

## APPEALS POLICY AND PRECEDENT MANUAL

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**VOLUNTARY LEAVING**

**VL 5.00**

<b>VL GENERAL</b>
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**VL 5.00 GENERAL.**

INCLUDES CASES WHICH CONTAIN (1) A GENERAL EXPLANATION OF THE PURPOSE OF THE UNEMPLOYMENT COMPENSATION LAW, AS IT RELATES TO THE VOLUNTARY LEAVING DISQUALIFICATION, (2) DISCUSSION OF THE INTENDED RELATIONSHIP BETWEEN THE VOLUNTARY LEAVING DISQUALIFICATION AND OTHER PORTIONS OF THE UNEMPLOYMENT COMPENSATION LAWS, AND (3) OTHER VOLUNTARY LEAVING POINTS WHICH DO NOT FALL WITHIN ANY SPECIFIC LINE IN THE VOLUNTARY LEAVING DIVISION OF THE CODE.

Appeal No. 1932-CA-77. A claimant who resigns because of dissatisfaction with working conditions or because of some other problems but does so without notice, as required by the claimant's contract with the employer, and without giving the employer any opportunity to remedy the situation, thereby quits work without good cause connected with the work.

Also see Appeal No. 398-CA-76 under VL 90.00.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 40.00

<b>VL ATTENDANCE AT SCHOOL OR TRAINING COURSE - STUDENTS</b>
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**VL 40.00 ATTENDANCE AT SCHOOL OR TRAINING COURSE – STUDENTS.**

INCLUDES CASES IN WHICH CLAIMANT'S ATTENDANCE AT SCHOOL OR A TRAINING COURSE, OR HIS INTENTION TO DO SO IN THE NEAR FUTURE, MOTIVATES HIS LEAVING WORK.

Appeal No. 94-008303-10-053194. The claimant worked for the employer one day each week and received public assistance benefits through the Aid to Families with Dependent Children (AFDC) program administered by the Texas Department of Human Services (TDHS). As a condition for the continued receipt of AFDC benefits, the claimant was required to participate in a training program jointly administered by TDHS and the Texas Workforce Commission. The claimant quit her job as it conflicted with the training program. HELD: As the claimant quit her job to remain eligible for AFDC benefits, the Commission held that her reason for quitting was urgent, compelling and necessary so as to make the separation involuntary. Accordingly, the claimant's disqualification under Section 207.045 of the Texas Unemployment Compensation Act was reversed under Section 207.046 of the Act.

Appeal No. 1626-CA-78. In February, the claimant, a full-time employee, advised the employer that, two weeks thereafter, he would no longer be available for full-time work as he planned to attend barber college. The claimant requested, and was permitted, to continue working part-time until the employer could hire a replacement. In May, the claimant was notified that his services were no longer required because the employer had found a suitable full-time replacement. A full-time job had been available to the claimant at all times. HELD: Since the claimant worked part-time subsequent to quitting his full-time employment, it was held that the claimant had not quit his most recent work in order to attend an established educational institution; accordingly, no disqualification under Section 207.052 was in order. (However, the Commission disqualified the claimant under Section 207.045, holding that he had been voluntarily separated from his last work because he had restricted his hours of work, and held the claimant ineligible under Section 207.021(a)(4) because of his inadequate work search.)

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

## VL 40.00 (2)

**VL ATTENDANCE AT SCHOOL OR TRAINING COURSE - STUDENTS**

Appeal No. 97-008948-10-082498. The claimant completed a one day temporary job and, because she had enrolled in training, informed the employer she was no longer available for day jobs. The employer, a temporary agency, offered primarily daytime office work during the week. The claimant had enrolled in a computer training class that met 8:30 a.m. to 4:30 p.m., Monday through Friday. The Texas Workforce Commission had approved the claimant's training under Section 207.022. HELD: By severely restricting the hours she was willing to work for the employer, and thus eliminating the hours she initially agreed to work for this employer, the claimant, in effect, severed the employment relationship. The claimant left her last work voluntarily so that she could attend a class to receive training in computer work. The claimant's reasons for leaving her last work were personal, and were not for good cause connected with the work. Although the claimant's training was approved by the Commission under Section 207.022 of the Act, this section does not protect a claimant from disqualification for having resigned from employment in order to begin training. Rather, Section 207.022 protects a claimant from disqualification for failing to search for work or accept an offer of suitable work after having begun the Commission approved training. Also digested at AA 40.00.

Appeal No. 337-CA-77. The claimant had been attending college three nights a week. When hired, he was told that he would sometimes have to work nights. Near the end of his employment, the claimant was advised that, effective at the end of the current semester, he would have to work more nights than he had previously and, thus, that he would have to change his school hours at the end of the semester. Even though the claimant's college offered day classes equivalent to the night classes which he had been attending, the claimant refused to change his class schedule and this caused his separation. HELD: The claimant voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045. (However, the Commission reversed the claimant's continuing disqualification under Section 207.052 of the Act because it held that, since the claimant continued attending school during the same hours as in the past and would have been willing to work the same hours that he had been working, the claimant had not left his last work for the purpose of attending an established educational institution.)

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 70.00

<b>VL CITIZENSHIP OR RESIDENCY REQUIREMENTS</b>
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**VL 70.00 CITIZENSHIP OR RESIDENCY REQUIREMENTS.**

INCLUDES CASES IN WHICH CLAIMANT'S SEPARATION FROM EMPLOYMENT RESULTS FROM LACK OF CITIZENSHIP, FROM FAILURE TO MEET RESIDENCE REQUIREMENTS, OR FROM SOME OTHER FACTOR RELATING TO CITIZENSHIP OR RESIDENCE.

Appeal No. 86-3546-10-022787. The claimant worked for the employer, a school district, for almost six years as a paraprofessional teacher's aide. The employer realized about a year prior to her separation that the claimant had mistakenly failed to indicate on her teaching certificate application that she was not a U.S. citizen. Section 13.044 of the Texas Education Code provides that a teaching certificate could only be issued to a non-citizen if the applicant showed an intent of becoming a citizen. The claimant initially indicated she would apply for citizenship but later changed her mind, choosing not to become a U.S. citizen. Because it was illegal for the employer to continue to employ her, she was given notice. HELD: The claimant effectively resigned her position by failing to take action necessary for her to receive the required certification to teach. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 90.00

## VL CONSCIENTIOUS OBJECTION

## VL 90.00 CONSCIENTIOUS OBJECTION.

INCLUDES CASES IN WHICH CLAIMANT LEFT WORK BECAUSE OF RELIGIOUS SCRUPLES OR ETHICAL CONCEPTS.

