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SEEKING AND ACCEPTING SUITABLE WORK

A claimant's search for work and willingness to apply for and accept suitable work is a good indication of continuing availability for work as required in Sec. 2-205 and is closely linked to the adjudication of that issue. A claimant for UI benefits is expected to demonstrate continued availability for work measured by what one does in an attempt to become reemployed in a reasonable time. Reemployment of unemployed workers is an important part of the original mission of the Employment Security system; involving both the job placement/training and UI components of that system. The goal is to encourage and assist in that reemployment before the exhaustion of benefits in order to maintain or restore the economic security of the worker. The applicable provisions of the Act requiring a search for work and requiring a claimant to apply for and accept suitable employment are:

Section 2-417. Seek and accept work—Week of occurrence disqualification

A. An individual shall be disqualified to receive benefits for each week in which the individual shall have failed to do any of the following:

1. Diligently search for suitable employment at a pay rate generally available in that area of the state in keeping with his or her prior experience, education and training;
2. Make application for work with employers who could reasonably be expected to have work available;
3. Present oneself as an applicant for employment in a manner designed to encourage favorable employment consideration; or
4. Participate in reemployment services, such as job search assistance services if the individual has been determined likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the Oklahoma Employment Security Commission. An individual will not be disqualified under this paragraph for failure to participate in reemployment services if;
 - a. the individual has previously completed reemployment services, or
 - b. there is justifiable cause for the individual's failure to participate in reemployment services

B. The requirements of subsection A of this section shall be waived if the individual has been summoned to appear for jury duty before any court of the United States or of any state. The waiver will continue for as long as the individual remains on jury duty pursuant to the original summons.

Section 2-418. Seek and accept work – Indefinite disqualification

A. An individual shall be disqualified to receive benefits for the full period of unemployment next ensuing after the individual shall have failed to do any of the following:

1. Accept an offer of work from an employer including any former employer;
2. Apply for or accept work when so directed by the Employment Office of the Commission; or
3. Accept employment pursuant to a hiring hall agreement when so offered. Such disqualification shall continue until the individual has become reemployed and has earned wages equal to or in excess of ten (10) times his or her weekly benefit amount.

B. Any individual who shall have failed in any of the requirements of subsection A of this section due to illness, death of a family member or other extenuating circumstance beyond his or her control shall be disqualified for regular benefits under this section only for the week of the occurrence of such circumstance beyond his or her control. Any individual who is disqualified under this subsection only for the week of the occurrence of such circumstance beyond his or her control shall not thereafter be or become eligible for extended benefits for the purposes of Sections 2-701 through 2-724 of Title 40 of the Oklahoma Statutes until such individual has become reemployed and has earned wages equal to at least ten times his or her weekly benefit amount.

Definition

Section 2-417 above covers the claimant's responsibility to search for work in a manner designed to accomplish reemployment and to participate, when scheduled, in reemployment services established by the OESC. In previous years the Commission required a set number of employer contacts each week to establish compliance with the work search requirements of the Act. The same work place changes mentioned earlier in reference to applying the able and available provisions of Sec. 2-205 have also required the OESC to adopt a new work search policy effective October 1, 2006 and revised June 5, 2007. The new policy and agency rule establishes a more realistic definition of a sufficient search for work in the modern labor market; focusing not on how many contacts a claimant makes, but rather did the claimant engage in those activities a "[r]easonably prudent person would be expected to do to secure work using any means that are appropriate and customary each week." OAC 240:10-3-20(b). Agency policy provides that a claimant who takes part in two activities meeting the above definition satisfies the requirements of Sec. 2-417. In addition to the statutory waiver provided for jury duty in subsection (b), special circumstances which relieve the claimant of the required two activities and are:

- Union members who are searching for work through their union must be registered with the hiring hall or placement facility of their labor union and be a member in good standing.
- If an employee is involved in a verified temporary layoff, is receiving partial unemployment insurance, or is receiving supplemental unemployment benefit payments through an approved plan based on a temporary layoff, the work search requirement is met if the employee maintains an attachment to the employer and remains available to return to work for the employer.
- Attending the six hour Job Search Workshop sponsored by OESC will satisfy the work search requirement for that week.
- Unemployed workers who secure employment will be considered to have met their work search requirements up to three weeks before the job begins.

Section 2-418 provides for disqualification when a claimant refuses to apply for suitable work when directed to do so by the OESC or refuses an offer of suitable work from an employer, including a former employer. Work offered must be suitable as defined by Sec. 2-408 and even suitable work may be refused under certain circumstances defined in Section 2-409.

