LABOR DISPUTE

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

> *Section 2-410. Participation in labor disputes.*
> *(1) An individual shall be disqualified to receive benefits for any week with respect to which the Commission finds that his unemployment is due to a stoppage of work which exists at the factory, establishment or other premises at which he is or was last employed, because of a labor dispute.*
> *(2) This section shall not apply if it is shown that: (a) He is not participating in or directly interested in the labor dispute which caused the stoppage of work; (b) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute; or (c) The employer has locked out his employees.*
> *(3) Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment or other premises.*

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

Law Summary

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

Case Law

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

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

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

Result: Benefits denied.

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

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

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

Result: Benefits denied.

Case Applications

90 AT 5664 BR

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

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

Result: Benefits denied.

89 AT 00286

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

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

Result: Benefits denied.

88 AT 11581 LD

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

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

Result: Benefits allowed.

LABOR DISPUTE

80 AT 3194

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

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

Result: Benefits denied.

See Also Disagreement with Employer/ Rules or Regulations

LACK OF WORK

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

LACK OF WORK

Business Closed Because of Buyout

Case Applications

83 BR 514

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

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

Result: Benefits allowed.

LACK OF WORK

Layoff While on Leave of Absence

Case Applications

97 AT 00861 BR

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

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

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

Result: Benefits allowed.

84 BRD 2756

Facts: Claimant was given an indefinite leave of absence to care for her seriously ill mother. Four months later the claimant's sister became available to care for their mother. Claimant notified her employer that she could return to work. The company told her work was slow and to check back the following month. She was placed on layoff status without returning to work and applied for benefits.

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

Result: Benefits allowed.

83 BRD 10627

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

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

Result: Benefits allowed.

LACK OF WORK

1407 BR 77

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

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

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

Result: Benefits allowed.

LACK OF WORK

Medical Problem After Layoff

Case Applications

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

LACK OF WORK

Moving After Layoff

Case Applications

83 BR 1893

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

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

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

Result: Benefits allowed.

LACK OF WORK

Temporary Layoff

Case Applications

81 BR 1239

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

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

Result: Benefits denied.

LACK OF WORK

Temporary Worker

Case Applications

00 AT 04280 BR

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

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

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

Result: Benefits allowed.

LACK OF WORK

96 AT 7020 BR

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

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

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

Result: Benefits allowed.

96 AT 3481 BR

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

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

Result: Benefits allowed.

LACK OF WORK

96 AT 04849 BR

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

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

Result: Benefits denied.

90 AT 07420

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

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

Result: Benefits allowed.

LEAVING IN ANTICIPATION OF DISCHARGE

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

Cross-reference: Constructive Discharge

LEAVING IN ANTICIPATION OF DISCHARGE

Case Applications

90 AT 1992 BR

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

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

Result: Benefits denied.

86 AT 11870 BR

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

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

Result: Benefits denied.

LEAVING IN ANTICIPATION OF DISCHARGE

81 AT 8355; 82 BR 772

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

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

Result: Benefits allowed.

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

PERSONAL OR DOMESTIC REASONS

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

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

PERSONAL OR DOMESTIC REASONS

Care of Children

Case Applications

90 AT 7692 BR

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

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

Result: Benefits denied.

Desire for Promotion or Higher Wages

Case Applications

83 BR 463

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

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

Result: Benefits denied.

Dislike of Work

Case Applications

97 AT 01685 BR

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

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

Result: Benefits denied.

95 AT 4275 R BR

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

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

Result: Benefits denied.

90 AT 5640 BR

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

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

Result: Benefits denied.

PERSONAL/DOMESTIC REASONS

Illness or Death of Relative

Case Applications

90 AT 7432 BR

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

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

Result: Benefits denied.

PERSONAL/DOMESTIC REASONS

Moving Residence

Case Applications

90 AT 5182 BR

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

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

Result: Benefits denied.

89 AT 9290 BR

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

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

Result: Benefits denied.

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PERSONAL/DOMESTIC REASONS

Spouse Relocated

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

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

Case Applications

02-AT-9794-BR

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

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

Result: Benefits allowed.

00 AT 4474

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

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

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

98 AT 7073 BR

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

Held: Good cause.

Result: Benefits allowed.

PERSONAL/DOMESTIC REASONS

Transportation

Case Applications

95 AT 2545 BR

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

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

Result: Benefits denied.

90 AT 2209 BR

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

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

Result: Benefits denied.

82 AT 2439; 82 BR 731

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

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

Result: Benefits denied.

PERSONAL/DOMESTIC REASONS

Vacation

Case Applications

82 AT 0144; 82 BR 251

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

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

Result: Benefits denied.

PERSONAL/DOMESTIC REASONS

Wanting Part-time Work Only

Case Applications

00-AT 2391 BR

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

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

Result: Benefits denied.

OPPOSITION TO POLYGRAPH TESTING

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

POLYGRAPH TESTING, OPPOSITION TO

Case Applications

81 AT 8229

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

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

Result: Benefits allowed.

PREGNANCY

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

PREGNANCY

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

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

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

Case Applications

90 AT 7223 BR
Facts: Claimant filed for benefits indicating she left her work as a housekeeper on maternity leave.

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

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

Result: Benefits denied.

90 AT 1115 BR
Facts: Claimant was granted six weeks maternity leave to begin upon the birth of her baby. The baby was born July 13th and claimant secured a medical release to return to work on August 29th. The employer testified that claimant told him in late August that she would be unable to return to work. Claimant stated she asked for an extension of her leave of absence until September 4th, but the employer refused. Claimant worked part-time for the employer from August 17th to October 17th to train employees and her replacement.

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

Result: Benefits denied.

RELIGIOUS BELIEFS

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

RELIGIOUS BELIEFS

Case Law

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

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

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

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

RELIGIOUS BELIEFS

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

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

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

Case Applications

90 AT 770 BR

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

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

Result: Benefits allowed
81 BR 357

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

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

Result: Benefits denied.

RESIGNATION

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

Cross-Reference: Leaving in Anticipation of Discharge.

Early Acceptance by Employer

Case Applications

00 AT 4474

See Quit to Relocate with Spouse

87 AT 5487 BR

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

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

Result: Benefits denied.

Desire for Higher Wages

Case Application

75 AT 4491; 590 BR 75

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

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

Result: Benefits denied.

Case Law

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

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

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

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

Case Applications

94 AT 11836 UCFE BR

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

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

Result: Benefits denied.

RESIGNATION

87 AT 3322 BR

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

Held: Good cause is found for leaving.

Result: Benefits allowed.

84 BR 1895

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

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

Result: Benefits allowed.

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

Case Applications

97 AT 5692 BR

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

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

Result: Benefits allowed

90 AT 5311 BR

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

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

Result: Benefits denied.

Case Applications

95 AT 6571 BR

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

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

Result: Benefits denied.

83 AT 3517; 83 BR 924

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

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

Result: Benefits denied.

RESIGNATION

Withdrawn

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

RETIREMENT

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

Case Law

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

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

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

Result: Benefits denied.

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

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

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

Result: Benefits denied.

Case Applications

95 AT 4132 BR

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

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

Result: Benefits denied.