Appeal No. 398-CA-76. The claimant, a cashier, had moral objections to having to sell books, magazines, or other items from the "adults only" section of the employer's newsstand. She did not know when she was hired that this would be part of her duties. However, because of her embarrassment, she did not make known to the employer her objection to this work but simply quit. Had she told the employer that she objected to part of her duties, the employer might have been able to make such arrangements that would alleviate the problem. HELD: Since the claimant did not complain to the employer, thereby denying him an opportunity to remedy the situation, her quitting was without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 1932-CA-77 under VL 5.00.

Appeal No. 4901-AT-70 (Affirmed by 567-CA-70). The claimant's religion required full observance of Sunday as the Sabbath, especially the attendance of Sunday morning and evening worship services, which the claimant regularly attended. Although the claimant, at the time of her hiring, had objected to all Sunday work, because of her financial situation she agreed to work Sunday afternoons. Subsequently, the employer changed her working hours, which would have prevented her from attending worship services. When the employer refused to permit the claimant to be off work for worship services, the claimant quit. HELD: A claimant cannot be denied unemployment insurance where the denial would operate as an infringement of her constitutionally protected right to the free exercise of her religion. Accordingly, the claimant's leaving was found to have been based on good cause connected with the work. (Cross-referenced under VL 450.10.)

Also see AA 90.00 and MC 90.00.

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## VOLUNTARY LEAVING

VL 135.00 - 135.05

**VL DISCHARGE OR LEAVING****VL 135.00 DISCHARGE OR LEAVING.****135.05 DISCHARGE OR LEAVING: GENERAL.**

INCLUDES CASES CONTAINING (1) GENERAL DISCUSSION AS TO WHETHER THERE WAS A LEAVING OR A DISCHARGE, (2) POINTS ON DISCHARGE OR LEAVING NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 135, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 764254-2. The claimant worked part-time for the employer and ceased reporting to work as scheduled after he secured a full-time position with another employer. However, the claimant never informed the employer he was quitting and was subsequently terminated by the employer in accordance with their attendance policy for failing to report to work as scheduled. **HELD:** Section 207.045 of the Act, which provides that an individual who is partially unemployed and who resigns that employment to accept other employment that the individual reasonably believes will increase the individual's weekly wage is not disqualified for benefits, applies to situations in which an employee actually provides a resignation to his employer. Since the claimant merely abandoned his part-time job and did not advise the employer he was quitting to take another full-time job, he did not resign. Accordingly, the claimant is not entitled to the protection of Section 207.045 of the Act. Rather, the claimant is disqualified under Section 207.044 of the Act for violating the employer's attendance policy.

Case No. 747862-2. The claimant stopped performing services for the employer, a home health care provider, when restrictions were placed on his license which prohibited his continued employment. The claimant was a registered nurse and had been hired with no restrictions on his occupational license, as the Board of Nurse Examiners had not yet received paperwork regarding disciplinary actions from other states. As a result of receiving paperwork showing disciplinary action in the state of Utah approximately ten years earlier, and after meeting with the claimant, restrictions were placed on the claimant's license that prohibited him from working for a home health care provider. The claimant notified the employer he would be unable to continue working for them immediately upon learning of the imposition of those restrictions, as he otherwise would have lost his occupational license. **HELD:** The claimant's work separation was voluntary and without good cause connected with the work, as he was responsible for maintaining his professional license, and it was his actions which ultimately resulted in the placement of restrictions on his license that prevented his continued employment.

Case No. 523756-2. The employer is a licensed staff leasing services company. It entered into a staff leasing services agreement with the client for which the claimant worked. The staff-leasing employer did not require employees to contact them at the end of an assignment for placement with another client. The client discharged the claimant for failing to comply with a reasonable request. In its response to the notice of initial claim from the TWC, the employer reported that the separation occurred when the claimant left the client location. **HELD:** A staff leasing agreement establishes a co-employer relationship between the client and the staff

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 135.05 (2)

## VL DISCHARGE OR LEAVING

Case No. 523756-2

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leasing company. Each entity retains the right to discharge a worker. If the staff leasing services company does not invoke the notice requirement in Section 207.045(i), then Section 207.045(i) is not applicable. In this case, by not invoking the notice issue in its response to the TWC, the staff-leasing employer essentially *ratified* the actions of its co-employer client in relation to the work separation. Therefore, the Commission will analyze the separation from the client in determining qualification for benefits and, if applicable, chargeback to the account of the staff leasing services company. (Also digested at MC 135.05).

Case No. 428646. The claimant quit her job with the employer, a staff leasing services company, by submitting a resignation letter giving two weeks notice to the employer's client. The employer had not given the claimant written notice to contact them on termination of her assignment at the client company. However, the claimant sent a copy of the letter to the staff leasing employer, thereby indicating that she was aware of her relationship with the employer. The claimant quit because of stress resulting from the demands of the job. The claimant did not discuss her concerns with the office manager of the client company, and did not discuss her concerns with a representative of the staff leasing services company because she did not want to appear to be circumventing the client's authority. At the time she resigned, her assignment with the client company had not been completed, and work was still available for the claimant. HELD: The claimant voluntarily quit her job by sending a copy of her resignation letter to the staff leasing services company. Under the facts of this case, Section 207.045(i) does not apply. The claimant voluntarily quit without good cause connected with the work when she initiated her separation without first discussing her job dissatisfaction with the client and the staff leasing services company.

Case No. 172562. The employer sold its business. The claimant was offered comparable work with the new owner but declined the offer. HELD: When a company purchases an employer's business and the new employer offers the claimant comparable employment, a rejection by the claimant of the new company's affirmative job offer will be considered a voluntary resignation without good cause connected with the work. (Also digested at MC 135.05.)

Appeal Number 99-011197-10-111299. The claimant was employed by a temporary help firm. The claimant was aware that the employer's policy required employees to make themselves available for reassignment within the 24-hour period immediately following the close of the last involved temporary position. The employer's policy indicated that availability for reassignment was to be accomplished via the employee signing in on the employer's availability logbook. While the claimant went to the employer's office within 24 hours of having been informed of the close of his last assignment, the claimant did not sign in the employer's availability logbook at that time and was thus not considered to be available by the employer. HELD: The claimant was voluntarily separated from his last position of employment without good work-connected cause. The employer's requirement that employees make themselves available by signing in the logbook constituted a reasonably promulgated policy and the claimant's failure to follow that policy constituted a failure on the claimant's part to make himself effectively available for reassignment as per Section 207.045(h) of the Act. The claimant was disqualified from the receipt of benefits.