Section 2-408. Suitable work

(1) In determining whether or not any work is suitable for an individual, there shall be considered among other factors and in addition to those enumerated in Section 2-409 the length of his unemployment, his prospects for obtaining work in his customary occupation, the distance of available work from his residence and prospects for obtaining local work.

(2) Suitable work shall be defined as employment in an occupation in keeping with the individual's prior work experience, education or training, or having no prior work experience, special education or training for occupations available in the general area then, employment for which the individual would have the physical and mental ability to perform.

(3) Upon receipt of fifty percent (50%) of his benefits, suitable work shall not be limited to his customary or registered occupation.

Part (3) of Section 2-408 does not require a claimant to accept a lesser wage in their usual occupation, but does require that the work search be expanded to include work other than the customary or registered occupation of that claimant.

Section 2-409. Conditions exempting otherwise suitable work

Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
- (4) If the new work involved a substantial degree of risk to his health, safety or morals.

Burden of Proof

Generally speaking, a party will not be required to prove a negative; therefore, the burden of proof belongs to the party who has the best access to the information. In most cases, the claimant will bear the burden of proof to show that they have made the required search for work since only the claimant would have access to that information. That burden belongs to the Commission if the claimant has failed to follow up on a Commission referral. The Commission would have the information regarding the referral and its validity. The same would apply to an employer making an offer of work. The employer would have the best access to the information on the terms of the offer and its suitability.

SEARCH FOR WORK

Commission-Required Contacts

Case Applications

87 AT 6055 BR

Facts: Claimant was found ineligible for benefits for three different periods because he did not make his work search as required. Claimant appealed. The Appeal Tribunal addressed the three periods, but only made a decision on one. The Claimant and the Commission appealed to the Board of Review.

Held: Claimant signed an “individual work search affidavit”, which said he would make a certain number of contacts each calendar week. Claimant testified it was his signature on the form and that he should have read the instructions better. The Board of Review upheld the Commission’s decision.

Result: Benefits denied.

Lack of Transportation

80 BR 2068

Facts: Claimant was unemployed for a long time. She received a referral from the Commission. Claimant did not contact the employer until two days later at 3 p.m. at which time the employer said the position had been filled. Claimant said she could not contact the employer until then because she did not have transportation and her parent's phone was not working.

Held: An individual that fails to apply for or accept work when so directed by the Commission shall be disqualified. The employer held the job open for two days. Claimant did not timely apply.

Result: Benefits denied.

Moving to Different Area

80 AT 2262; 80 BR 1320

Facts: Claimant was terminated and moved to Texas. She did not actively seek employment for five weeks due to the move. Once she moved to Texas she began looking for and found employment.

Held: Claimant must make a diligent effort to find suitable employment. Claimant did not make any attempt for five weeks.

Result: Benefits denied.

Newspaper Advertisements

76 AT UCX 205; 693 BR 76

Facts: Claimant was unemployed for over one year. He sought employment by checking the newspapers.

Held: Merely checking newspapers to find suitable employment is not a diligent search for employment.

Result: Benefits denied.

Telephone Contacts Only

76 AT 8135: 342 BR 77

Facts: Claimant was unemployed for several months. There was a question whether claimant was diligently searching for employment. Claimant had not made personal contacts in a few weeks. The Commission denied benefits. On appeal the claimant stated she had accepted a referral from the commission but did not result in a job. Prior to the hearing she contacted a pizza parlor and two grocery stores. The Appeal Tribunal denied benefits.

Held: Claimant did not make any contacts during the week of October 10, 1976, and for several weeks prior, except by telephone. This is not a diligent search for work.

Result: Benefits denied.

Undue Restrictions

89 AT 01932

Facts: The claimant worked in maintenance and sanitation for the past year as well as a few days each month as a substitute teacher. The claimant is searching for work other than substitute teaching, but is restricting his available work hours to after 4:30 p.m. because he wants to remain available for substitute teaching in hopes of getting a full-time teaching position.

Held: A claimant must not place restrictions on his availability for work relating to hours, salary or type which conflicts with his work experience. By restricting his availability only to evening or nighttime employment, he placed undue restrictions on his availability. Decision cites *Atterberry v. Bell Glass Containers*, 898 BR 76.

Result: Benefits denied.

92 AT 01451

Facts: The claimant attends school from 7:45 a.m. to 12:30 p.m., Monday through Friday. She is willing to withdraw from or rearrange her class schedule in order to obtain and accept full-time work.

Held: The claimant has not restricted her ability to seek or accept work.

Result: Benefits allowed.

