

## SECTION IV - VOLUNTARILY LEAVING EMPLOYMENT

- IV-20      **Abandonment of Position**  
-1-3              Case Law and Commission Cases
- IV-30      **Change in Terms or Conditions of Work**  
(A)-1              Change in Company Policy  
(B)-1-2            Change in Work Assignment/Duties  
(C)-1-3            Demotion &/or Pay Reduction  
(D)-1-2            Employer Failed to Keep Promise  
(E)-1              Excessive Overtime  
(F)-1-3            Reduction/Change in Hours Worked  
(G)-1              Relocation of Employment  
(H)-1              Temporary Change in Work Assignment  
(I) -1              Transfer to Different Shift
- IV-40      **Constructive Quit**  
-1                  Case Law and Commission Cases
- IV-50      **Leaving Because of Disciplinary Action**  
-1-3              Case Law and Commission Cases
- IV-60      **Opposition to Drug Testing Policies**  
-1                  Case Law and Commission Cases
- IV-70      **Husband and Wife Teams**  
-1                  Case Law and Commission Cases
- IV-80      **Illness or Injury**  
(A)-1              Aggravation to Pre-existing Condition  
(B)-1-2            Inability to Perform Duties  
(C)-1              Medical Leave  
(D)-1              Non Work-Related Accident or Illness  
(E)-1              Required to Permanently Leave Work  
(F)-1-2            Stress Related to Job  
(G)-1              Work-Related Accident/Illness
- IV-90      **Incarceration**  
-1                  Case Law and Commission Cases

## **ABANDONMENT OF POSITION**

If an employee voluntarily leaves his position and does not return or does not return within a reasonable time, then he is considered to have abandoned the position. In order to qualify for unemployment benefits, the employee must establish good cause for abandoning the job. This is based on the premise that an employer cannot be expected to hold a position open for an indefinite period of time without a prior arranged agreement between the employer and employee or without any contact from the employee. To be required to do so would place an undue burden upon the employer and presumably upon the other employees who would have to do the work of the absent employee.

See also: Discharge for Excessive Absence.

## ABANDONMENT OF POSITION

### *Case Law*

*Marks v. Action Staff, Inc. et al., No. 68-649 (Okla. Ct. of App. 6-12-88)*

**Facts:** Claimant was hired by a temporary agency and assigned to a fertilizer plant. He performed poorly and the plant decided to release him. That day, however, claimant was injured on the job. He received worker's compensation for three months. When he was released to work he did not return for another assignment. He applied for unemployment insurance.

**Held:** Claimant should have known that the temporary agency was his employer. He received his checks from them and had worked for them previously. He voluntarily abandoned his employment with the agency without good cause.

**Result:** Benefits denied.

### *Case Applications*

*97 AT 06164 BR*

**Fact** Claimant was employed from October 1, 1996, to February 1, 1997. Claimant thought that the ownership of the company had changed but the district manager said it did not. Claimant was assigned a new district manager on December 27, 1996. Claimant was scheduled to report to Cushing, OK, on January 11, 1997 for training, but she called and said that she was ill. Claimant did not contact the employer from January 14, 1996 to January 18, 1996, and was only present at the workplace for twenty minutes on January 17, 1997. Claimant and the District Manager each allege they tried to contact the other, but were not successful. On February 1, 1997, the District manager concluded claimant was not returning and sent a message firing the claimant.

**Held:** Claimant did not report in or call regarding her absence. Claimant voluntarily abandoned her employment without good cause.

**Result:** Benefits denied.

## ABANDONMENT OF POSITION

### *91 AT 966 BR*

Facts: Claimant worked for the employer for eight months, then quit because he could make more money baling hay. When claimant was required to work out of town for this employer, he received no help from the employer with expenses.

Held Claimant quit for personal reasons, but not for good cause connected with the work.

Result: Benefits denied.

### *90 AT 6954 BR*

Facts: Claimant called the employer to advise that he would be absent for two to three days due to illness. He did not report until two weeks later. He had a release from the doctor, but was told that he was considered a voluntary termination because of being absent for three days without calling.

Held: It is unreasonable to expect an employer to hold a position open for two weeks with no contact from the employee. Claimant disregarded his duties to his employer.

Result: Benefits denied.

### *90 AT 5273 BR*

Facts: The employer cross-trained all workers. Claimant was asked to sandblast, which he had never done. Although there were personnel to train him, claimant refused to learn. The supervisor reported the claimant was told to leave the property but be back at 8 a.m. Claimant did not report. Claimant said he assumed he was fired when he was told to leave.

Held: Claimant's refusal to train amounted to insubordination, but his failure to show the following day is a voluntary quit without good cause.

Result: Benefits denied.

## ABANDONMENT OF POSITION

*88 AT 12314 BR*

Facts: Claimant was a correctional officer. He had not been a tower guard for three years and did not regularly come into close contact with inmates. A riot broke out and the claimant was told to enter the inmate dorm. Claimant stated he felt as if he was having a heart attack. He left the facility. Three days later he was examined and was fine. The warden contacted the claimant and advised that he would probably be fired. A few days later he voluntarily resigned.