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## VOLUNTARY LEAVING

VL 135.05 (3)

**VL DISCHARGE OR LEAVING**

Appeal No. 99-008549-10-090999. The claimant participated in a training program offered by the employer, earning an hourly rate while learning job skills. The claimant entered into the program with the knowledge that it was a work skills training program, designed to provide her with the skills needed to gain productive work. Separation occurred when she successfully completed the program. HELD: The Commission found that the claimant's separation from the skills training program was analogous to the circumstances in work study participant cases. The claimant's training was structured to continue only for the length of the work skills training program. As in the cases of work study participants, the work was not structured to continue beyond the end of her program participant status. When the program ended, the claimant's work ended. The claimant was aware when she entered into the program that this would be the case. Accordingly, the Commission held that the claimant voluntarily left the last work without good cause connected with the work. Cross referenced at VL 495.00 and MC 135.05.

Appeal No. 99-007057-10-072899. The claimant was employed by a temporary help firm. The claimant was aware that the employer's policy required employees to contact the employer for reassignment within 24 hours of the close of any temporary position and that contact for reassignment was to thereafter be made on a daily basis. A failure to maintain such contact was noted as possible cause for the denial of unemployment benefits. The claimant was contacted by an employer representative and informed that her most recent temporary assignment had ended. The claimant notified the employer at that time that she was available for reassignment. The employer had no further work available at that time. The claimant did not thereafter make herself available for reassignment on a daily basis. The claimant filed for unemployment benefits on the day following the close of her last assignment. HELD: The claimant was involuntarily separated under non-disqualifying circumstances. The claimant effectively made herself available for reassignment when she immediately informed the employer of her availability for further assignments when told of the ending of her temporary assignment. In doing so, the claimant fulfilled the requirement set out in Section 207.045(h) of the Act that the temporary help employee contact the temporary help firm for reassignment upon completion of the last assignment. Under Section 207.045(h) of the Act, the claimant was not required to call the temporary help firm on a daily basis to report her continued availability once she made herself available for reassignment during her initial contact with the employer where she was informed that her assignment had ended. The claimant was laid off due to a lack of work when, having made herself available for reassignment, no further work was offered. No disqualification under Section 207.044.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 135.05 (4)

**VL DISCHARGE OR LEAVING**

Appeal No. 97-006956-10\*-061998. The employer, a staff leasing firm, had a policy that required employees to contact them within two days after the completion of an assignment. In this case, the claimant contacted the employer within that time frame. HELD: Where an employer's policy is less restrictive than the "next business day" requirement, as stated in Appeal No. 97-004610-10-042497 (also in VL--135.05), reasonable time will be established on the basis of the employer's less restrictive policy. This precedent is also applicable to temporary help firms.

Appeal No. 96-009657-10-090297. The claimant worked as a substitute teacher for this employer, an independent school district, completing her last assignment on May 12, 1997. Shortly before the regular school year ended on May 22, 1997, the claimant requested her name be removed from the substitute teacher availability list so that she could travel overseas on a personal vacation beginning May 19, 1997. This request was granted. Had the claimant not removed her name from the availability list, continued work as a substitute teacher would have been available through June 27, 1997, when the summer session ended. The claimant had performed substitute teaching services during two previous summer sessions. HELD: At least in situations where one party has taken affirmative action to end the employment relationship prior to filing a claim and clearly lacked good cause connected with the work for quitting, the Commission will look to that affirmative action for a ruling on separation. Disqualified under Section 207.045. (Cross referenced at MS 510.00).

Appeal No. 86-000326-10-121786. Due to technological changes, the claimant's job was completely eliminated and other employees had their work reduced or their jobs eliminated. The employer offered an incentive voluntary separation plan to its workers, resulting in more separations by senior employees thereby opening more positions for less senior employees who otherwise would have been laid off. The claimant, however, would have been subject to layoff due to her insufficient seniority. HELD: The claimant was terminated due to the elimination of her job and her insufficient seniority to qualify for transfer to another, comparable position. Furthermore, although some workers situated similarly to the claimant may have had the option of continued temporary work, the claimant was not offered such work. (Also digested under MC 135.30 and cross-referenced under VL 495.00.)

Appeal No. 86-00443-10-121886. Due to economic conditions, the employer instituted a reduction in force in the claimant's department in accordance with the labor-management agreement. The workers had three options: 1) exercise bumping privileges, 2) opt to be placed on substitute status, or 3) accept permanent layoff. Because of her seniority, the claimant could have exercised her bumping privileges. However, she elected to be placed on substitute status. During the eleven weeks following the filing of her initial claim, the claimant worked eleven shifts on a substitute basis. She could have worked fifty-three shifts by exercising her bumping privileges. HELD: Citing the precedent holding in Appeal No. 27,633-AT-65 (Affirmed by 37-CA-66), VL 475.05, the Commission ruled that the claimant voluntarily separated from her last work without good work connected cause by failing to exercise her bumping privileges. (Cross-referenced under VL 495.00)

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## VOLUNTARY LEAVING

VL 135.05 (5)

**VL DISCHARGE OR LEAVING**

Appeal No. 2198-CA-77. The fact that, after resigning with notice, a claimant continued working until a replacement could be trained and in order to assist the employer with tax forms, did not change the nature of the claimant's separation from a voluntary quit to a discharge. Such activities by a claimant after she gave notice of her intention to resign should reasonably be considered a part of the process of the claimant's voluntary separation from employment. (For a more complete digest, see VL 515.30.)

Appeal No. 1252-CA-77. The claimant, an employee of a temporary help service, failed to report for reassignment after the completion of the last assignment he was sent out on by the temporary help service. HELD: Because the claimant was separated when he failed to report for reassignment after completion of a temporary job, his separation was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

In Appeal No. 263-CA-68, the claimant, also an employee of a temporary help service, completed a job assignment on a Friday and reported to the employer on the following Monday for reassignment, at which time he was advised that no other work was available. The claimant was not offered any further work until after he filed his initial claim. The employer required its employees to report back as soon as possible upon completion of a job assignment and there was no evidence that there would have been any work available had the claimant reported back on the intervening Saturday. HELD: Since the claimant reported to the employer subsequent to completing his last job assignment and since he was not offered work until after he had filed his initial claim, his separation was due to lack of work. No disqualification under Section 207.045 or Section 207.044.

Also see Appeal No. 300-CA-71 under VL 495.00 and cases under MC 450.55.

