unless there is the intervention of some new fact which alters the aspect of its suitability.

must be scrutinized, including length of unemployment and the prospect of other employment. It is not the intent of the system to lower an individual's standard of employment. The nature of the employment market, the duration of unemployment, and prospects of securing employment in the claimant's customary occupation, and thus the obsolescence of his trade, all must be considered as closely interwoven factors in making a judgment of suitability.[20] Where the job is at a lower skill than that which gave rise to the higher earnings, the individual's training and experience and the possible loss of skill will also enter into consideration.[21]

Though the wages for a job are normal for that work in that locality, they may not be sufficient to afford the claimant a living wage. This fact should receive real consideration, for otherwise not only may the purpose of the suitability provision be perverted, but a true social maladjustment may be fostered.[22] This maladjustment can be alleviated by the unemployment compensation system since the claimant will have a greater opportunity to seek better employment while in benefit status than while employed. Such an opportunity should be afforded a claimant if his training and experience give any indication that it may be fruitful.

The war has brought with it a generally higher individual earning level resulting from overtime and from individuals working at higher skills than those at which they were previously employed; as a consequence, the factor of "prior earnings" as well as the factor "training and experience" will become more crucial in determinations of suitability during the reconversion period. Postwar jobs at lesser skills and lesser pay may be offered claimants. It is quite obvious that if an individual had been working at the same skill and rate as before the war and thus his higher earnings have been solely the result of overtime, he cannot be heard to object to a job offer merely because the job does not afford an opportunity for overtime work. In those situations in which the individual's prior earnings have been increased due to his working at a higher skill, however, different factors are present. While there may be a natural tendency to generalize that his skill and increased earning capacity is the result of a wartime phenomenon, and thus that the higher earnings and the experience and training acquired at such jobs are unreliable criteria in judging suitability, such a generalization, of course, is unfounded. Skills and the resulting earning

20. Note the factors bearing on "suitability" in Bowman v. Troy Launderers & Cleaners, Inc., 215 Minn. 226, 9 N. W. (2d) 506 (1943).

21. Where an individual must be downgraded care should be taken to keep him working in the path of his usual skill.

22. Some laws specify that work shall not be suitable unless the weekly wage exceeds the weekly unemployment compensation benefit amount. CONN. GEN. STAT. (Supp. 1939) § 1339e, as amended by GEN. STAT. (Supp. 1941) § 718f(b)(1).

capacity attained during a war are as real as like skills and capacity gained at any other time. Thus, unless employment at such skills is not a reasonable prospect, a judgment that a job at a lower skill or rate is unsuitable would seem to be required.

It is recognized that at the onset of a reconversion period job opportunities will be considerably less than they were in the immediately preceding period. Job openings, however, will be available for some skills, and job opportunities for others will follow as reconversion proceeds. Although the large demands of local industries for some skills will be predictable by employment security agencies, the agencies usually will not be in a position immediately to know with exactitude what, when, or where demands for particular skills will occur in a period when new industries and new techniques may be anticipated. It seems reasonable, therefore, that work at a lesser skill and lower wages should not be deemed suitable unless a claimant has been given a reasonable period in which to compete in the labor market for available jobs at his higher skill or related skills; or, where such skills are not immediately required, that a reasonable duration of benefits be afforded him immediately after the beginning of reconversion until the demands of industry are predictable and it can be said that industry will have no need in the near future for such skill. To do otherwise would be to disregard the purpose of the provision and to force some individuals into work below their highest skills from which point they could not effectively compete for jobs when available.

The necessity of making a large number of determinations uniformly may create a tendency to develop rules of thumb for measuring the duration of the reasonable period. Although such rules are useful expedients in an administrative process, they should not be substituted for sound judgment. Suitability depends in many cases on a bulk of factors. Any device such as a sliding scale which would allow specific periods of benefits before specified wage reductions are required appears too inexact and inflexible unless it is to be used as a most general kind of guide. Even in such a case, extreme care should be taken to supervise its use so that claims examiners will not rely on it rather than on judgment. The statute makes it clear that relevant considerations should be adverted to and that each case should be judged on the basis of its individual facts.

Looking at the major adjustments which some individuals must make in this period, it seems reasonable to predict that in many cases the reasonable period will be of long duration, that frequently it may be for the claimant's entire benefit duration. Where a claimant is confronted with major adjustments, it seems more logical that he be allowed benefits for his entire duration to make these adjustments as best he can than that he be required to obtain subsistence by accepting

a job which will force him into a pattern where these adjustments will be impossible or at least extremely difficult. The fact that there is a durational limit on the number of weeks of benefits that may be paid in a year in itself limits reasonably the period in which an individual may be expected to work out his own problem arising from his unemployment. When considered together with the suitability provision, the limitation strongly indicates that work was intended to be viewed as unsuitable even though the entire duration of benefits must be paid if such individual adjustments could not be made or could be made only at a sacrifice.