Held: A corrections officer cannot abandon his job and be compensated for it. The working conditions were unsafe, but he knew that.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

When an employer hires an employee and the employee accepts employment from the employer, a contract has been made between the parties. Even if not expressly stated in written form, the terms agreed upon by the parties or assumed by the parties based upon the statements made at the time of hire become the terms of the contract and are binding unless altered by an agreement between the parties. As with written contracts an agreement to alter the original employment contract or "contract of hire" cannot be considered valid if made under coercion or duress, express or implied. Therefore, any substantial and material change in the contract of hire imposed by the employer which adversely affects the employee's health, safety, or morals, workload, wages and hours or other working conditions may be considered good cause for the employee to quit the employment. It shall be considered whether the changes are unconscionable or substantial or material. If duties are added that are contrary to the employee's morals, for example, the change would be unconscionable. If the employee's wages are reduced, but not substantially, then there is not good cause for the employee to quit. If the reduction in wage is across the board and applies to all employees then the standard to determine whether a pay cut is substantial has been determined to be whether it is more than 15%. (See *R & R Engineering Co.*) A pay cut for an individual may be good cause if less than 15% based upon the reasonable person standard. The reasonable person standard can be applied to determine whether a change violates health, safety, moral, or other working conditions.

Cross-reference: Wages; Union Relations

Note: Black's Law Dictionary defines reasonable as being "fair, proper, just, moderate, suitable under the circumstances." Reasonable care is defined as "that degree of care which a person of ordinary prudence would exercise in the same or similar circumstances."

## CHANGE IN TERMS/CONDITIONS OF WORK

### *Change in Company Policy*

#### *Case Applications*

##### *90 AT 6912 BR*

Facts: Claimant smoked. The employer was aware of this and allowed the claimant to smoke on the premises. In December the employer announced a new no smoking policy which would begin the first of the year. The claimant tried to convince the employer to have an indoor smoking area. Claimant resigned. The Commission denied benefits. The Appeal Tribunal reversed and allowed benefits.

Held: There is no evidence that claimant tried to comply with the new policy. Reversed.

Result: Benefits denied.

##### *90 AT 6867 BR*

Facts: Claimant worked for the employer for four years. The job was stressful and the workload was not evenly distributed. There were frequent changes in policy. Claimant's doctor advised that she quit but she could not. Claimant finally quit because she was no longer allowed to smoke.

Held: There is no medical evidence of stress-related problems except a doctor's appointment on one day. The non-smoking policy would not have had a serious impact on claimant's work results or abilities.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Change in Work Assignments/Duties*

#### *Case Applications*

##### *00 AT 2790 R BR*

Facts: Claimant was a machine operator. She quit when she was told she would be transferred to another machine on which she would make \$2 - \$3 less per hour. Claimant had filled in on the other machines but had been paid her weekly average on her regular machine. On the new machine she would be paid on an allowance basis. Claimant would be paid on the number of bundles per day. This machine paid 60 cents to \$1 a bundle. For six bundles (the daily average) claimant would earn \$4.80 per hour. With the temporary allowance supplement, claimant would receive \$5.74 per hour. Claimant quit.

Held: There was a substantial decrease in wages. Claimant had good cause to quit.

Result: Benefits allowed.

##### *00 AT 2498 BR*

Facts: Claimant was hired as a dispatcher/driver at a regular salary. His primary duties were as dispatcher. Claimant was told by the employer that the dispatcher job was being terminated and he was transferred to driving. Claimant had to call in for dispatch. He never did. When contacted, the claimant stated he could not drive due to an injury.

Held: There was a drastic change in claimant's employment, hours and salary. Claimant would not be on salary, but would be paid by the load. He would work over forty hours per week. Good cause found.

Result: Benefits allowed.

##### *96 AT 4077 BR*

Facts: Claimant worked as a trash truck driver for two and a half years. He resigned when another employee was given the job as driver. Claimant was told he had to ride in the back of the truck and pick up trash.

Held: There was a substantial change in claimant's contract of hire. The Board of Review reversed the decision of the Appeal Tribunal and found good cause.

Result: Benefits allowed.



## CHANGE IN TERMS OF CONDITIONS OF WORK

### *90 AT 2830 R*

Facts: On the day that claimant quit, he experienced car trouble on the way home for lunch. Since he lived in the country, he had no way to call his employer for several hours while he repaired his car. As he arrived home his phone was ringing. It was his employer who directed him to return to work. When he returned he was advised that he could no longer be trusted and that his pay would be cut. He was also moved to a different job. Claimant quit.

Held: Claimant was presented with changes in his salary and work duties as a disciplinary action. These changes made his job untenable. Good cause was established.

Result: Benefits allowed.

### *87 AT 1224 BR*

Facts: Claimant was hired as an inside salesman and worked in that position for three and a half years. He was transferred to the warehouse for one year and then to a position as a truck driver. He had never worked as a truck driver and felt that he did not have the proper training to safely accomplish his duties so he quit.

Held: There was a material change in the original hiring agreement. The duties of a salesman and a truck driver are not similar.

Result: Benefits allowed.

### *83 AT 217*

Facts: Claimant was employed as a receptionist and loan servicing clerk. When her job was eliminated, the employer offered her a position as a teller with only a slight modification of working hours. Claimant quit.

