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THE UNEMPLOYMENT COMPENSATION RECIPIENT — SHOULD HE ACCEPT A JOB?

INTRODUCTION

EMPLOYMENT security acts, which exists in nearly every state, are designed to provide income to a worker who through no fault of his own, has lost his job.

The Colorado Employment Security Act,[1] originally enacted in 1935 as the Colorado Unemployment Act, is an example of how this end is accomplished. Under the act employers coming within its purview make contributions,[2] based on their employees' wages, into a state unemployment compensation fund.[3] Payments from this fund are paid by the Unemployment Compensation Commission to applicants who have filed the forms and have otherwise qualified.[4] These unemployment benefits serve the purpose of providing the claimant with income while he searches for new work. The overall program is aimed at returning the claimant to the active work force as soon as possible. To achieve this end, the claimant must comply with certain requirements to remain eligible for the payments. Thus, during his period of unemployment, he must be registered at one of the State Employment Offices maintained throughout the state by the Department of Employment Security,[5] be available for work, and conduct a thorough and active search for new employment.[6]

Another condition takes priority over the above requirements in importance to the worker: he cannot refuse an offer or referral of suitable work. A violation of this condition precipitates the discontinuance of the benefits.[7] The significance of this provision lies not only in the loss of the claimant's sole source of income but also in the vagueness of its terms. By studying factual problems arising under this condition and interpretations placed upon it, this uncertainty will be more apparent. Guidelines may then be suggested which would benefit not only the claimant in determining whether his action will breach the requirement, but also the agency that must determine if the condition has been breached. In light of this fact,

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1 COLO. REV. STAT. § 82-1-1 to -13-6 (Supp. 1965).

2 COLO. REV. STAT. § 82-6-1 (1963).

3 COLO. REV. STAT. § 82-7-1 (1963).

4 COLO. REV. STAT. § 82-1-2 (1963); COLO. REV. STAT. § 82-4-7 (Supp. 1965).

5 COLO. REV. STAT. § 82-4-7(2) (1963); see also Reg. 7A of the Regulations of the Colorado Department of Employment Security.

6 COLO. REV. STAT. § 82-4-7(4), (8) (Supp. 1965).

7 COLO. REV. STAT. § 82-4-8(6)(c)(i) (Supp. 1965).

this note will be devoted to discussing both opinions and problems which have emerged from this requirement.

I. OFFER OF WORK

In order for a claimant to disqualify himself from receiving benefits for failure to accept suitable work, he obviously must have first received an offer of work. Although the existence of an offer will usually be an easy factual question to resolve, certain situations may arise which cause some difficulty. Does general knowledge of job openings in a worker's occupational field constitute an offer if he feels he could qualify for the work? Is a help-wanted advertisement in a magazine or newspaper an offer of work in the statutory sense? Situations like these lack elements which usually attend an "offer of work" in common parlance.[8] Normally an offer is for a particular job and is directed at and communicated to the claimant personally. Furthermore the existence of an offer requires that the "offeror" anticipated an acceptance or rejection. Applying this test to the situations involving advertisements or general knowledge of job opportunities, it would seem that they should not be considered an offer of work. However, if the worker who possesses a unique skill in an occupational field which can be used by few employers, refuses to investigate a job offer in an advertisement made by one of those employers, he may, by the very nature of the work and limited number of potential employers have had an offer of work within the meaning of the statute. Courts have had occasion to apply the above standards. Thus, a call from a claimant's employment service asking whether he is interested in sales work, to which the claimant answers in the negative, cannot be considered as an offer.[9] It lacks the specificity which inheres in an offer. Likewise, a statement by an employer to his former employees that they might be given jobs if they would file applications was not sufficiently definite to be an offer. Hence, the employees' failure to fill out applications was not a refusal to accept suitable work.[10]

II. REJECTION OF WORK

Few problems arise with respect to whether an offer has been rejected. It would seem possible for a claimant to reject an offer

[8] Although advertisements and "want ads" in a magazine may not constitute an offer under the suitable work provision, it should be recognized that a claimant's failure to inquire about such offers may disqualify him from receiving further benefits on the ground that he is not actively seeking work under COLO. REV. STAT. § 82-4-7(8) (Supp. 1965).