(The above temporary help service cases are cross-referenced under MC 135.05.)

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VOLUNTARY LEAVING

VL 135.05 (6)

**VL DISCHARGE OR LEAVING**

Appeal No. 280-CA-76. While off duty, the claimant, a nursing home registered nurse, was telephoned by the employer's administrator and was asked to come in and discuss some charges which had been made by other employees against her. At the claimant's insistence, the administrator advised her of the nature of the charges (petty theft) and the claimant requested time to think about the matter. Shortly thereafter, she telephoned the administrator and stated that she would not be coming in to discuss the matter or to return to work. **HELD:** The claimant quit and was not discharged. Furthermore, her leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 86-14984-10-111886 under VL 495.00; Appeal No. 86-00326-10-121786 under MC 135.30; Appeal No. 27,633-AT-65 (Affirmed by 37-CA-66) under VL 475.00 and Appeal No. 87-11216-10-070287 under VL 235.40. Also see Appeal No. 96-012206-10-102596 under MC 135.45.

Appeal No. 97-004610-10-042497. Claimant, a laborer with a temporary help firm, completed his last assignment on Thursday. The following Tuesday morning, he contacted the employer for reassignment, but no work was available. Claimant was well aware his unemployment benefits could be denied if he failed to contact the temporary help firm for reassignment on completion of a temporary job. **HELD:** Disqualified for leaving voluntarily without good cause. Here, claimant effectively abandoned his job by failing to contact the temporary help firm for reassignment within a reasonable time after completion of a temporary job. "Reasonable time" as used here means not later than the next business day.

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## VOLUNTARY LEAVING

VL 135.10

**VL DISCHARGE OR LEAVING****135.10 DISCHARGE OR LEAVING: ABSENCE FROM WORK.**

WHERE A DECISION WAS MADE UPON THE BASIS OF WHETHER, AS A RESULT OF AN ABSENCE FROM WORK, THERE WAS A LEAVING OR A DISCHARGE.

Appeal No. 923-CA-77. The claimant had been off work due to an on-the-job injury and his doctor advised the employer that he would be released to return to work on October 1. The claimant remained off work for an additional three months because he was under the care of a different doctor for a different condition. At no time after his first doctor's release did the claimant contact the employer. He was replaced seven weeks after his first release. HELD: By remaining off work without informing the employer that he was still under a doctor's care for another condition, the claimant made no effort to protect his job and thus voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 2997-CA-77. The claimant was hospitalized due to a serious nervous condition. She made no personal effort to inform the employer of her whereabouts, although she thought certain ones of her co-workers who knew of her whereabouts would tell the employer. Five days after her hospitalization, the claimant's husband informed the employer that she was hospitalized and would not be able to return to work. The employer, therefore, assumed that the claimant had resigned. He replaced her and informed her when she attempted to return to work three weeks later that she had been replaced. HELD: The claimant voluntarily left her last work without good cause connected with the work in that she did not make an adequate effort to protect her job. Disqualification under Section 207.045.

Appeal No. 3288-CA-76. On the morning of the claimant's last day on the job, the claimant told her supervisor that she was ill and the supervisor responded that she was needed. Later that day, the claimant left work to see a doctor but gave no notice to her supervisor or co-workers. When she returned to work more than a day thereafter, she was told that she had been replaced for having left work without notice. HELD: The claimant left her last work voluntarily without good cause connected with the work. Although she had good reason for being absent, her doing so without notice constituted a failure to take necessary steps to protect her job.

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VOLUNTARY LEAVING

VL 135.10 (2) – 135.20

**VL DISCHARGE OR LEAVING**

Appeal No. 3288-CA-76

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The claimant's having told her supervisor earlier in the day that she felt ill was not notice that she would be going to the doctor later that same day. Disqualification under Section 207.045.

Appeal No. 3595-CA-75. The claimant had been off work on an authorized medical leave of absence due to an on-the-job injury. When she was finally released by her doctor to return to work, the claimant did not contact the employer but, instead, filed an initial claim. HELD: It is incumbent upon an employee, when released by her doctor following an approved medical leave of absence, to contact the employer to determine if work is still available. By filing her initial claim at a time when the employer-employee relationship had not been severed, the claimant thereby, in effect, voluntarily resigned without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 2200-CA-76 and Appeal No. 2726-CA-77 under VL 235.25. Appeal No. 3458-CA-75. A claimant who is off work on her doctor's advice due to an illness, with the prior permission of the employer, and who throughout her continuing absence keeps the employer advised of her status, has done all that is necessary to protect her job and is not subject to disqualification under either Section 207.045 or Section 207.044.

**135.20 DISCHARGE OR LEAVING: INTERPRETATION OF REMARK OR ACTION OF EMPLOYER OR EMPLOYEE.**

WHERE THE REMARKS OR ACTIONS OF EITHER THE EMPLOYER OR EMPLOYEE WERE CONSIDERED IN DETERMINING WHETHER THERE WAS, IN FACT, A LEAVING OR A DISCHARGE, USUALLY WHERE THE INTENTION OF EITHER THE EMPLOYER OR EMPLOYEE WAS NOT CLEAR.

APPEALS POLICY AND PRECEDENT MANUAL

VOLUNTARY LEAVING

VL 135.20 (2)

**VL DISCHARGE OR LEAVING**

Appeal No. 87-16658-10-092387. The employer's policy provided for discharge for any employee receiving three warnings for related or similar offenses. On her last day at work, the claimant was presented by her supervisor with a written reprimand which constituted her third warning. As the claimant's prior warnings had been for unrelated offenses, the claimant's discharge was not intended. Thinking that she was being discharged, the claimant refused to read the reprimand and walked off the job. She did not seek to clarify her status and did not return. HELD: The claimant voluntarily left her last work. As she made no attempt to clarify her status, under the circumstances, her leaving was without good cause connected with the work.

Appeal No. 87-11291-10-070187. The claimant alleged he was fired by a co-worker who was temporarily acting as the dispatcher. The co-worker had no authority to fire the claimant. On the following day, the owner emphatically told the claimant he was not fired and that the co-worker had no authority to fire him. The claimant insisted he had been fired and left. HELD: The claimant's refusal to return to work after the employer reassured him of his job was a voluntary separation without good work-connected cause. The claimant could not reasonably think his co-worker had the authority to fire him particularly after the owner specifically informed him the next day that he had not been discharged.