Held: There was not good cause to quit as the claimant's job was only slightly different.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Demotion &/or Pay Reduction*

#### *Case Law*

*RAC Foods, Inc. dba Jr. Food Mart v. Bd of Rev. et al, No. C-89-100 (D.Ct. Latimer Co.)*

Facts: Claimant worked twice for this employer, the first time for two years. Then she was off for six months. She then worked two more years. She quit because the employer informed her that her hours were being reduced as were her wages from \$4.25 per hour to \$3.85 per hour. She was demoted to a previous position. Claimant was told that the demotion was due to an inventory control problem. Claimant was given no other reason. When claimant received her paycheck, her hours and salary were cut. The employer says the demotion was for rumors of embezzlement from some other organization.

Held: The demotion was based on refuted hearsay. The wages were reduced by 9%, but her hours were reduced by 20%. Good cause was found.

Result: Benefits allowed. Note: This affirmed the decision in 89 AT 5902 BR.

*See also: R & R Engineering; Steward v. Blue Bell, 80 BR 1717 (The standard for pay cut was 16% cut in pay.); Jones v. St. Francis Hosp., 350-BR 76 (This involved a 15% cut in pay; also stated that employers have a right to downgrade in a time of need).*

#### *Case Applications*

*00 AT 1821 BR*

Facts: Claimant notified the employer of medical problems her brother and husband were having which required her to be off work. She was unable to tell her employer how long she would need to be gone. The claimant was gone one week, but was then ready to return to work. She was demoted from assistant manager trainee to cashier. She tried to contact the store manager who would not speak to her. The employer gave no reason for the demotion, nor did he give any reason as to why her request for a meeting was denied.

Held: Claimant showed good cause for quitting.

Result: Benefits allowed.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *99AT 5985 BR*

Facts: Claimant was a telephone salesperson. The project she was working on ended. She interviewed for two other projects and was chosen for one project making one dollar less per hour. Claimant refused because of the salary reduction and because the scheduling could not accommodate a two day part-time job.

Held: Claimant was faced with a permanent cut of 6% and a temporary cut of 15%. Good cause has been shown for quitting. The Appeal Tribunal reversed the Commission and the Board of Review affirmed.

Result: Benefits allowed.

### *96 AT 7710 BR*

Facts: Claimant was hired part-time as needed. The terms of her contract changed so she was earning substantially less than she earned on her regular contract. Claimant was not happy with the contract but continued to work, thereby accepting the new contract. She did not resign until four months later. Claimant resigned because she was going through a divorce and needed the extra income.

Held: Claimant resigned for personal reasons. There was no change in the contract that affected her health, safety, morals, hours, wages, or working conditions. The Appeal Tribunal was reversed by the Board of Review.

Result: Benefits denied.

### *96 AT 6863 BR*

Facts: Claimant was employed as a materials manager and was a supervisor. As a result of allegations made by a company employee, and outside investigator was hired. Drug and alcohol use was uncovered, as well as time falsification and property theft occurring over a period of time. The claimant supervised two of the employees that were fired because of the investigation. The employer felt that claimant failed in his supervisory duties and took his duties away. Claimant was to be demoted to planner. Claimant's salary was not affected. Claimant felt humiliated and resigned.

Held: There was not good cause for quitting. Claimant quit for personal reasons.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

*95 AT 7695 BR*

Facts: Claimant resigned when his supervisor decided to transfer him from customer service manager to a position as produce clerk because of complaints the store received concerning customer service and excessive refunds during claimant's shift. His pay was reduced from \$330.00 per week to \$5.00 per hour. The reduction in salary was over 15%.

Held: Claimant had good cause for quitting. The Board of Review reversed the decision of the Appeal Tribunal.

Result: Benefits allowed.

See also: *00 AT 2790 R BR*, Change in Terms/Conditions of Work; *95 AT 9685 BR*, Reduction/Change in Hours Worked; *82 at 9295*; *83BR 202*, Wages: Changes in Per Diem Allowance

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Employer Failed to Keep Promise*

#### *Case Applications*

##### *89 AT 9512 BR*

Facts: Claimant was under the impression that when he moved from a temporary to full-time he would be eligible for full-time benefits. The employer said that he thought claimant was remaining in the position only until he found something better. When claimant learned that he was not in full-time status he resigned. The employer claimed that claimant was being considered for a full-time position when he quit.

Held: The Commission and Appeal Tribunal denied benefits. The Board of Review reversed and allowed finding that when claimant's position changed to full-time, he was entitled to benefits he never received. There was a change in the claimant's hiring contract.

Result: Benefits allowed.

##### *86 AT 13456 BR*

Facts: Claimant accepted a position with a bank and was told she would be trained for the position. She was given customers to help and did not know what to do, so she talked to the person that hired her. After two weeks she resigned. The Commission denied benefits.

Held: The employer promised to train claimant. This did not happen. When claimant could not provide services to a customer and sent the customer away, the employer became angry. She talked to the employer on several occasions but was ignored. Claimant left her employment for good cause.

Result: Benefits allowed.

## CHANGE IN TERMS OR CONDITIONS OF WORK

*1260 BR 77*

Facts: Claimant was employed as a broker and later promoted to sales manager. The business came under new ownership and the new employer asked the claimant to stay on as broker because no position was available as sales manager. Claimant was promised that he would be promoted as soon as possible. After several months, claimant was told to raise production or he would be fired. Claimant then heard that someone else had been promoted to sales manager. Claimant resigned.