[9] Jackson v. Review Bd. of Indiana Employment Security, 124 Ind. App. 648, 120 N.E.2d 413 (1954).

[10] Muncie Foundry Div. of Borg-Warner Corp. v. Review Bd. of Indiana Employment Security Division, 114 Ind. App. 475, 51 N.E.2d 891 (1943).

not only by express refusal but also by his conduct. Once a claimant has received what is considered a valid offer, he should be required to exercise a certain degree of diligence in accepting the offer. Thus, a claimant who receives an offer of work and accepts it two weeks later only to find the job filled, might properly be denied further unemployment benefits because he has "refused" work. This result would seem even more valid if the offer is for seasonal work and the position must be filled immediately.

The problem has arisen as to whether or not an offer has to be made before there can be a refusal. Despite the conceptual difficulty in the issue, it was presented to the court in *Loew's Inc. v. California Employment Stablization Comm'n.*[11] In that case nine motion picture studios had agreed with a casting corporation that the latter was to hire extras for the former. Extras were paid $10.50 per day when appearing in scenes using less than thirty persons and $5.50 per day when more than thirty persons were required. Separate telephones were used for hiring in each group, and extras were to call both numbers each day to apply for work. The claimants had both telephone numbers but called only the $10.50 number. They filed for benefits for the period of time during which no $10.50 work was available. However, during the same time period extras were needed for the lower salary work. The court held that their failure to call the second number when work was available was a refusal even though there had been no specific offer of such work.

III. Suitability of Employment

Whether particular employment is "suitable" is one of the more perplexing questions presented by the statutory provision disqualifying a claimant who refuses that employment. To determine whether offered employment is suitable most state legislatures have supplied their administrative agencies with specific guidelines by which to determine the suitability of employment for its claimants. In Colorado, for example, it is provided that:

> In determining whether or not any work is suitable for an individual, 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 work in his customary occupation, and the distance of the available local work from his residence, shall be considered. Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:
> (ii) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

[11] 76 Cal. App. 2d 231, 172 P.2d 938 (1946).

(iii) 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.
(iv) 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.[12]

Despite these enumerated guidelines, many situations have been presented which require resolution by court and agency decisions.

A. *Health, Safety and Morals*

This standard is an attempt to make the job fit the claimant rather than forcing the claimant to work at a job which would seriously affect his health, safety or morals; no individual should be required to accept employment which would be physically detrimental to his well-being . Thus, a woman lacking satisfactory transportation, who would not accept nightshift work in an undesirable neighborhood, was not disqualified from receiving further benefits. Her action was not a refusal of suitable employment.[13] An elderly woman suffering from neuritis refused a job offer which would have required her to work twelve consecutive hours on two of five working days. She was held by the referee not to have refused suitable employment because the job would have adversely affected her health.[14] In another case, the claimant was justified in refusing a spray paint job on the ground that he was allergic to paint.[15]

Generally, courts have taken a liberal view in determining whether employment will impair the health or safety of an individual.

However, whether or not emotional and mental health is encompassed by the health and safety exception to disqualification seems uncertain. In one case the referee seemed to suggest that emotional and mental health problems, as well as physical hazards, will be a sufficient basis for refusal. In that case, the claimant refused to return to a job in a department where she had been slurred or insulted and tripped or hit while going downstairs. Because the claimant had two previous experiences in the department which

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12 COLO. REV. STAT. § 82-4-8(6)(c)(i)-(iv) (Supp. 1965).