NOTE: The Commission denial was based on the claimant's negative response to questions on whether she would be willing to withdraw or rearrange her school schedule. The claimant was not informed of the consequences for that negative response. The standard requires a full understanding of the questions posed and the consequences of the answers.

Union

306 BR 78

Facts: Claimant is a union member. He must go through the union to obtain work. The union assigns work as it is available. When the job is finished he goes back to the union hall for another job. Claimant contacted the union once a week.

Held: Claimant was somewhat restricted in his search by his union membership. He was making a reasonable job search and is available for employment.

Result: Benefits allowed.

REFUSAL OF REFERRAL

Commuting Distance

Case Applications

79 BR 366

Facts: Claimant was employed as an operator. The office closed and there was no other work for her. She was offered work in Oklahoma City, Lawton, Tulsa or Muskogee. All were too far to commute and she did not want to relocate.

Held: Claimant would have had to relocate her home a great distance from where she resides. Claimant is not bound to accept an offer of work of this type.

Result: Benefits allowed.

Different Shift

80 AT 5424; 80 BR 1214

Facts: Claimant was employed as a practical nurse. The Commission offered her a referral to a job as a nurse with the same pay. Claimant said she did not want to work the 3 p.m. to 11 p.m. shift, and that she could not drive in downtown traffic. Also she complained that the 52-mile round trip was too far from home.

Held: The same job on a different shift is suitable work. Claimant cannot refuse to drive in traffic. Claimant did not have good cause for refusing the referral.

Result: Benefits denied.

Part-time or Temporary Work

218 AT 61; 52 BR 61

Facts: Claimant's last job was \$140 per month plus commission as a sales clerk. The Commission referred the claimant to a position making \$160 per month plus commission. Claimant refused the job because she was told the job was temporary for the Christmas season and she did not want to hurt her chances of obtaining permanent employment.

Held: Temporary work is acceptable unless a person has an imminent possibility of permanent employment. The work was suitable; the refusal was not acceptable.

Result: Benefits denied.

Personal Reasons

Case Applications

82 AT 0243; 82 BR 292

Facts: Claimant was referred to employment by the Commission. She never contacted the employer and, when asked, she said she had a house full of company that she did not trust alone in her house. Claimant never did contact the employer.

Held: Claimant did not have good reason for her failure to apply for the job.

Result: Benefits denied.

Relocation

2954 AT 61

Facts: Claimant was working as a lab tech in a film photo processing plant. He was laid off and filed for benefits. The Commission referred him to a company that advised he would have to leave Oklahoma for six weeks of training in New York and that he might not be assigned back to Oklahoma. Claimant refused. Benefits were denied based on refusal of a suitable offer of work. On appeal the claimant stated that he would have accepted the job if he could stay in Oklahoma.

Held: One that has established a residence in an area where there is a likelihood of finding a job need not be ready to accept employment that would require a change of residence. The offer was not suitable. Claimant would have been required to move.

Result: Benefits allowed.

Union Hiring Hall Referral

87 AT 7496

Facts: Claimant went to his union hall to inquire about work. He was given the name of a prospective employer. Claimant did not call the employer for a while and then had his aunt call the employer. Next, claimant paid someone to call the employer for him. Claimant finally called the employer saying he was having trouble reaching the employer and that he was having too many problems at that time to accept employment.

Held: An individual who fails to accept employment pursuant to a hiring hall agreement when so offered is disqualified from receiving benefits.

Result: Benefits denied.

Unsuitable Work

83 AT 2013; 83 BR 501

Facts: Claimant was laid off and receiving benefits when his former employer notified the Commission that claimant was eligible for rehire in its janitorial department. The Commission sent claimant a letter at the last address advising him to report to the local office in five days or his benefits would be stopped. Claimant did not report. On appeal claimant said he did not receive the notice until seventeen days later because it was given to his children, not him. Claimant was not interested in working for the company since he had not tried to contact them.

Held: Claimant failed to properly apply for or accept work. When directed by the employment office, he failed to contact the prospective employer about a job.

Result: Benefits denied.

79 AT 852; 79 BR 596

Facts: Claimant was last employed as a counter clerk at the cleaners. On referral she was offered a position in management. Claimant declined to interview because she did not have experience and did not desire the duties.

Held: Because the job offered was not suitable employment in keeping with claimant's prior training, claimant's refusal to accept the position did not disqualify her.

Result: Benefits allowed.

79 BR 594

Facts: Claimant worked as a waitress for a fraternal club. Claimant was offered two referrals for jobs in coffee shops or fast food establishments. Claimant had specific schooling to learn how to waitress in a formal restaurant. Claimant refused the offers saying she would not work below her qualifications.