Appeal No. 86-378-10-121886. The claimant, a secretary, felt she was not doing a good job for the employer because of stress. She discussed this concern with the supervisor and he asked her to remain for two more weeks. The claimant interpreted this remark to mean she was discharged after two weeks. She thereafter stopped reporting to work. The claimant's supervisor never told her she was discharged and he understood she had quit, the two weeks being considered her notice to the employer. HELD: The claimant had the burden of clarifying any doubts about her job status and as she failed to do so and left the employer with the impression that she had quit, the claimant's separation was voluntary and without good cause connected with the work.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 135.20 (3)

**VL DISCHARGE OR LEAVING**

Appeal No. 1393-CA-77. The claimant, after having become involved in an argument with her co-worker, announced that she could no longer tolerate conditions and left. Her supervisor then began processing termination papers. Later, the claimant telephoned her supervisor and advised him that she did not intend to resign; however, the employer chose to treat her as having resigned. HELD: By leaving work and giving the employer the reasonable impression that she was resigning, the claimant voluntarily quit work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 3875-CA-76. The claimant complained to the employer that she could not work with her supervisor anymore, as the supervisor was not performing his duties. The employer responded that, if she could not work with her supervisor, he (the employer) would have to do the claimant's job. The claimant thereupon punched out as she considered that she had been discharged. HELD: The employer's statement to the claimant that he would have to do her work if she could not work with her supervisor, did not constitute notice of her discharge. Accordingly, the claimant's separation was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 2176-CA-76. The claimant had been absent from work on a number of occasions. When the claimant became ill after work on her last day of work, she called the employer and the latter stated that he needed someone who was dependable. The claimant stated that she was sorry but made no further explanation nor did she ask for further explanation of the employer's remark. She did not thereafter report for work. HELD: By not reporting to work again after the employer made an ambiguous remark to her concerning her dependability and by not attempting to determine for certain the employer's intentions, the claimant voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 135.20 (4) - 135.25**

**VL DISCHARGE OR LEAVING**

Appeal No. 3518-CA-75. During a heated discussion with the employer's manager regarding the claimant's absence without notice on the previous day and the employer's general working conditions, the claimant indicated that he could find better work elsewhere. To this, the manager responded that it would probably be best if he did so. HELD: The employer's manager's invitation to the claimant that, if he could secure better work elsewhere, he should probably do so, was not an unequivocal expression of the manager's intention to discharge the claimant. Consequently, the claimant's leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

**VL 135.25 DISCHARGE OR LEAVING: LEAVING PRIOR TO EFFECTIVE DATE OF DISCHARGE.**

WHERE THE CLAIMANT, BEING AWARE OF A DISCHARGE TO TAKE EFFECT IN THE NEAR FUTURE, LEFT PRIOR TO THE EFFECTIVE DATE OF SUCH DISCHARGE.

Appeal No. 97-009174-10-082697. Even where the claimant gives more than two weeks' notice, the employer retains the option of accepting claimant's resignation at any time before the intended resignation date, and—so long as the claimant is paid the usual wage through the end of that notice period—such early acceptance by the employer does not change the separation from a quit discharge. Accordingly, the claimant carries the burden in cases of showing the voluntary leaving was for good cause connected with the work.

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**APPEALS POLICY AND PRECEDENT MANUAL****VOLUNTARY LEAVING****VL 135.25 (2)****VL DISCHARGE OR LEAVING**

At its meetings on March 9 and March 23, 1988, the Commissioners adopted the following policy to apply to instances in which one party gives the other party notice of impending separation and the other party takes the initiative of terminating the employment relationship earlier:

- (1) The Commission recognized an expectation generally existing in the work place that a party intending to terminate the employment relationship will customarily give two weeks notice to the other party.
- (2) During such two-week period, early termination of the employment relationship by the party receiving such notice will not change the nature of the separation. The party first initiating the separation will continue to bear the burden of persuasion as to whether the separation was justified; that is, in the case of an involuntary separation, whether the claimant was discharged for misconduct connected with the work or, in the case of a voluntary separation, whether the claimant voluntarily left work without good cause connected with the work.
- (3) When more than two weeks' notice of impending separation is given and the party receiving the notice initiates a separation prior to the intended effective date, the nature of the separation, and thus the allocation of the burden of persuasion, will depend on the general circumstances in the case.

APPEALS POLICY AND PRECEDENT MANUAL

VOLUNTARY LEAVING

VL 135.25 (3)

**VL DISCHARGE OR LEAVING**

Appeal No. 87-02149-10-021288. On October 1, the claimant gave the employer notice of her intent to resign at the end of December, to enter other employment. She was requested by the employer, and she agreed, to refrain from discussing with her co-workers her intention to resign. The employer discharged the claimant after learning that she had discussed her resignation with a co-worker.

HELD: The claimant was discharged for work-connected misconduct because her betrayal of the employer's confidence and failure to abide by her agreement constituted a mismanagement of a position of employment.

Appeal No. 87-2079-10-020988. The claimant, a truck driver, was notified on December 29 that December 31 would be his last day of work. He was to be laid off due to lack of work. The claimant became upset and left immediately. HELD: The Commission applied their policy providing that when a party is given notice within a two-week time frame (of impending separation), early acceptance by the party receiving such notice will not change the nature of the separation. The employer here gave the claimant two days' notice and the claimant's early acceptance did not change the involuntary nature of the separation. The employer had the burden of showing misconduct on the part of the claimant. As there was no misconduct alleged in this instance, no disqualification under Section 207.044.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 135.25 (4)

**VL DISCHARGE OR LEAVING**

Appeal No. 87-00697-10-011488. On November 2, the claimant gave notice of his intent to quit his job in March of the following year. He further advised the employer that, during that time period, he intended to work under a decreased workload and would train only one particular individual to replace him. The employer accepted his resignation effective immediately. HELD: Recently adopted Commission policy provides that where a party gives in excess of two weeks notice of separation and that notice is accepted immediately, the burden of persuasion will normally shift to the party accepting the notice early. As the employer accepted the claimant's notice early here, the separation will be considered a discharge. The burden of establishing that the claimant was discharged for work connected misconduct was found to have been met in that the claimant's actions of giving the employer an ultimatum that he would not perform to his usual standard during his notice period amounted to intentional malfeasance, thus constituting misconduct connected with the work on the claimant's part.