3. *Union Relations.* The large-scale employment shifts which will occur after the beginning of reconversion may confront agencies with many cases in which an individual belonging to one bona fide labor organization is offered a job in an establishment having a "closed-shop agreement" with another such group. The requirement that one join other than a company union as a condition of being employed does not come within the terms of the third clause of the labor standards provision, yet agencies confronted with such a circumstance may wish to maintain strict neutrality as between rival unions or may desire to allow individuals in such cases freedom of union affiliation. The following quotation from an Iowa referee's decision [23] sets forth appropriate criteria to accomplish these purposes:

> "A requirement to join a union as a condition of being employed or being continued in employment should be deemed to render the employment unsuitable or constitute good cause for leaving it, if claimant is a member of a rival bona fide labor organization and objects in principle to joining the new organization, or considers his obligation toward his own organization inconsistent with membership in the new organization, or would be required, as a condition of being employed or by the rules of the old or new organization, to give up his membership in the old organization in the event of so joining."

If a claimant is required "as a condition of being employed" to resign from a bona fide labor organization, the third clause of the labor standards provision would enjoin disqualification. Where, on the other hand, expulsion from a labor organization will follow upon an individual's taking a job to be performed under conditions contrary to union rules, the clause would not apply, for, although some decisions have stated that expulsion is tantamount to resignation,[24] expulsion is a result of being employed and is not required "as a condition of being employed." It would appear, however, that a finding should be

23. Ben. Ser. 8073-Iowa R (V6-7).

24. Ben. Ser. 8283-N.C. R (V6-12) (holding claimant had good cause for refusal where expulsion would result).

made that the individual has good cause for refusing such employment. There can be little doubt that loss of status in his union and the attendant consequences will be a substantial harm to him and thus a sufficiently good cause for his refusal. Nor would it appear pertinent to inquire into the reasonableness of the union rule that would bring about the expulsion. The harm to the individual will occur, and, therefore, the good cause will exist whether the union rule is reasonable or unreasonable.

Moreover, where a claimant will be expelled from his union for performing work under certain conditions and where such conditions do not obtain for similar work in the locality, and, therefore, the same result would not follow if he were to accept such similar work, a finding that he is not disqualified may be mandatory under the second clause of the labor standards provision; it may be necessary to find that the "conditions of work" are substantially less favorable to the individual than those prevailing for similar work in the locality.[25]

4. *Moral and Religious Objection.* The usual suitability clause states that risk to a claimant's morals shall be considered in making determinations thereunder. This element is frequently viewed broadly to give effect to one's moral precepts regardless of their consistency with prevailing ethical standards. Such a view is entirely consistent with the democratic principle of freedom of thought and religion. In order to make the work unsuitable, however, the connection between the condition pertaining to the job and the claimant's moral principle should be direct and not fanciful or nebulous. Thus, although it has been frequently and properly held that one who believed the sale and consumption of liquor immoral was not obliged under the pain of disqualification to accept a job in a liquor vending establishment, it would not appear that the same result should obtain where the claimant's objection is merely that an employee working at the same establishment is addicted to drink. No true feeling of participating in wrongdoing would arise from his working under these conditions.

5. *Distance.* The factor of distance is another of those enumerated in the suitability provision. It relates in two ways to the distance of the offered work from the claimant's home: (1) the time and cost of travel to and from work, and (2) whether the work is so far distant that it would be necessary to move from the present home. Where work for miners was nearly 175 miles from their homes, the Colorado Supreme Court held the work unsuitable despite the urging of wartime conditions and the shortage of miners, thus, in effect, refusing to allow the use of the system as a manpower control.[26]

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25. Attention should also be called to problems that arise under clause one of the labor standards provision, such as whether the job is vacant due directly to a labor dispute.