Held: There is a drastic difference between fast food and formal restaurant. The positions offered were below claimant's training. Claimant was justified in refusing the offers.

Result: Benefits allowed.

REFUSAL OF EMPLOYMENT

After Receipt of 50% of Benefits

Case Applications

79 AT 1674; 80 BR 456

Facts: Claimant was separated due to lack of work. She was given the classification of pie maker. After the Claimant received half her benefits, the Commission referred her to a job as a food service worker making more than she did on her previous job. Claimant refused, because the wages were too low and the job was not in her classification. Claimant argued that the wages needed to be higher to justify the additional driving. The claimant was requiring a beginning wage of \$4.00 per hour despite the fact that she had been making only \$2.95 per hour on her last job. The claimant had received over 50% of her benefits.

Held: Upon receipt of half of benefits, suitable work shall not be limited to the customary or registered occupation. Food service is closely related to a pie/pastry maker.

Result: Benefits denied.

Before Filing for Benefits

88 AT 04416

Facts: Claimant was hired as a warehouse supervisor. When hired, he told the employer he had heart problems and was unable to lift over 40-50 pounds. After working for a year, the claimant suffered a heart attack. Six months later the claimant was working 35 hours per week. The next month it was reduced to twenty hours per week. Claimant was then laid off for lack of work, but was later offered the job of a warehouseman. Claimant was advised that the lifting requirements were the same as the old job.

Held: Claimant refused the job offer before he filed for benefits.

Result: Benefits allowed.

Child Care

78 AT 1801; 80 BR 91

Facts: Claimant was laid off then offered the same job on a different shift. Claimant refused saying she could not find suitable care for her children if she worked a different shift.

Held: The same job at a different shift is suitable employment. Claimant must accept suitable employment. Adequate daycare was available during the second shift.

Result: Benefits denied.

Commuting Distance

84 AT 9199; 84 BR 2447

Facts: Claimant was laid off due to lack of work. He received benefits. All base period employers were notified of the charging of benefit wages. The employer protested saying claimant was eligible for rehire. Work was available if the claimant commuted 80 to 90 miles per day. Claimant refused.

Held: Claimant would have had to move or commute 80 to 90 miles to work. He had good cause for refusing employment.

Result: Benefits allowed.

Humiliation or Embarrassment

83 BR 1039

Facts: Claimant began work as a graduate nurse. She failed the State Nursing Board exam and was made a senior assistant at the same salary and shift. Claimant failed a second time and her pay was reduced by \$.97. She failed the third time and she was offered a job as a nurse technician making \$5.68 per hour. Claimant refused because she was embarrassed and the job paid less.

Held: Any embarrassment caused by reduction in salary was not the fault of the employer. The job offer was in keeping with the employment agreement.

Result: Benefits denied.

Job Offered to Deny Claimant Benefits

97 AT 5349 BR

Facts: The employer offered the claimant an assignment described as one week plus. The employer asserts clients never agree to commit to more than a week, but if they are satisfied with the work, the employment will continue indefinitely. Claimant told the employer she could not accept it at the time because she had doctor, dentist and employment service appointments. The Appeal Tribunal held the claimant did not refuse an offer of work, and allowed benefits.

Held: The Board of Review held that claimant failed to accept an offer of work, which was not due to extenuating circumstances beyond her control.

Result: Benefits denied.

Medical Limitations

79 AT 8485; 80 BR 483

Facts: After a shut down due to a fire, the claimant was called back to work according to seniority. Claimant refused stating he had problems with his back and the job required heavy lifting. Benefits were allowed. The employer appealed and benefits were denied. At the Appeal Tribunal hearing the employer said he had been presented with medical statements releasing claimant to work.

Held: The employer acted in good faith using information available to him at the time claimant was called back to work.

Result: Benefits denied.

Same Job/ Different Shift

81 AT 01626; 81 BR 582

Facts: Claimant was employed as a wrapper. Claimant's shift was abolished and she was offered at 6 a.m. to 2 p.m. or 2 p.m. to 11 p.m. shift. Claimant had been working 12 p.m. to 6 p.m. Claimant did not accept either because she said she had two teenage daughters that she did not want to leave at home alone early in the morning or late at night. Claimant testified she was available from 8 a.m. to 5 p.m. or 9 a.m. to 5 p.m.

Held: The work offered was suitable. The mere changing of shifts was not good reason for claimant to refuse employment.

Result: Benefits denied.