Held: Claimant's testimony was unrefuted by the employer. The fact that someone else was promoted to the position claimant was promised is a change in claimant's hiring agreement. Claimant had good cause to resign.

Result: Benefits allowed

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Excessive Overtime*

#### *Case Applications*

#### *80 BR 666*

**Facts:** Claimant was a truck driver hired to work forty hours per week with some overtime, but nothing excessive. During the six weeks he worked he put in eighteen hours a day. In a two week period he worked 186 hours. Claimant asked his supervisor to cut his hours reminding him of what was said when he was hired. The employer refused to cut his hours. Claimant quit after giving two weeks notice.

**Held:** The amount of overtime was excessive and created a danger to the motoring public. Claimant left with good cause.

**Result:** Benefits allowed.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Reduction/Change in Hours Worked*

#### *Case Applications*

##### *01-AT-0775 BR*

Facts: Claimant worked from 11 a.m. to 7 p.m., five days per week. On August 30, 2000, the employer changed claimant's schedule to 7 p.m. to 7 a.m., three days on and three days off. The schedule did not show adequate staffing per state law. Claimant was told the change was for a two-week trial period. Claimant quit.

Held: The Appeal Tribunal found that the employer used twelve-hour shifts only from September 1, 2000, to September 10, 2000. The employer supplemented staffing with temporary or substitute workers. Claimant did not show why she could not work the scheduled hours on a temporary basis, but she assumed the change was permanent. The Appeal Tribunal held that the claimant did not take steps to protect her job by discussing it with the employer, and that the temporary change in hours for business purposes did not render the job untenable. Good cause was not found. The Board of Review reversed holding that the claimant was given no choice. Whether temporary or permanent, the schedule change was a major change in the terms of employment. Good cause found.

Result: Benefits allowed.

##### *00 AT 3057 BR*

Facts: Claimant worked for the employer for three months part-time (15 hours/week). She voluntarily left when she was told she would be required to work the scheduled hours whether day or night. Claimant was hired to work between 5 p.m. and 8 a.m. weekdays and any hours on the weekend so she could have her days free to seek full-time employment. Every time she was scheduled for the day, she told the manager again. The last week she was scheduled on a day that she had interviews. She called the manager and told him. He let her off. The next work day, she was harassed for taking off. She had a meeting with her supervisor the next day and was told that she would have to work the scheduled hours or be not employed. Claimant did not return.

Held: Good cause.

Result: Benefits allowed.



## CHANGE IN TERMS OR CONDITIONS OF WORK

### *96 AT 8963 BR*

Facts: Claimant worked part time for the employer at the same time he was working a full-time job elsewhere. He left the full-time job and began working full-time for the part-time employer. He only worked three days, then resigned because he was required to work sixteen-hour days. Claimant received a salary and commission. Claimant's supervisor told him that it would get better.

Held: Claimant had worked for this employer for one and a half years. He knew of the need for long hours. No good cause shown.

Result: Benefits denied.

### *96 AT 3355 BR*

Facts: The employer had a flextime policy. Claimant was working 8:30 to 5:30 so she could tend to her grandchildren. The employer changed the policy and was requiring the claimant to report to work at 8:00 a.m. Claimant would have had to have her grandchildren be at home alone to wait at the school bus stop in the cold. Claimant quit.

Held: The change in the hours was a material change in claimant's employment contract. Good cause shown.

Result: Benefits allowed.

### *96 AT 1914 BR*

Facts: The claimant signed a contract that did not state the number of hours she would work. In the past the claimant was allowed two weeks vacation, worked 35 hours per week and allowed to take off days when class was not in session. The new superintendent changed his hours to forty, plus no more days off. The claimant was allowed to keep his two weeks vacation as well as the retirement pay claimant was receiving. However, instead of the retirement money going to the fund, the money was added to her salary so that she could put it in a fund herself.

Held: Not good cause.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

*95 AT 9685 BR*

Facts: Claimant worked as a custodian eight hours per day and as a bus driver for one and a half hours per day five days a week. Claimant received seven and a half hours of overtime per week. Because of a cut in funding, the administration recommended that claimant not be allowed overtime hours. Claimant would then work six hours as a custodian and two hours as a bus driver. Claimant believed this reduced his pay 18%. Claimant's summer hours of eight hours per day would not change.

Held: Claimant's cut in pay was only 12.66% at most. He quit without good cause.

Result: Benefits denied.

See also: 97 AT 5692 BR, Resignation to seek/accept other work.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Relocation of Employment*

#### *Case Applications*

##### *84 BR 8447*

Facts: Claimant was laid off due to a lack of work. He received benefits. All base period employers were notified of the charging of benefits wages after the second benefit check was paid. The employer protested stating that the employee was eligible for rehire. Work was available, but the commute was 80 to 90 miles. Claimant refused the rehire.

Held: Distance is good cause for refusing employment.

Result: Benefits allowed.

##### *84 BR 1661*

Facts: As a disciplinary action claimant was demoted and transferred from Oklahoma City to Muskogee. She was required to pay her own moving expense. She advised the employer she could not financially afford the move and did not report to work.

Held: An employee is not required to relocate to another area to maintain employment. Good cause.

Result: Benefits allowed.