13 Referee's Decision-847 (Colo. 1955) [hereinafter cited as RD]. The author has taken Colorado administrative decisions from the Commerce Clearing House Unemployment Insurance Reporter, Vol. IB. The citation system consists of two letters designating the appellate body which heard the case. Thus, RD means "Referee's Decision." The digits following the letters are the number of the case; all cases decided during any given year are numbered in consecutive order. The abbreviation, "Colo." has been inserted to remind the reader that Colorado law is being cited. The cases reported in the Unemployment Insurance Reporter are extracts rather than entire opinions. Many agency decisions cited by various writers are taken from the Unemployment Compensation Interpretation Service: Benefit Series. Since this service is not available to the author, no reference will be made to it.

14 RD-6382 (Colo. 1953).

15 Sledzianowski v. Unemployment Compensation Bd. of Review, 168 Pa. Super. 37, 76 A.2d 666 (1950).

were so upsetting as to interfere with her work and give her a nervous condition, the referee held that she should not be precluded from receiving benefits due to her refusal.[16]

Other cases have been more explicit in saying emotional or mental problems fall within the health exception. The Pennsylvania Superior Court held that a victim of St. Vitus' dance was justified in refusing a piece work job because it would make him too nervous,[17] and an Iowa court held that a person with tendencies toward nervousness was not required to accept a night job with mental patients.[18]

Despite the fact that the courts and agencies have been fairly liberal toward the claimant where his physical and mental well-being are concerned, the burden is on the claimant to prove that a potential job will adversely affect his health or safety. Evidence to accomplish this is usually prior experience or medical records. But the problem is treated differently where a claimant refuses a job without adequate proof of harm reasonably anticipated from a prospective job. In *Wolfgram v. Employment Security Agency,*[19] benefits were denied where the claimant refused to accept a job in a mine because work several years previously at a lower level of the mine had caused heat rash. In rendering its opinion the court said, "Where a claimant refuses an offered job because of a fear that such job would be detrimental to his health, without further investigation, or inquiry, he is deemed ineligible for benefits unless he first gives the offered job a fair trial."[20]

This manner of treating cases differently on the basis of whether prior experience or medical reports exist seems justified. Without such a qualification, the claimant might easily resort to a defense of refusing a job on some fictitious physical or mental condition which he could claim would be aggravated by his acceptance. However, this is not to say that if a claimant has no medical records or prior experience, his refusal should automatically be considered a violation of the suitable work provision. In such cases the reasons for refusing on a health basis should always be considered carefully.

One frequently litigated question is whether a claimant's religion should be taken into consideration in determining whether he has refused suitable employment. The situation arises where claimant

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16 RD-2268 (Colo. 1949).

17 Dep't. of Labor and Industry v. Unemployment Compensation Bd. of Review, 159 Pa. Super. 571, 49 A.2d 259 (1946).

18 Forrest Park Sanitarium v. Miller, 233 Iowa 1325, 11 N.W.2d 583 (1943).

19 77 Idaho 298, 291 P.2d 279 (1955).

20 *Id.* at 300, 291 P.2d at 281 (1955); see also Broadway v. Bolar, 33 Ala. App. 57, 29 So. 2d 687 (1947) (claimant failed to investigate job); Claim of DiStefano, 277 App. Div. 823, 97 N.Y.S.2d 75 (1950) (failure to try out job).

refuses to accept a job because it will require him to work on a day which interferes with his religious beliefs. In 1963, the United States Supreme Court decided this question on constitutional grounds.[21] In holding that the South Carolina Employment Commission violated claimant's First Amendment rights under the Constitution by disallowing her claim, the Court said:

> The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.[22]

The majority of state high courts which have been confronted with that issue have held that refusal of work for religious reasons does not disqualify claimant from receiving benefits. In *In the Matter of Miller*,[23] the claimant was a member of the Seventh Day Adventist Church, which teaches that the sabbath is from sundown Friday until sundown Saturday during which time no work is to be performed. The North Carolina Supreme Court decided that work on Friday night was not suitable for her, and she should not be precluded from receiving benefits. Cases involving similar fact situations have reached the same result in both Michigan [24] and Ohio.[25]

In these religion cases, it must be determined that claimant's religious objection is made in good faith. Obviously, *ad hoc* adoption of religious beliefs should not justify refusing employment. It would seem that religious convictions previously professed might properly be considered to determine the propriety of the refusal. However, once it is determined that claimant has honest religious beliefs which would interfere with his acceptance of a proferred job, the belief must be respected.