26. Industrial Comm. v. Parra, 111 Colo. 69, 137 P. (2d) 405 (1943).

Several decisions have been handed down within the last few years [27] which hold that if a claimant voluntarily quits a job and puts distance between himself and it, the job on a reoffer must be considered suitable. In the *Alabama Textile Products* case the claimant quit her job in Alabama because she wished to join her husband in New York. On filing an interstate claim in New York, she was disqualified because she refused her old job which had been reoffered her. In the *Feuchtenberger* case, the claimant quit his job in West Virginia, moved from the state, obtained employment and was disqualified when he refused an offer of his old job in West Virginia after the employment he had obtained had terminated because of lack of work. These decisions can have an extensive effect in the postwar reconversion period. War industries have drawn on a countrywide labor supply. Many individuals, their patriotism appealed to by the United States Employment Service and employers, have left their home localities to work in areas where essential industries are located. When the need for producing war materials ceases, there will be those who, though they could have stayed on to assist in reconversion, will have voluntarily quit to go back home. Later, while waiting for work or while unemployed following a period of employment, they may be offered their old job or a similar job in the reconverted plant of their former employer. Such facts point up more clearly the character of the country's labor market and the resulting fundamental weakness of the rule, making it evident that a decision has been reached that brings into the system a parochialism out of concert with its national character.[28]

Freedom of movement within the labor market, whether induced by initiative or personal necessity, must have been contemplated; if evidence of this is needed it is found in the fact that all state laws make provision for allowing the agency to enter into reciprocal agreements to pay interstate claims. It is reasonable to believe that the disqualification for voluntary quitting is the sole manifestation of the manner in which such freedom, so long as one stays within the labor market, is

27. *Ex parte* Alabama Textile Products Corp., 242 Ala. 609, 7 S. (2d) 303 (1942); United States Coal & Coke Co. v. Board of Rev., W. Va. C. C., Kanawha Cy., April 3, 1943 CCH Unemployment Ins. Serv.—W. Va. ¶ 1965.022; Feuchtenberger Bakeries, Inc. v. Board of Rev., W. Va. C. C., Kanawha Cy., April 15, 1943, *ibid.*

28. See Steward Machine Co. v. Davis, 301 U. S. 548 (1937). The following statement by the court in the *United States Coal & Coke* case, cited *supra* note 27, heightens the feeling that the court took into account the effect the decision would have on local interests:

> "I am of the opinion that each of the claimants who voluntarily and without good cause gave up a position which was then, and continued to be, available to him in this State, and who refused to return to West Virginia to accept this available employment, is barred from receiving benefits under our Unemployment Compensation law. In each of these cases the claimant has, without cause, by his voluntary act, placed distance between him and continuously available work in this state."

to be considered incompatible with payment of benefits. But the period of this disqualification had run in these cases, and the courts seem thus by the application of the rule to have extended it. Two considerations appear to have led to this result. In the *United States Coal & Coke* case, the West Virginia circuit judge, after considering the voluntary character of the person's departure from the locality of his former job, said, "As I view it the beneficient objects and purposes of our statute relative to *involuntary* unemployment cannot be extended to cover such claims." [29]

Similarly, in the *Alabama Textile Products* case, the court stated:

> "The Act is specific that the work is not suitable if the board finds that it unduly risks '[her] health, safety, and morals, [and her] physical fitness.' So that if her employment is so affected, she would not be chargeable with voluntary unemployment if she quits it. But if her previous work is available and suitable and she without one of those causes, enumerated above, voluntarily puts distance between her and it, she cannot complain that such distance has rendered that job unsuitable.
>
> ". . . She can voluntarily select her place of residence and change it at will, within or without the State, and would not be required to accept work at a former residence which was not suitable on account of its distance from her present residence, provided she did not leave that job and voluntarily put the distance between her and it, without some cause which is considered good under the Act." [30]

Thus, it seems fair to infer that each court viewed the claimant's unemployment as arising from his act and as to some degree wilful or voluntary. But this was rather a matter of voluntary quitting followed by involuntary unemployment. In addition to implying that this claimant's unemployment was due to his act or fault, the Alabama court, whose decision was cited with approval by the West Virginia court in the *United States Coal & Coke* case, spoke of the payment of benefits penalizing the employer,[31] thus implying that an employer who was not at fault in causing the unemployment should not be charged on his

29. *Ibid.* (emphasis supplied).

30. *Ex parte* Alabama Textile Products Corp., 242 Ala. 609, 616–7, 7 S. (2d) 303, 309–10 (1942).

31. In the *Alabama Textile Products* case, 242 Ala. 609, 618, 7 S. (2d) 303, 310–1, the court stated:

> ". . . . The fact would remain that she failed to accept suitable employment, and though as between her and her husband, there was good cause for doing so, it was not so under the terms of the Act, as between her and her employer, so as to penalize him and his other employees in order to maintain a well-ordered home, not to maintain a status of employment."

(The reference to employees no doubt arises from the fact that contributions are required of employees in Alabama.)