##### *84 BR 1552*

Facts: The claimant worked as a janitor in a state office building. She was informed that her position was being abolished and she was offered a job in another state building in the same city. Claimant declined.

Held: Claimant did not have good cause to refuse the position since the wages, hours and other conditions were the same as the previous job. Not good cause.

Result: Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Temporary Change in Work Assignment*

#### *Case Applications*

*587 BR 76*

**Facts:** Claimant worked as a hand presser, but later moved to sewing machine operator. She was unable to keep up on a particular sewing contract so she was moved back to pressing. She was to return to sewing machine operator after the contract was finished. Claimant quit because she thought she would be permanently assigned to presser.

**Held:** The employees were to work as assigned. The job was a reasonable temporary assignment. Claimant did not establish a material change in the hiring agreement. No good cause.

**Result:** Benefits denied.

## CHANGE IN TERMS OR CONDITIONS OF WORK

### *Transfer to Different Shift*

#### *Case Applications*

##### *97 AT 00774 BR*

Facts: Claimant worked for the employer for three years. She quit when the employer decided to require her to transfer from 7 a.m. to 1 p.m. to a 1 p.m. to 7 p.m. shift. The employer testified that claimant told her she could work the night shift if necessary. Claimant stated that changing shifts messed up her blood sugar.

Held: Claimant presented no evidence that her doctor said she could not work the evening shift.

Not good cause.

Result: Benefits denied.

##### *95 AT 7825 BR*

Facts: Claimant worked as an office manager trainee from 7 a.m. to 3 p.m. She was given a leave of absence for nearly two months to recover from the loss of her mother. At the time she took the leave she knew she could not return to the same position. During her leave, the employer called claimant to see if she was going to return and to offer her a new position. One position was the night assistant manager from 3 p.m. to 10 p.m. and paid \$6.00 per hour. The other position was as a front-end manager, receiving clerk, and stock clerk at \$5.50 per hour. Claimant turned down the jobs and resigned. Claimant had signed an agreement that her hours were to remain flexible.

Held: Claimant was offered a position at the same salary but a different shift. She had signed an agreement to be flexible. Not good cause.

Result: Benefits denied.

## **CONSTRUCTIVE QUIT**

When an employee solicits termination from his employer it is considered to be a constructive quit, because the employee is the moving force behind the separation. The issue of whether good cause exists still has to be considered to determine eligibility for benefits.

## CONSTRUCTIVE QUIT

### *Case Applications*

#### *90 AT 7685 BR*

Facts: Claimant was instructed to complete daily time sheets. He completed them weekly. The employer received two time sheets for the same week and when claimant was questioned, he could not explain how it happened. Claimant was told if it happened again, he would be fired. Claimant told the employer to go ahead and fire him. Claimant was dismissed.

Held: When an employee solicits termination and challenges the employer to discharge him, the conduct is a constructive quit, which equals disqualification.

Result: Benefits denied.

#### *80 BR 1289*

Facts: Claimant was being counseled by his foreman in regards to unsafe work practices. Claimant asked to be fired and the employer did so.

Held: Claimant forced his own termination.

Result: Benefits denied.

## **LEAVING BECAUSE OF DISCIPLINARY ACTION**

It is not generally considered good cause if an employee leaves to avoid receiving a reprimand or warning, nor if he leaves because of it. An employer has the right to reasonably reprimand, discipline or counsel employees. The Board of Review has established that the discipline should reasonably reflect the severity of the offense. The employee may feel that the discipline was unjustified, but unless the employee can show that the reason for leaving was due to other causes and not just the fact that he was disciplined, then good cause will not be established.

Cross-reference: See also Discharge for Misconduct: Refusal to sign reprimand.



## DISCIPLINARY ACTION, LEAVING BECAUSE OF

### *Case Applications*

#### *00 AT 3656 BR*

Facts: Claimant had worked for the employer for 33 years as a bookkeeper/accountant. Due to Federal regulations, claimant was sent to training meetings. Claimant was asked to help do the budget. Claimant told the boss she did not know how. He told her to fill out a budget worksheet and when she was ready to print, he would help her. Claimant never contacted the boss. Over Christmas he took it home to complete. After the holidays, he told claimant that he had done it. The boss told claimant to take a class paid for by the employer and held during work hours or evenings to learn how to do a budget. Claimant had complained about the extra work and she was reprimanded. Claimant quit.

Held: There was not a sudden change in job duties. Claimant was reprimanded for going over the supervisor's head to the Board with her complaints without sharing with him first. The reprimand was appropriate. Good cause not shown.

Result: Benefits denied.

#### *00 AT 2463 BR*

Facts: The employer required all factory workers to perform warm-up hand and arm exercises daily at work. This was to lessen repetitive task injuries. Claimant was counseled for not properly performing the exercises, which she could not do because of a previous injury. Claimant was observed talking and laughing during the exercises after a counseling session for the same infraction. The employer felt that it showed a lack of respect. Claimant was told that she would get a two-day suspension. Claimant walked out and quit.

Held: The exercises were a reasonable work requirement. The two-day suspension was a reasonable disciplinary tool. Good cause not shown.

Result: Benefits denied.