B. *Prior Training and Experience*

This statutory provision requires that for a job to be suitable, it must be reasonably related to the qualifications of the applicant. The basic theory is that the claimant should not be required to accept a job which involves far less or a different type skill than he possesses.[26] The real problem involved here is how much less skill

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[21] Sherbert v. Verner, 374 U.S. 398 (1963).

[22] *Id.* at 404.

[23] 243 N.C. 509, 91 S.E.2d 241 (1956).

[24] Swenson v. Michigan Employment Security Comm'n, 340 Mich. 430, 65 N.W.2d 709 (1954).

[25] Tary v. Bd. of Review, Bureau of Unemployment Compensation, 161 Ohio St. 251, 119 N.E.2d 56 (1954).

[26] Frequently, this factor is intimately related to the problems of lower wages, the length of unemployment and general prospects of the claimant's securing his customary work, and it will be discussed in context with these factors in Section (D) *infra*.

does a job require before a claimant will be allowed to reject the offer in that a claimant may properly be required to accept a job involving a level of skill which is inferior to that already attained by him. In a Colorado agency decision, the claimant held a doctorate in physics and had been last employed as a research assistant in the missile industry. She refused employment as a door-to-door salesman. The referee held that she had not refused suitable employment in light of her high educational background and lack of experience in the offered work.[27]

Court decisions support similar results. In *Pacific Mills v. Director of Division of Employment Security,*[28] the claimant had gone to business college and been trained for office work. She worked as a secretary for Pacific Mills until she was laid off. Later, she refused work in the shipping department; the work constituted stapling tags to pieces of cloth and recording yardage on an adding machine. Despite the fact that the wages for the two jobs were about equal, claimant was held not to have refused suitable work. In a Minnesota case, the court determined that the claimant did not refuse suitable employment where he had been trained as a steam cleaner in a dry cleaning department and then refused a job consisting of light garage work, stockwork and truckdriving.[29]

Several cases have held that the claimant is reasonably suited for a different job even though the levels of skill involved in the present and former employments are not the same. In *Beecham v. Falstaff Brewing Corp.,*[30] a night watchman who refused a job as a janitor was held to have refused suitable work. The same result occured where a stenographer refused a job as a clerk and typist,[31] a manager of a dress shop would not accept a job as a saleslady in a department store,[32] or a photographic helper would not work as a stock clerk at substantially higher wages.[33]

The latter case raises the question of whether a claimant should be required to accept a job which, although it pays substantially more, involves far less skill than his former employment. An example might be a commercial artist who earned $4,000 a year being offered a job as an inventory clerk at $6,000 a year. It is suggested that the claimant should not be required to accept such a job unless jobs in his

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27 RD-24892 (Colo. 1964).

28 322 Mass. 345, 77 N.E.2d 413 (1948).

29 Bowman v. Troy Launderers and Cleaners, 215 Minn. 226, 9 N.W.2d 506 (1943).

30 150 Neb. 792, 36 N.W.2d 233 (1949).

31 Boyle v. Corsi, 277 App. Div. 1155, 100 N.Y.S.2d 834 (1950).

32 Grubman v. Unemployment Compensation Bd. of Review, 175 Pa. Super. 488, 107 A.2d 186 (1954).

33 Friedman v. Unemployment Compensation Bd. of Review, 201 Pa. Super. 641, 193 A.2d 676 (1963).

former occupational field are extremely scarce. The mere fact that claimant refuses such a job offer will normally indicate that he himself places a premium on his own experience and ability and considers utilization of his skill more important than higher financial reward. Aside from maintaining the personal pride of the individual himself, it is submitted that maximum utilization of a worker's skills and experience is a desirable end within the framework of the entire economic system. However, it should be remembered that one of the act's primary purposes is to return the worker to the active labor force and too great an emphasis on maximum use of a worker's skills may have the effect of thwarting this aim.

