## SECTION IV - VOLUNTARILY LEAVING EMPLOYMENT

# VOLUNTARY QUIT

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

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

*Definition*

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

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

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

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

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

### *Burden of Proof*

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

VOLUNTARY QUIT

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

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

Facts:

1. On November 29, 1955, a large number of the employees of Aero ceased work and left the plant in protest over the failure of the UAW union and Aero to negotiate a labor contract.

2. At the time Aero made it known that those employees desiring to continue work could do so.

3. A considerable number of employees who ceased work and went on strike made claim for unemployment benefits.

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

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

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

CROSS-REF: LABOR DISPUTE.

VOLUNTARY QUIT

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

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

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

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

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

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

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

CROSS-REF: LABOR DISPUTE

VOLUNTARY QUIT

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

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

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

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

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

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

CROSS-REF: CHANGE IN CONDITION

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

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

Facts:

1. Glen served as a Manager I with the OESC. She had worked there approximately sixteen years and had served as assistant manager. Her responsibilities included supervision of other employees including Ronald Radford.

2. Glen and Radford both applied for the open position of Manager III. Glen had received high evaluations on job performance and had a master's degree plus thirty hours toward an advanced degree; Radford's inadequate job performance had been discussed with him by Glen, as his supervisor, and Radford had only two years of college.

3. Despite these differences in qualifications, Radford was hired as Manager III. Glen was placed in the position of being supervised by a person she had previously supervised. Further, she learned that Radford's previous position would not be filled so her work load would be substantially greater.

4. Subsequently, Glen experienced severe health problems, diagnosed by her treating physician and psychiatrist as "severe reactive depression ", directly related to not being promoted at her place of employment when qualified to do the work. Both doctors advised her to quit her job.

5. Glen attempted to return to work, but she found the job conditions untenable and tendered her resignation.

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

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

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

CROSS-REF: ILLNESS OR INJURY

VOLUNTARY QUIT

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

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

Facts:

1. Claimant resigned due to allergies caused by the lint and dyes at the workplace.

2. Claimant's doctor affirmed her allergies developed while working for employer. The doctor also stated her condition was due to the work environment; the doctor advised claimant to seek other employment.

3. Claimant requested she be "laid off" and employer denied this request.

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

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

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

CROSS-REF: ILLNESS OR INJURY

VOLUNTARY QUIT

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

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

Facts:

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

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

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

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

VOLUNTARY QUIT

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

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

Facts:

1. Claimant retired under voluntary incentive program to downsize federal workforce.

2. Claimant accepted severance bonus. Claimant had no reason to believe she would be terminated if and/or when the employer was forced to have a reduction in force.

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

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

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

VOLUNTARY QUIT

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

History:

1. The District Court, Adair County, directed the board of Review to conduct proceedings to determine whether one of the witnesses for employer had told the truth concerning the reasons given by claimant for quitting.

2. In the course of the remand proceedings, the board considered, among others, further testimony from the witness and a written statement which claimant testified the witness had signed in her presence.

3. This statement was in affidavit form, but was not executed by a notary or other authorized to administer oaths.

4. Both the witness' testimony and "affidavit" disclosed the witness had been told by the claimant she intended to quit if not paid commissions.

5. The witness explained she omitted this from her earlier testimony, because the employer told her "not to expand" on her answers.

6. The District Court affirmed the Board of Review's award, after first granting, and then vacating, claimant's post-award dismissal of the District Court proceeding.

Issue:

1. Was the "affidavit" sufficient to support either the remand or the reversal of the denial.

2. After claimant's dismissal did the District Court have jurisdiction to do anything but affirm the initial denial.

3. Claimant did not prove she was entitled to any commissions when she quit; was such omission fatal to her, failure to pay commissions, "good cause" argument.

Holding:

1. When presented with the "Affidavit", The District Court properly remanded the case to the Board of Review to consider "additional evidence". Note: The Court of Appeals stated, "…in determining the evidentiary weight or value to be accorded the affidavit, the Board of Review was not bound by common law or statutory rules of evidence or by technical rules of procedure. 40 O.S. 1991, Section 2-607. Given the testimony of claimant that she saw the witness sign the "affidavit", it was admissible at the very least to impeach any testimony of the witness that was inconsistent with its contents, in view of the opportunity the witness had to explain her knowledge of it, and to deny its contents and execution. See, 12 O.S. 1991, Section 2613.