Appeal No. 96-011165-10-092696. On or about July 1, 1996, the claimant submitted a written notice of resignation to the employer, informing them that he would be resigning effective August 4, 1996. He intended to go to work for another company at that time. On July 25, 1996, the employer hired a replacement for the claimant, and the claimant's services were no longer needed as of that date. HELD: When the moving party gives more than two weeks notice of an impending separation, and a separation actually occurs within two weeks of the stated effective date of the notice, the original moving party retains the burden of persuasion to establish the nature of the separation as either a voluntary quit or a discharge. The claimant in the instant case retains the burden of persuasion to establish the nature of the separation. This claimant resigned to accept other employment, which is a resignation for personal reasons and not for good cause connected with the work.

Appeal No. 87-00208-10-010488. The claimant was given two weeks' notice of impending termination by the manager who in the past had consistently and unfairly criticized him. The claimant left immediately because he was upset. HELD: The claimant was

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 135.25 (5)

**VL DISCHARGE OR LEAVING**

Appeal No. 87-00208-10-010488 (con't)

effectively discharged when given two weeks' notice of termination. As there was no evidence of any work-connected misconduct on the claimant's part, he was awarded benefits without disqualification under Section 207.044 of the Act even though he could have continued working two more weeks.

Appeal No. 86-20059-10-112387. On December 11, the claimant informed the employer that he would be leaving on January 30th of the following year. He was scheduled to report to active duty on February 4th. The employer only allowed him to work until December 15th. **HELD:** The Commission has adopted a policy that recognizes a general expectation in the work place of two weeks' notice of separation. When a party gives notice in excess of two weeks and that notice is accepted before the intended effective date, the burden of persuasion shifts to the party accepting the notice early. In the instant case, the separation was treated as a the employer's early acceptance of the claimant's notice. As the employer failed to meet its burden of establishing misconduct connected with the work on the claimant's part, no disqualification under either Section 207.045 or Section 207.044.

Appeal No. 87-98680-1-1187 (Affirmed by 87-19987-10-111787). Approximately twelve weeks prior to the expiration date of his employment contract, the claimant notified one of the members of the employer's board of directors that he did not intend to renew the contract. Later that same day, the employer's board of directors chose to exercise their option in the employment contract of giving the claimant thirty days' notice of termination and paying him thirty days' salary plus vacation in lieu of working. The severing of the employment contract was made immediately effective. **HELD:** The claimant set in motion the circumstances which resulted in his separation. Citing the holding in Appeal No. 1760-CA-76 under VL 440.00, the Appeal Tribunal further held that when a claimant chooses to terminate his employment by not extending his contract when work is available for him, the claimant has voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL****VOLUNTARY LEAVING****VL 135.25 (6) - 135.35****VL DISCHARGE OR LEAVING**

Also see cases under MC 135.25, MC 135.35 and VL 135.35.

Appeal No. 96-001500-10-020697. After several poor performance reviews, the claimant gave the employer notice of his intent to resign voluntarily three weeks hence. The employer elected to accept the claimant's resignation immediately. Although the claimant performed no further services for the company, the employer paid the claimant his usual salary through the intended resignation date. HELD: A separation does not change from a quit to a discharge simply because the employer decides to accept the resignation immediately. Here, the employer has compensated the claimant for not working out the notice period--even if longer than the customary two weeks--by paying him through his intended resignation date. In this case, the claimant did not have good cause to resign voluntarily after poor performance reviews. (Also digested at MC 135.25).

**135.35 DISCHARGE OR LEAVING: LEAVING IN ANTICIPATION OF DISCHARGE.**

WHERE CLAIMANT, BELIEVING HE WOULD BE DISCHARGED OR LAID OFF, LEFT TO AVOID SUCH DISCHARGE.

Appeal No. 748-CA-77. The claimant, a cashier, quit work while her employer, a physician, was considering what should be done about a situation in which a patient asserted that she had paid the claimant \$50 cash in part payment of a fee for medical services, when the receipt issued by the claimant, as well as the claimant's recollection of the transaction, indicated that the patient had paid only \$20. At no time, including during a meeting with the claimant and the patient and the latter's family, did the employer accuse the claimant of theft or threaten her with discharge. HELD: The claimant did not have good cause connected with the work for quitting as she was not accused of theft or threatened with discharge. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 135.35 (2) - 135.40**

**VL DISCHARGE OR LEAVING**

Appeal No. 28,213-AT-65 (Affirmed by 1231-CA-65). The claimant quit when he learned that a former employer would be taking over management in two weeks and that he would be unable to continue when the change was made. He quit at that time to enable his current employer to secure a replacement. HELD: Since he had had two weeks' employment remaining and his leaving had nothing to do with his last employer, the claimant voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

**135.40 DISCHARGE OR LEAVING: RESIGNATION INTENDED.**

WHERE A CLAIMANT SUBMITTED HIS RESIGNATION TO BECOME EFFECTIVE AT SOME FUTURE TIME, BUT WAS DISCHARGED PRIOR THERETO AND THE QUESTION AROSE AS TO WHETHER THERE WAS A "DISCHARGE" OR "LEAVING".

See MC 135.25 and VL 135.25.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 138.00

<b>VL DISCIPLINARY ACTION</b>
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**VL 138.00 DISCIPLINARY ACTION.**

INCLUDES CASES WHERE A CLAIMANT LEFT WORK BECAUSE OF SOME DISCIPLINARY ACTION ON THE PART OF THE EMPLOYER.

Appeal No. 87-20843-10-120987. The claimant became angry and quit after being reprimanded by the employer about her work prioritization. The claimant, normally a sales representative, had been filling in as the employer's receptionist at the time. HELD: The claimant quit without good cause connected with the work because her resignation was in response to a reasonable reprimand by the employer and an employer has the right to issue reasonable reprimands to its employees. Disqualification under Section 207.045.

Appeal No. 2888-CA-76. On her last regularly scheduled workday prior to her last day on the job, the claimant, a dentist's assistant, missed work because severe flooding in her neighborhood had prevented her traveling to work. She had properly and timely notified the employer and he had raised no objection at that time. On her next day at work, the employer, in the presence of patients, accused the claimant of lying and conspiring with other employees. He would not permit her to explain her absence; he simply invited her to leave if she did not like what he had to say. As this exchange took place in the presence of the employer's patients, the claimant felt embarrassed and resigned pursuant to the employer's suggestion. HELD: It should be regarded as a necessary incident of an employer's authority that he be permitted to reprimand employees for their failings. Furthermore, an employer should, within reason, even be permitted to enter an erroneous reprimand without the latter necessarily providing his reprimanded employee with good cause connected with the work for resigning. However, there is no reason why even a justified reprimand must be aired in humiliating and accusatory language in the presence of the general public. In this case, the employer's abusive and unwarranted reprimand of the claimant provided her with good cause connected with the work for her leaving.