C. *Prior Earnings and Wages in Similar Employments*

The Employment Security Act is designed to preserve as much as possible the present economic status and standard of living of the individual. This goal is indicated by the legislative requirements that the claimant's former wages and wages for similar work in the locality be considered by the agency charged with determining whether the unemployed worker has refused suitable work.[34] Both the prevailing wage rate and the claimant's prior earnings should be considered at the same time, and if the newly offered job falls sufficiently short of either standard, the claimant should not be denied benefits.

In *Industrial Commission v. Brady*,[35] the claimant was a union painter and had earned $2.39 per hour on his previous job with time-and-a-half for overtime work. He refused to interview for a non-union job which would have paid $2.00 per hour without overtime provision. The referee found that the prevailing wage rate in the locality was $2.39 per hour with time-and-a-half for overtime. In holding that the claimant had not refused suitable employment because the wage offered was substantially less favorable than the prevailing wage in the locality for that type work, the court said:

> Assuming other conditions to be equal, it is apparent that where the wage differential amounts to $15.60 per forty-hour week, or $624.00 per year on a forty-week year, such employment . . . was substantially less favorable to the individual than that prevailing for similar work in the locality.[36]

The problem surrounding wage differences and their effect upon the suitability provision will, in many cases, be no more than

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[34] As is the case with respect to jobs requiring less skill or training than claimant possesses, the length of time during which claimant has been unemployed may be an important factor in considering whether offered remuneration is sufficient. This interrelationship will be discussed in Section (D) *infra*. It should also be appreciated that the problem of adequate wages is most often encountered in those jobs requiring less skill and training since a lower skilled occupation will usually involve less salary.

[35] 128 Colo. 490, 263 P.2d 578 (1953).

[36] *Id.* at 494-95, 263 P.2d at 580.

a calculated value judgment by the court or agency deciding the question. Thus, refusals of employment were held not justified where the difference in salary between former employment and offered employment was eleven cents per hour,[37] where a claimant who had been employed as a research chemist earning $750 per month refused a job as a chemical engineer at $500 per month,[38] and where a claimant who had been employed as a general office worker at $100 per week refused a job as assistant bookkeeper at sixty dollars per week.[39] Conversely, a former seamstress earning $1.10 per hour was justified in refusing a job as a waitress at 62½ cents per hour,[40] and a former packer earning $1.44 per hour could rightfully reject an offer to work as a sales clerk at 60 cents per hour.[41]

Little can be drawn from the above cases other than the fact that a wide range of discretion exists in the agencies and courts when determining whether an offered wage is sufficient. Despite the range of discretion, certain factors might easily be neglected. A situation may arise where a claimant is offered a job for which he will receive compensation commensurate with local standards and prior earnings, yet he may be required to work substantially longer hours to receive the salary. In order to properly compare the wages for each job, both should be converted into a dollar per hour figure. Once this figure has been determined for the two jobs, the wage difference is readily ascertainable. What is most important is the meaning of the wage to the claimant and not merely the salary figure standing by itself.

Another problem may arise where the wage offered conforms to local standards yet it is still not substantial enough to provide the claimant with a living wage. Because of this possibility, it would seem necessary for the agency to look at the claimant's domestic circumstances in deciding the problem. There may be instances where the offered wage would be sufficient to support a claimant with a wife and one child yet at the same time be totally inadequate for a claimant with a large family. By analogy to a case previously discussed, the chemist who is single might properly be required to accept the offer of work as a chemical engineer at $250 less per month than his former job paid. However, if this claimant has ten children and a wife to support, he should probably not be held to have refused suitable work under the same circumstances. To require

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[37] Claim of Mednick, 270 App. Div. 124, 58 N.Y.S2d 493 (1945).