2. Judicial review of a decision of the Board of Review is a "special proceeding", not a civil action. *Edmondson v. Siegfried ins. Agency, inc., 577 P2d 72 (Okla. 1978).* General provisions of civil procedure do not apply to the special proceeding for District Court review of decisions by the Board of Review. *District court for the Seventeenth Judicial District v. Bd. of Rev., 849 P2d 1102, 1103 (Okla. Ct. App. 1993).* Accordingly, claimant's mistaken unilateral attempt to terminate the District Court review pursuant to Section 684 did not deprive the Court of the continuing jurisdiction contemplated by Section 2-610(1) and (3) for further review of the decision and proceedings on remand upon their filing with the Court. Subsection (3) clearly provides that the review process is not completed until the Court's issuance of a mandate.

3. While failure to timely pay compensation due an employee is indeed "good cause" for an employee to quit and remain eligible for unemployment compensation, so are other material breaches of a compensation agreement, such as the failure of the employer to timely account to the employee concerning the status of variable earnings like commissions based on net operating income. It was undisputed that employer, under the written terms and conditions of employment, had not paid or settled commissions for a two month period at the time claimant quit. Whether employer offered a credible justification for the breach was a factual issue to be resolved by the Board of Review.

4. The Court held that the Board of Review resolved the factual issue in favor of claimant and their conclusion was supported by the evidence. The employer's breach of the compensation agreement in this regard was "good cause" for claimant to quit her employment and remain eligible for unemployment compensation under 40 O.S. 1991, Section 2-404.

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

VOLUNTARY QUIT

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

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

Facts:

1. Claimant worked for employer approximately three months.

2. She was hired on a temporary basis to replace an employee who was going on maternity leave.

3. It was understood at the time of hire the claimant would be allowed to prepare resumes and to interview for other jobs during the work day. It was further understood the claimant's job would end when the employee on maternity leave returned to work.

4. Said employee returned to work; the employer had no further work available for claimant.

5. The claimant was hired only as a temporary fill-in for a regular employee on leave, and her intention was to seek work elsewhere.

Issues:

1. Whether the OESC has standing to appeal from a decision of the District Court sitting in review of a decision by the Board of Review;

2. Whether a secretary hired to fill in during the three month pregnancy leave of another secretary is entitled to unemployment benefits when the regular secretary returns to work as scheduled.

Holding:

1. Under the provisions of 40 O.S. 1991, Sections 2-610 and 2-611, the Commission had standing to bring the appeal in the case.

2. The District Court found that the findings of fact of the Board of Review were not supported by the evidence. The district judge found that the evidence clearly showed that the employee intended to voluntarily separate and terminate her service. The District Court found that the decision of the Board of Review was erroneous as a matter of law in the application of 40 O.S. Section 2-404 and the misapplication of 40 O.S. Section 2-406. The Supreme Court agreed.

VOLUNTARY QUIT

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

History: Petitioner filed suit in United States District Court for Western District of Texas, which entered judgment for the Respondent. Petitioner appealed to Fifth Circuit Court of Appeals, which reversed the decision of the District Court. The Respondent sought a writ of certiorari with the United States Supreme Court, which reversed and found in favor of the Respondent.

Facts: Local zoning authorities denied the Catholic Archbishop a building permit to enlarge a church under an ordinance governing historic preservation. The archbishop filed suit challenging the ordinance under the Religious Freedom Restoration Act of 1993 (RFRA). The United States District Court found that Congress had exceeded the scope of its enforcement power under Sec. 5 of the 14th Amendment in enacting the RFRA. The Court of Appeals reversed finding the RFRA to be constitutional. The Supreme Court held that the RFRA was unconstitutional and exceeded Congress' Section 5 enforcement powers.

Issues: Does legislation, which deters or remedies a constitutional fall within the sweep of Congress' enforcement power under the 14th Amendment even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into the legislative spheres of autonomy previously reserved to the states?

Holding: The RFRA exceeds Congress' power under section 5 of the 14th Amendment to enforce provisions of the 14th Amendment; it contradicts the principles necessary to maintain the separation of powers and federal-state balance, addresses laws of general application that place incidental burdens on religion that are not based on animus or hostility and do not indicate any widespread pattern of religious discrimination, and is not designed to identify and counteract state laws likely to be unconstitutional; RFRA is also out of proportion to supposed remedial or preventative object, displaces laws and prohibits official actions in almost every level of government, and constitutes a considerable congressional intrusion into states' traditional prerogatives and general authority to regulate.