## DISCIPLINARY ACTION

### *97 AT 1654 BR*

Facts: Claimant resigned his employment as a clerk of a retail store after being placed on a three-day suspension for yelling and cursing in front of customers and employees and arguing with the store manager. Claimant was upset because the store's security guard had gone through his coat. The manager had been advised that claimant's coat was on the floor of the back room. The manager told the claimant to put it on the coat rack. Claimant argued with the manager more than once about it and about his behavior in front of the customers. Claimant was suspended for insubordination and for his behavior in front of customers. Claimant admitted using inappropriate language on the floor of the store. Claimant felt the suspension was unfair and decided to quit.

Held: An employer has the right to discipline employees. The suspension was not unduly harsh considering claimant's behavior. Good cause not shown.

Result: Benefits denied.

### *90 AT 0452 BR*

Facts: Claimant was employed as a meat cutter. He threw a temper tantrum and called the general manager about not receiving sick pay for a day of illness. The general manager said he would check on it and call back. When he called back, he advised claimant that he could be paid for holiday or sick pay but not both. Claimant began using abusive language toward the general manager. Claimant was counseled the following day and again became upset. He refused to sign a suspension form. He was told to schedule an interview with personnel. Claimant did not keep the appointment.

Held: Good cause not shown.

Result: Benefits denied.

## DISCIPLINARY ACTION

*89 AT 6657 R BR*

Facts: Claimant felt she was doing more than her share of work and asked the employer to check into it. The employer observed the claimant and a coworker for seven weeks. The employer then asked the claimant to meet with him at the close of business. Claimant agreed to stay if it would not take long as she had made plans. The employer told the claimant she was spending too much time on personal business and some other things. The meeting went longer than expected and claimant told the employer that she needed to leave. The employer told the claimant to stay until the conclusion or turn in her keys. Claimant turned in her keys and asked for a sack for her personal belongings. The employer asked the claimant to think about her actions. She declined. This meeting was taped.

Held: Claimant was the moving force in her separation when she turned in her keys and left because of a corrective interview which was being held based on her request. Claimant quit without good cause connected to the work.

Result: Benefits denied.

## **OPPOSITION TO DRUG TESTING POLICIES**

If a drug testing policy is part of the hiring agreement or “contract of hire” then quitting to avoid a drug test or because of opposition to the drug test is without good cause. Note that refusing to take a drug test not conducted in accordance with the Safe Workplace Drug Testing Act is good cause. If the policy was not a part of the original contract of hire then quitting employment because of opposition may be good cause if there is no basis for requesting the drug test. Employees who are hired prior to the enactment of a drug testing policy must be made aware of the policy and be given an opportunity to assent to it as a change in the contract of hire or object to it. If the employee does not affirmatively object to the change in the contract of hire, then it will be presumed that the employee consented to said change. Any subsequent quit to avoid a drug test then would be without good cause. Note that any employee of an industry regulated by the Department of Transportation must follow its rules and regulations regarding drug testing. Cross-reference: Section 2-406A Discharge. See also the Standards for Workplace Drug and Alcohol Testing Act.

(<http://www.oscn.net/applications/ocsn/DeliverDocument.asp?CiteID=447185>)

## DRUG TESTING POLICIES, OPPOSITION TO

### *Case Law*

*Doby v. Quarles Drilling, et al., #75,100 (Okla. S. Ct. 12-24-91)*

**Facts:** After claimant worked for the employer for one year, the employer instituted a random drug testing policy. Refusal to take the test would result in termination. All employees were given a letter and claimant signed. One month later, claimant refused to take the test and was terminated. Benefits were denied based on claimant being discharged for misconduct.

**Held:** Misconduct under Sec. 2-406. Claimant was aware of the policy and agreed to it by signing the letter. Claimant's refusal to take the test was misconduct.

## **HUSBAND AND WIFE TEAMS**

There may be cases in which a husband and wife are hired as a team and work together as a team. If one quits the employment because the other has left then it is for a personal reason and not for good cause. There is an exception. If the reason the employee is leaving is because the spouse has accepted other work outside of commuting distance and the employee is quitting to relocate with the spouse.

## HUSBAND AND WIFE TEAMS

### *Case Applications*

*79 AT 129; 79 BR 207*

**Facts:** Claimant was employed as a residential guidance specialist. When he was hired, claimant was aware that the job required a husband/wife team. His wife resigned, so the employer asked the claimant to resign. Claimant asserted that he was discharged.

**Held:** Claimant knew the terms of hire. They were hired as a team. He knew ahead of time that his wife was resigning, and he was the moving force in her resignation. Good cause not shown.

**Result:** Benefits denied.

## **ILLNESS OR INJURY**

An employee forced to quit employment because of an illness or injury is deemed to have quit for good cause connected to the work. The illness or injury does not have to have been caused by the employer but must be connected to or aggravated by the working conditions or the nature of the work, regardless of any fault of the employer. The burden of proof is on the employee to show that he has sought medical treatment, and has been advised by a physician to quit the employment or change occupation. The employee should be prepared to present physical evidence of the physician's advice such as a letter from the physician, or both parties may agree to the limiting medical condition. Other factors to be considered are whether the illness is of a temporary nature and whether the employer provides for paid medical leave. If the employer's policy also provides for paid medical leave or other avenues which would help the employee protect his job, it must also be shown that the employee has followed the employer's procedures in that regard and has made every possible effort to protect the job attachment.