[38] Lorenzi v. Unemployment Compensation Bd. of Review, 197 Pa. Super. 573, 180 A.2d 84 (1962).

[39] Valentine v. Unemployment Compensation Bd. of Review, 197 Pa. Super. 574, 180 A.2d 85 (1962).

[40] Palmer v. State Bureau of Unemployment Compensation, 19 Ohio Op. 2d 362, 177 N.E.2d 806 (1961).

[41] Merck & Co. v. Unemployment Compensation Bd. of Review, 184 Pa. Super. 138, 132 A.2d 727 (1957).

the latter to accept the job would not only defeat one of the aims of the act but also restrict the claimant's mobility to search for a new job which would provide compensation sufficient to sustain himself and his family.

A question may arise as to what extent fringe benefits should be considered in determining wage suitability. A claimant may be offered a job which falls below the local wage standard yet fringe benefits incident to the employment may have a value sufficient to offset this difference. The mere fact that the fringe benefit has a face value sufficient to compensate for a wage difference should not be considered as controlling. It may not have such a high value to the claimant himself. For example, the claimant may have no interest in a pension plan financed primarily by employer contributions. In some cases the value of such a benefit may be needed by him to support his family adequately. The agency should attempt to ascertain the value of the fringe benefit to the claimant in light of his circumstances and determine its offsetting effect on lower wages in this manner.

D. *Length of Unemployment and Prospect of Securing Work in Customary Occupation*

Where an offered job involves less skill and lower wages, the courts consider the claimant's length of unemployment and the prospects of his finding similar work in determining whether the job is suitable. Thus, a job may be unsuitable when first offered yet be declared suitable if offered again after a period of unemployment. In *Bayly Mfg. Co. v. Department of Employment*,[42] the Colorado Supreme Court gave some indication as to when a claimant would be required to accept a job at substantially lower pay than what he had previously earned. Claimants had worked in a clothing factory earning between $1.40 and $2.00 per hour. This operation was transferred to another locality and claimants later refused to accept work making overalls in which they could earn only about $1.00 per hour. The court, in remanding to the district court for further findings of fact, said:

> It is clear that the beneficient purposes of the Act do not contain a guaranty that a job offer must be for wages equal to that of the old job in order to be deemed as "suitable" work, but work at a substantially lower wage should not be deemed "suitable" unless a claimant has been given a reasonable period to compete in the labor market for available jobs for which he has the skill at a rate of pay commensurate with his prior earnings. Where the offer is for work at a wage materially lower than the wage previously earned, the claimant may be justified in refusing the offer while seeking

[42] 155 Colo. 433, 395 P.2d 216 (1964).

> employment at a rate of pay commensurate with prior earning capacity, but this right is not without qualification and the claimant is entitled only to a reasonable opportunity to obtain work for which he is fitted by experience and training at a wage rate comparable to that for which he previously worked. . . . Work which may be deemed "unsuitable" at the inception of the claimant's unemployment, and for a reasonable time thereafter, because it pays less than his prior earning capacity, may thereafter become "suitable" work when consideration is given to the length of unemployment and the prospects for obtaining customary work at his prior earning capacity.[43]

In a New Hampshire case, claimant's previous job was that of a skilled mender earning $1.04 per hour. After a ten-week period of unemployment, an unskilled job paying sixty cents per hour, which claimant had justifiably refused earlier, was held to be suitable work.[44]

Despite the fact that claimant is allowed a "reasonable" period of time before he will be required to accept work at substantially less wages or skill, the problem of determining what is "reasonable" still exists. Periods of five[45] and of nineteen[46] days have been held insufficient time to discover new work. One solution to the problem might be to set up a sliding scale requiring claimant to accept ten dollars less pay per week after a month of unemployment, twenty dollars less after two months, etc. However, a system such as this would seem to be too inflexible to be workable. For example, the prospect of claimant's obtaining work in his customary occupation should be taken into account, and it would be difficult to devise a uniform scale which could reflect this factor. If claimant X has been unemployed for three months, yet it appears that he has a good chance of receiving work in his customary occupation, he should not be required to take a job in a different occupation involving less skill or lower wages. However, it might be entirely proper to require claimant Y to accept such a job, even though he has been unemployed as long as X, if Y's chances of securing a job commensurate with his skill appear slim.