APPEALS POLICY AND PRECEDENT MANUAL

VOLUNTARY LEAVING

VL 138.00 (2)

**VL DISCIPLINARY ACTION**

Appeal No. 1236-CA-76. The claimant, assistant manager of a chain convenience store, resigned because she had been reprimanded by the employer's administrative assistant. Although the latter was not the claimant's immediate supervisor, he had the authority to indicate to the claimant deficiencies in her work. The claimant was aware that the administrative assistant had such authority but resigned rather than respond to his corrections. HELD: Since criticism of the claimant's job performance was within the scope of the administrative assistant's duties, the claimant's voluntarily leaving because she objected to his criticism of her job performance was without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 273-CA-77 under MC 135.45.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 150.00 - 150.15

<b>VL DISTANCE TO WORK</b>
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**VL 150.00 DISTANCE TO WORK.****150.05 DISTANCE TO WORK: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF DISTANCE TO WORK, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 150, AND (3) POINTS COVERED BY ALL THREE SUBLINES.

Appeal No. 886-CA-71. In the absence of a prior agreement to work at any of the employer's stores in the trade area, a claimant had good cause to quit rather than transfer to a store in a town twenty miles away.

**150.15 DISTANCE TO WORK: REMOVAL FROM LOCALITY.**

APPLIES TO DECISIONS IN WHICH THE LEAVING WAS A RESULT OF (1) CLAIMANTS REMOVAL FROM THE LOCALITY OF THE EMPLOYER'S PREMISES, OR (2) THE REMOVAL OF THE EMPLOYER'S PLACE OF BUSINESS TO ANOTHER LOCALITY.

Appeal No. 2672-CA-76. The claimant, who resided in Denton, had commuted to work in Dallas, a distance of 30.8 miles. She quit work when the employer relocated its office to Richardson as this increased the claimant's travel distance to 40.6 miles. Apart from the extra distance and travel time involved, the additional travel expense, in the claimant's opinion, constituted an effective reduction in pay. HELD: The employer's relocation did not measurably increase the inconvenience borne by one who was already commuting a distance of more than thirty miles. Furthermore, even if the claimant's additional travel were to be regarded as tantamount to a reduction in pay, it was not substantial. Thus, neither of the reasons given by the claimant provided her with good cause connected with the work for her leaving. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

## VL 150.15 (2)

**VL DISTANCE TO WORK**

Appeal No. 1892-CA-76. In January 1976, the employer decided to move his business a distance of about ten miles. The claimant repeatedly stated to the employer, when asked, that she would not transfer as it was too far to drive. On the last day of operation in the old location, the claimant stated that she was willing to transfer. By that time, however, she had been replaced. She probably could have obtained transportation by sharing a ride with any one of the five employees residing in her neighborhood who did transfer to the new location. HELD: Since the distance by which the employer's plant was relocated was relatively small and since there were fellow employees from whom the claimant could have obtained transportation, the claimant's failure to obtain transportation and transfer to the new location constituted a voluntary quit without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 1112-CA-71. The claimant's employer relocated its operations from Fort Worth to Dallas. The employer offered all employees who would agree to the transfer a \$.35 an hour raise in pay and the advance of any funds needed to repair their cars. One of the employees who agreed to the transfer availed himself of this latter offer and, further, arranged a car pool among the transferring employees. The claimant, however, resigned. HELD: The employer's relocation would have required the claimant to commute some 80 miles a day had he agreed to transfer and the claimant had not agreed to transfer to Dallas when he accepted employment. Although the employer made some provisions to assist transferring employees, these were not sufficient to remove the good cause connected with the work for the claimant's leaving.

Also see cases under VL 150.20.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 150.20

<b>VL DISTANCE TO WORK</b>
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**VL 150.20 DISTANCE TO WORK: TRANSPORTATION AND TRAVEL.**

INVOLVES A LEAVING BECAUSE OF TRAVEL TIME OR EXPENSES, OR INADEQUATE TRANSPORTATION FACILITIES.

Appeal No. 97-006341-10-060597. In the home health care referral industry, either the worker or the referral service may initiate reassignment. In this case, the claimant was removed from her current assignment at her own request because she was dissatisfied. When the employer offered claimant reassignment later that same week, claimant declined because the only way she could get to the new client's home was by bus. The employer had never furnished transportation. HELD: Separation is an issue that can only be determined after an examination of all the facts and circumstances. An employment relationship such as this one continues until one party clearly notifies the other party that the employment relationship has ended, even if there is some passage of time during which the employee performs no services and earns no wages. This employment relationship was ended by claimant's action of declining the new assignment offered to her. This action clearly notified the employer that the relationship had ended. Claimant's separation occurred when she refused reassignment, not when she requested removal from her previous client. Claimant's dislike of the only available means of transportation—riding the bus—does not constitute good cause to leave voluntarily, because transportation was claimant's responsibility. (Cross referenced at VL 510.40 & VL 515.90).

Appeal No. 488-CA-76. The claimant was absent from work with notice for several days due to the necessity of repairing his car. When he reported back to work, he learned that he had been replaced. Although it was not disputed that transportation to the work site was the claimant's responsibility, the claimant made no effort to use public transportation facilities in order to get to work. HELD: Where it is a claimant's responsibility to arrange for his own transportation to work, failure of such transportation will subject a claimant to disqualification under Section 207.045 of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

VOLUNTARY LEAVING

VL 150.20 (2)

**VL DISTANCE TO WORK**

Appeal No. 6930-CA-60. Claimant lived in a small community approximately twenty-five miles from the employer's factory and had been riding to and from her job with a neighbor. She quit her job because she lost her only dependable means of transportation when her neighbor moved away. HELD: The Commission considered the following to be appropriate standards to be applied to cases of this type:

- (1) If the employer assumed the responsibility for transportation of an employee to work, the loss of transportation can be considered an involuntary separation on the part of the claimant if no other reasonable transportation is available. If other transportation is reasonably convenient and inexpensive, then the claimant's separation is a voluntary separation which will subject the claimant to a disqualification.
- (2) If the employer does not assume the responsibility for transportation of an employee to work, then transportation is the claimant's responsibility and any separation from work because of transportation problems would be a voluntary separation without good cause connected with the work.