## ILLNESS/INJURY

### *Aggravation to Pre-Existing Condition*

#### *Case Law*

*Standridge v. Bd. of Rev. et al., No. 68,770 (Ok. Sup. Ct. 3-22-90)*

Facts: Claimant quit her last job on her doctor's medical advice. The lint and dyes in the building where she worked were affecting her allergies. Claimant appealed after being denied benefits for failure to show medical evidence and for failure to take steps to protect her job.

Held: Claimant's doctor stated that her allergies developed while she was working for the employer. The doctor advised the claimant to seek another job. Claimant had no choice but to quit. There is no requirement that claimant seek a leave of absence under the Act.

Result: Benefits allowed.

#### *Case Applications*

*86 AT 5814 BR*

Facts: Claimant had a 10% service-connected disability because of an injury and lower back problems. Claimant told the employer about the back problem during the job interview and the doctor during the pre-employment physical. The doctor told her it would not be a factor in the position for which she applied, which was sitting at a keyboard. She was not told there would be lifting or prolonged standing when she started. She was lifting packages and twisting and standing all day. Also, she had to unload trucks. She could not perform her job without back pain. She quit.

Held: Claimant's duties were much different than promised. Claimant provided the employer with her restrictions. She showed good cause.

Result: Benefits allowed.

## ILLNESS/INJURY

### *Inability to Perform Duties*

#### *Case Law*

*Winfrey v. Matador Processors, Inc., No. C-86-467 (McClain Co. D. Ct., 2/87)*

**Facts:** Claimant had transferred to lighter duty due to health problems. She left her work area every twenty to thirty minutes because of illness. She worked one-half day and told the employer she had to leave because of illness. She went to the doctor on her day off, the next day. When claimant returned to work, the employer told her to take medical leave. Claimant wanted to work. She asked if she was fired and was told no, but she couldn't return to work.

**Held:** The Appeal Tribunal found that claimant was placed on involuntary leave of absence. When she filed for unemployment benefits she terminated her job voluntarily without good cause. The Board of Review affirmed. The District Court held that claimant was involuntarily terminated and granted benefits.

**Result:** Benefits allowed.

#### *Case Applications*

*81 BR 848*

**Facts:** Claimant was hired for a job that required no heavy lifting. She was transferred to a job that did. Claimant's doctor advised her to do no heavy lifting. As no work without heavy lifting was available, claimant quit.

**Held:** Claimant showed that the change in work duties was adverse to her health. Good cause shown.

**Result:** Benefits allowed.

## ILLNESS/INJURY

*80 AT 0628; 80 BR 1051*

Facts: Claimant worked at four different jobs for the employer, two of which were on a quota system. Claimant did well on the first quota job, but could not meet quota on the second job. Claimant began having health problems. She presented a doctor's statement saying that she had a problem with her legs and that her job was not properly suited for her because it required standing. Claimant was twice denied a transfer. Claimant told the employer she could not make quota because of her health problems. The employer said that the reason was inefficiency.

Held: Claimant's last position involved a change of conditions which adversely affected her health. Claimant tried to protect her job by requesting a transfer. The doctor said she could do other jobs. Claimant quit for good cause.

Result: Benefits allowed.

## ILLNESS/INJURY

### *Medical Leave*

#### *Case Applications*

##### *90 AT 7730 BR*

Facts: Claimant was on a leave of absence because of medical problems. She was released to return to work, but when she returned and worked for a few hours, she was still hurting. She asked for another leave of absence, but was told she could not have more time off. She left. When she was again released to return, she checked with her employer who told her she would be called back in ten days. She was never called back.

Held: The claimant made an effort to protect her job. She was able to work. Claimant left with good cause even though she was denied the leave of absence.

Result: Benefits allowed.

##### *90 AT 7101BR*

Facts: Claimant had a medical problem causing her to be off work for five months. She was placed on medical leave of absence and given forms to complete, which she did not do. She came into the office after four months and resigned.

Held: Claimant had an obligation to notify the employer of her illness and when she would return to work. Claimant did not complete the forms to protect her job. Claimant left without good cause.

Result: Benefits denied.

##### *79 BR 802*

Facts: Claimant decided she was too sick to work and requested a thirty-day leave. The employer denied the request in the absence of a doctor's statement. Claimant saw a doctor and was diagnosed a diabetic. Claimant sought work with another employer, but not the former employer after controlling her illness.

Held: Claimant did not present a doctor's statement to her employer. The medical advice was received after she quit and showed that she did not need to resign permanently. Good cause not shown.

Result: Benefits denied.

## ILLNESS/INJURY

### *Non Work-Related Accident/Illness*

#### *Case Law*

*Winfrey v. Matador Processors, Inc., No. C-86-467 (McClain Co. D. Ct. 2/87)*

**Facts:** Claimant experienced some problems on the job because of an illness and was transferred to lighter duty. Even with lighter duty claimant still had to leave her work area every twenty to thirty minutes. She went to the doctor on her day off and was approached about taking a leave of absence. Claimant said she could not afford to take leave. She went home sick. Claimant called the employer to see if she had been fired. She was told that she had not been fired, but she could not return to work. Claimant filed for unemployment benefits.