It is difficult to rationalize the idea that what was once unsuitable work to the claimant is now suitable by the mere fact that a certain amount of time has passed. Rather than accepting a suitable job under these circumstances, the theory seems to be that claimant should accept what is available and quit later when he is able to

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[43] *Id.* at 441-42, 395 P.2d at 220.

[44] Hallahan v. Riley, 94 N.H. 48, 45 A.2d 886 (1946).

[45] American Bridge Co. v. Unemployment Compensation Bd. of Review, 159 Pa. Super. 77, 46 A.2d 512 (1946).

[46] American Bridge Co. v. Unemployment Compensation Bd. of Review, 159 Pa. Super. 74, 46 A.2d 510 (1946).

[47] Comment, 13 CLEV.-MAR. L. REV. 523, 525 (1964).

find better employment.[47] On its face, this seems like a good idea, but one of its effects will be to severely limit and restrict the claimant in his search for a job commensurate with his ability. It is common knowledge that most employment interviews are helding during working hours, and the claimant, who will in most instances be working during these hours, will not have the time in which to make an adequate and thorough search. The result may often be that the claimant finds himself tied down to a job which is in reality unsuitable without much chance to acquire more favorable employment or at least compete with those who are able to interview and make applications during the day.

Length of unemployment considerations should only arise where wage and skill differentials are involved. If a claimant has refused work for religious, health, or safety reasons, the length of unemployment should not have any impact on his refusal. Those reasons are just as valid in the first as in the tenth week of unemployment.

E. *Distance*

The claimant should not be required to accept a job which is too distant from his home. The practical effect of this guideline is to tell the worker how much commuting he must do, and an unreasonable distance between the claimant's residence and the offered employment renders it unsuitable.[48] As is the case with most of the other guidelines set forth by the legislature, determining what amounts to an unreasonable distance is largely a discretionary matter on the part of the agency.

In one agency decision the claimant was a resident of Denver and refused a job offer in California. The referee held that he had not refused suitable employment in that any job offer which requires a claimant to re-establish his residence outside the state is unsuitable.[49] In a Colorado Supreme Court decision, two coal miners refused to accept work in a mine located about 175 miles from their homes. In reversing the agency, the court held they had not refused suitable employment. The agency had relied on the fact that coal mining was essential to the war effort.[50]

In determining whether the distance is great enough to make the job unsuitable, transportation facilities should be considered carefully. A job thirty-five miles away from claimant's house may not be too far if claimant owns a car or if a good carrier system runs between the two points. However, a job only five miles away should probably be deemed unsuitable if claimant has no transportation of

[48] As a matter of policy, the agency does not require the claimant to relocate for a job.
[49] RD-26001 (Colo. 1965).
[50] Industrial Comm'n v. Lazar, 111 Colo. 69, 137 P.2d 405 (1943).

his own and other means of transportation are not available. Agencies seem to consider the availability of a public transportation system in determining if the distance renders a job unsuitable. In one case a claimant, who was the mother of five children, refused an offer to cook at a hospital sixteen miles away because she had no means of transportation at her disposal. She was deemed not to have refused suitable employment.[51] A claimant in another case refused a job twelve miles away because she had no available transportation. The referee, in holding that she remained eligible for benefits, said that it was not required of a claimant to have her own transportation where no common carrier transportation existed.[52]