Seasonal Work

83 BRD 13915

Facts: Claimant was offered work during the opera season as a musician. He had been under contract and had performed the same job for the employer for three prior seasons. He refused the offer because the job was seasonal.

Held: Claimant had a history of seasonal work with this employer. He refused a suitable offer of work.

Result: Benefits denied.

Undue Restrictions

97 AT 5349 BR

Facts: The employer offered the claimant an assignment described as “one week plus”. The client employer never agrees to commit to employment of anyone longer than one week, but that if the client is satisfied, the employment may be indefinite. The claimant requested a delay of one week as she had medical appointments scheduled that week as well as appointment with the employment service. The employer withdrew the offer because the client needed someone immediately. The Appeal Tribunal held that the claimant did not refuse the offer but just requested a delay; however, she was not available for work that week.

Held: The Board of Review reversed finding that the claimant refused a legitimate offer of work; but not due to circumstances beyond her control.

Result: Benefits denied.

Unsuitable Work

80 AT 10832; 81 BR 641

Facts: Claimant had previously worked as a grocery checker. She was offered a night job for six days per week, 36 hours per week, and thirty cents less per hour. Her previous job was forty hours per week, five days a week. Claimant refused the job. The Commission denied benefits and the Appeal Tribunal affirmed.

Held: The job offered was materially different. The day job claimant had held was five days and thirty cents more per hour, while the night job offered was six days and thirty cents less. The job offered was one in which claimant had no experience. The work offered was not suitable.

Result: Benefits allowed.

77 AT 3026; 1317 BR 77

Facts: Claimant was a teller in a bank. She took maternity leave and when she returned was offered employment in bookkeeping since there were no teller positions available. The hours and pay were the same. Claimant saw it as a demotion and refused employment.

Held: Claimant was offered a bank job with the same hours and pay and a promised to return to her old job when a position was available. This is suitable employment. Claimant did not have good cause to refuse the offer.

Result: Benefits denied.

Wages/ Duties / Status

02 02130

Facts: The claimant was employed as an electrical inspector earning \$10.17 per hour. She was notified her employment was terminated due to a reduction in force that resulted in the number of electrical inspector positions being cut. The claimant filed a claim for benefits. After her termination, the employer offered the claimant a new position as an assembler earning \$9.65 per hour. Claimant refused the position because of the cut in pay and status of the new position and because the pay scale for an inspector topped out at \$14.30, but the assembler position offered was at the highest level of wages possible.

Held: The offer was a new offer of work after she was terminated due to layoff and was made after the effective date of her claim. A substantial reduction in wage makes an offer unsuitable. The offer would have resulted in pay of 52 cents per hour less. While it was less than 15%, it was a substantial reduction, as well as a substantial change in job status and work duties. The combination of the reduction in wage and change in duties and status made the offer unsuitable.

Result: Benefits allowed.

83 AT 2126; 83 BR 03

Facts: Claimant worked for the employer for \$4.30 per hour. He quit that job for a better-paying position and was laid off for lack of work. He began receiving benefits. The employer notified the Commission that they had work for the claimant at a salary of \$3.35 per hour. Claimant refused because the salary was less than his last salary. The Commission denied benefits for refusing a suitable offer or work. The Appeal Tribunal reversed and allowed benefits.

Held: The Board of Review held that the wages offered were substantially less than what the claimant had been making from the employer previously and that the offer was not suitable.

Result: Benefits allowed.

82 BR 615

Facts: Claimant was terminated because her husband's illness interfered with her work attendance. Claimant made \$4.75 per hour. She was offered the same job at \$3.35 per hour. She refused.

Held: The \$1.40 pay reduction was substantial and made the offer unsuitable.

Result: Benefits allowed.

With Former Employer

80 AT 8220; 80 BR 1723

Facts: Claimant worked for the employer for \$2.90 per hour. She left this employment for another job making \$5.36 per hour. She was laid off from the second job. She said she would accept a job making \$4.50 per hour. The previous employer offered a job at her previous wages and claimant refused.

Held: The wages offered would be less than claimant's benefit amount. She was on the better paying job for a longer time. Claimant was willing to accept \$1 less per hour in order to become employed. Claimant had good cause to refuse the offer.

Result: Benefits allowed.

79 BR 1002

Facts: Claimant was mailed a notice by a former employer that work was available on the day or night shift. The work and pay were the same as before. Claimant refused because she did not want to work for the employer. Claimant lived in an area of the state where unemployment is high and jobs are few.

Held: Claimant refused a suitable offer.

Result: Benefits denied.

PROCEDURES FOR OBJECTIONS AND APPEALS

MISCELLANEOUS