**Held:** The Commission, Appeal Tribunal and Board of Review all denied benefits. The Court held that claimant was involuntarily separated from work. Good cause shown.

**Result:** Benefits allowed.

## ILLNESS/INJURY

### *Required to Permanently Leave Work*

#### *Case Law*

*Standridge v. Bd. of Rev., et al., No. 68,770 (Okla. S. Ct. 3/22/90)*

Facts: Claimant quit her last employer on the advice of her doctor. The lint and dyes in the building where she worked were adversely affecting her allergies.

Held: The Appeal Tribunal reversed the Commission and denied benefits because the claimant did not present a medical statement to the employer showing that the job conditions caused her illness. The Board of Review affirmed. The Court of Appeals held that the denial of benefits was not supported by evidence. No one considered the statement from the claimant's doctor. The Court reversed and allowed benefits. The Supreme Court affirmed.

Result: Benefits allowed.

#### *Case Applications*

*82 AT 1321; 82 BR 859*

Facts: Claimant left employment because she developed an allergic reaction to the dye with which she was working. At the time of her resignation claimant submitted medical evidence from her doctor advising that it was necessary for her health that she leave this type of employment.

Held: Good cause established.

Result: Benefits allowed.

*81 BR 1753*

Facts: Claimant worked in a noisy area. He had surgery to repair a ruptured eardrum. His doctor told him not to work in noisy areas. Since the employer had no other work available, claimant left his employment.

Held: Claimant presented competent medical proof showing his health problems were work connected. Good cause shown.

Result: Benefits allowed.

## ILLNESS/INJURY

### *Stress Related to Job*

#### *Case Law*

*Glenn v. OESC, 782 P2d 150 (Okla. App. 1989)*

Facts: The claimant and an employee that worked under her applied for the same position. The lesser-qualified male employee was hired. Claimant's workload increased and she experienced severe health problems, diagnosed by her physician and psychiatrist as severe reactive depression directly related to not being promoted when she was qualified. Both doctors advised her to quit.

Held: It was not necessary for the claimant to file a grievance with her employer as a prerequisite to establishing good cause for quitting. Her health problems were related to the employer's decision to promote a less qualified male employee. She quit for good cause. The Board of Review had denied benefits. The District Court reversed and allowed. The higher court affirmed.

Result: Benefits allowed.

#### *Case Applications*

*90 AT 8652 BR*

Facts: Claimant worked two jobs for her employer. She quit due to stress. Her employer died and one job was eliminated causing her salary to go from \$1400 to \$900. This is a 33% drop. Then the employer's company came under investigation by the FBI. They continually questioned the claimant about alleged stolen property.

Held: The claimant's working conditions changed severely. This caused great stress. The Appeal Tribunal denied benefits. The Board reversed.

Result: Benefits allowed.

*87 AT 2185*

Facts: Claimant was advised to avoid high stress jobs. When work became too stressful, she quit.

Held: Claimant should have checked with the employer to determine if she could be reassigned to a less stressful position. She did not try to maintain her job.

Result: Benefits denied.

ILLNESS/INJURY

*84 AT 8853; 84 BR 2446*

Facts: Claimant left work because of a health condition created by internal strife within the corporation. Claimant submitted a report from his doctor showing that it was necessary that claimant leave work.

Held: The Commission and Appeal Tribunal denied benefits. The Board of Review reversed and allowed finding that claimant left his job on the advice of his doctor because the stress at work was too much. Good cause found.

Result: Benefits allowed.

*81 AT 13820; 85 BR 306*

Facts: The company for which claimant worked was sold and the new employer's operations were disorganized. The new employer was abusive when speaking to claimant about work. Claimant was under much mental stress and quit.

Held: Claimant showed good cause for quit.

Result: Benefits allowed.



ILLNESS/INJURY

*Work Related Accident/Illness*

*Case Applications*

*90 AT 1949 UCFE BR*

Facts: Claimant was injured on the job in January 1988. She was released to return to work with restrictions. Claimant alleged that the restrictions were not honored and she continued to miss work. The employer said claimant was expected to be fully released in July 1989. The employer had no opening consistent with claimant's restrictions. Claimant was released on July 31, 1989, with the restriction that her duties be rotated every two hours. Claimant called in August 1989, and said she would not be at work because her arm hurt. She then mailed in a letter of resignation.

Held: Claimant did not return from medical leave when released by the doctor. She failed to furnish any medical document showing a need for continued leave of absence. Claimant did not establish good cause.

Result: Benefits denied.

## **INCARCERATION**

If an employee's actions result in his incarceration and he is therefore prevented from appearing for work and he does not make an effort to report to his job after his incarceration then he will be deemed to have abandoned his job.

Cross-reference: Discharge for Incarceration

## INCARCERATION

### *Case Applications*

*80 AT 4554;80 BR 1100*

**Facts:** Claimant was an inmate in a work-release program. He was separated from employment when the corrections department transferred him to a different correctional facility in another city. The transfer was made because claimant was deemed a poor risk under the pre-release center program and a bad influence on the community. Claimant served out his term and then returned to his hometown and filed for benefits.

**Held:** The Commission and Appeal Tribunal denied benefits. The Board of Review held that claimant's separation from employment was caused by his violation of the terms of the pre-release center. After his release the claimant did not try to reapply for his old job.

**Result:** Benefits denied.