F. *Other Circumstances*

In addition to the statutory guidelines, other factors should be considered by the agency in determining whether employment is suitable. One example consists of personal circumstances of the claimant, and although not mentioned in the statute, they should be carefully scrutinized by the agency before making a final determination. In one case, it was held that a woman had not refused suitable employment because the job required that she work at night which would interfere with her domestic commitments.[53] Also, where a claimant failed to apply for an offer of suitable work because of plans, on advice of a doctor, to move her husband to another state she was held to have refused work with good cause.[54]

CONCLUSION

Unemployed workers frequently are confronted with the dilemma of determining whether or not their refusal of an offered job will result in termination of their unemployment benefit checks. This dilemma is caused by the uncertainty and vagueness inherent in the statutory provisions providing for the forfeiture. Although the statutes usually have guidelines designed to assist the agency in ascertaining the applicability of the provision, the standards themselves are overly broad and, altogether too often, completely nonexistent. Thus, a claimant who has a job offer paying twenty cents less per hour than his former employment and who desires to know the effect of his refusal of the new job will only learn from the statutes that the agency will consider the wage difference in determining if the worker is disqualified for future benefits. Another claimant, who has an especially large family, will search in vain for

[51] RD-2038 (Colo. 1948).
[52] RD-1665 (Colo. 1948).
[53] RD-1421 (Colo. 1947).
[54] RD-8842 (Colo. 1955).

any indication that family size will be considered at all, let alone what importance it will have in the agency decision.

The two hypotheticals above raise separate problems. On the one hand is the situation in which the agency is expressly instructed to take cognizance of specific facts (wage difference), on the other hand is the case in which the agency may or may not consider certain facts (family size) at its discretion. The latter problem warrants further legislative attention. Factors such as the size of the claimant's family, personal domestic commitments, the standard of living the new job will afford the worker, and the religious beliefs of the claimant are not mandatorily reviewed by the agency. Hence it is possible that the agency may overlook them or even apply the disqualification provision in a situation where these factors would justify the job refusal. For these reasons it is suggested that employment security statutes should specify these items in the guidelines to the agencies. Although statutory guidelines may be criticized as being too broad, nonetheless, the claimant is assured that important facts peculiar to him must be studied before forfeiture occurs.

It must be remembered that inclusion of the foregoing factors in the statute would not completely solve the claimant's problem. He would know what facts the agency must consider to determine disqualification, but he would not know exactly when his refusal would be justifiable. The statutory guidelines are general, and rightly so, to provide flexibility in analyzing different fact situations. However, many cases may arise in which the claimant must know the effect of his refusal within a short period of time. For example, the employer may offer the claimant a job requesting that he either accept or reject the offer by a specified time. The statutory guidelines will rarely be adequate to inform him of the effect of a refusal. At the same time, it does the claimant little good to first refuse the job and later be told that his refusal terminates his benefit payments.

Since the legislature cannot anticipate the multifarious situations which will arise under the act and hence cannot be more specific in its guidelines to the agency, an alternative procedure to these guidelines may be desirable. The agency could make available to the claimant forms which request the pertinent information concerning the new job and also the claimant's personal circumstances which the claimant believes might justify his refusal of the job. The agency could then issue what would in essence be an advisory opinion on the effect of such refusal. The opinion should be binding upon the agency unless the claimant has filed false or incomplete information or otherwise defrauded the agency. The purpose of such a procedure should be to inform the claimant of the probable effect

of a refusal as soon as possible to avoid the claimant's loss of both the unemployment benefits and a job.

In last analysis the application of the disqualification provision in unemployment security statutes must rest in the agency. The flexibility present in the current guidelines, supplemented by additional criteria, would assure the worker that his situation would receive fullest consideration. The proposed procedure would assist the worker in deciding whether or not to accept a job before the loss of his unemployment benefits. The end result would be beneficial to the worker in resolving his initial dilemma and would further the purpose of unemployment security acts not only by returning the worker to the active work force as soon as possible but also by placing him in the most suitable job.

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