The claimant in this appeal was responsible for providing her own transportation to the job and was forced to resign because she failed to provide herself with such transportation. Her resignation was a voluntary quit without good cause connected with the work. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 155.00 - 155.05

**VL DOMESTIC CIRCUMSTANCES****VL 155.00 DOMESTIC CIRCUMSTANCES.****155.05 DOMESTIC CIRCUMSTANCES: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF LEAVING BECAUSE OF DOMESTIC CIRCUMSTANCES, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 155, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 97-009604-30-090497. The claimant, a civilian, was separated from her work as a secretary at a U.S. Naval Hospital overseas when her husband, a Navy enlisted man, was transferred to a base in the United States. Government regulations prohibit such military facilities from continuing to employ military dependents once their enlisted sponsor is transferred out of the commuting area. **HELD:** The claimant's separation under these circumstances was a voluntary leaving with good cause connected to the work. No disqualification. (Cross reference at VL 305).

Appeal No. 954-CA-70. Per Commissioner vote effective February 25, 2010, Case No. 954-CA-70 is no longer a precedent and has been removed.

Appeal No. 954-CA-70. The claimant, two months pregnant, was severely beaten by her husband and hospitalized. In order to prevent a recurrence, she resigned her job and moved to another city to live with her mother. **HELD:** Although the claimant's resignation was for a compelling personal reason, it was not for good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 1212-CA-66. A claimant who gave notice and quit because his trouble with his wife was affecting his work and he could not get his personal affairs straightened out, left his work voluntarily without good cause connected with the work. Although the employer had told him he must get his personal problems straightened out or submit his resignation or he would be subject to discharge because his work was suffering due to his personal problems, the claimant quit at a time when his possible discharge was not under immediate consideration. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 155.10 - 155.35**

**VL DOMESTIC CIRCUMSTANCES**

**155.10 DOMESTIC CIRCUMSTANCES: CHILDREN, CARE OF.**

WHERE A CLAIMANT LEFT WORK IN ORDER TO CARE FOR CHILDREN. (ILLNESS OF CHILDREN CODED UNDER "ILLNESS OR DEATH OF OTHERS" SUBLINE, VL 155.35.)

Appeal No. 5156-AT-69 (affirmed by 589-CA-69). When a claimant leaves her work to care for her children during the summer while school is out, the separation is voluntary and without good cause connected with the work. Disqualification under Section 207.045.

**VL 155.25 DOMESTIC CIRCUMSTANCES: HOUSEHOLD DUTIES.**

WHERE A CLAIMANT LEFT WORK BECAUSE CONTINUANCE AT SUCH EMPLOYMENT WOULD HAVE MADE IMPOSSIBLE, OR DIFFICULT, THE PERFORMANCE OF HOUSEHOLD DUTIES.

Appeal No. 6066-AT-69 (Affirmed by 635-CA-69). The claimant was physically able to work the seven hours required on her job but quit because she was not physically able to do her housework also and could not afford to hire a housekeeper. HELD: The claimant's leaving was without good cause connected with the work. Disqualification under Section 207.045.

**155.35 DOMESTIC CIRCUMSTANCES: ILLNESS OR DEATH OF OTHERS.**

LEAVING WORK BECAUSE OF CLAIMANT'S DESIRE TO CARE FOR AN ILL MEMBER OF THE FAMILY, OR TO ATTEND A FUNERAL, ETC.

Appeal No. 2183-CA-76. The claimant quit work in order to accompany her husband who was moving to Dallas to undergo medical treatment. It was necessary for the claimant's husband to be close to the clinic where he was being treated and necessary for the claimant to assist in caring for him. HELD: The claimant's reason for leaving was not good cause connected with the work. Disqualification under Section 207.045. (Note: This decision was

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 155.35 (2) - 155.40

#### VL DOMESTIC CIRCUMSTANCES

Appeal No. 2183-CA-76 (con't)

issued prior to the adoption of the spousal relocation provision in Section 207.045 of the Act.)

Appeal No. 3639-CA-75. The claimant notified the employer that she was going to be absent as she was leaving town temporarily to care for her terminally ill grandmother. Due to her grandmother's illness and funeral, the claimant was absent from work for about two weeks, during which time she was replaced. HELD: The claimant voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 387-AT-68 (Affirmed by 107-CA-68). During her off duty hours, the claimant learned that her mother had been seriously injured in an automobile accident in Mexico and that it was necessary for her to go to her mother. She so advised her supervisor by phone that night and had her husband call the employer the next morning. She could give no definite date she would return and it was necessary for the employer to replace her. HELD: The claimant's leaving under such circumstances, without stating a definite date for her return to work, constituted a voluntary quit without good cause connected with the work. Disqualification under Section 207.045.

#### 155.40 DOMESTIC CIRCUMSTANCES: MARRIAGE.

LEAVING EMPLOYMENT TO MARRY OR BECAUSE OF AN EMPLOYER'S RULE AGAINST EMPLOYING PERSONS AFTER MARRIAGE.

Appeal No. 2354-CA-77. The claimant was asked to resign because the employer's rules forbade simultaneous employment of married persons. When she did not resign, she was terminated. HELD: The employer's policy cannot be used by the Commission to disqualify a claimant as it is a policy endeavoring to prohibit the parties from exercising their constitutional right to marry. Furthermore, it is a well-known public policy that the government encourages marriage and will not be a party to enforcing rules which place impediments in the way of persons desiring to marry. The Commission held that the claimant's separation was an involuntary one and that she was not subject to disqualification under either Section 207.045 or Section 207.044 of the Act.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 180.00**

<b>VL EQUIPMENT</b>
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**VL 180.00 EQUIPMENT.**

INCLUDES CASES IN WHICH CLAIMANT LEFT WORK FOR REASONS SUCH AS: A LACK OF EQUIPMENT TO DO THE JOB, THE DEFECTIVE NATURE OF SUCH EQUIPMENT, OR THE EMPLOYER'S REQUIREMENT THAT THE CLAIMANT FURNISH CERTAIN EQUIPMENT.

Appeal No. 5633-AT-63 (Affirmed by 9799-CA-63). A claimant has good cause to quit rather than operate a central air conditioning unit which he knew to be defective and which he had reason to believe would endanger lives and property. He had called the matter to the attention of management but nothing was done about it for financial reasons. (Cross-referenced under VL 210.00.)

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 190.00 - 190.10

<b>VL EVIDENCE</b>
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**VL 190.00 EVIDENCE.****190.10 EVIDENCE: BURDEN OF PERSUASION AND PRESUMPTIONS.**

APPLIES TO DISCUSSIONS AS TO WHICH PARTY HAS BURDEN OF PERSUASION, OR AS TO LEGAL ADEQUACY OF PARTICULAR EVIDENCE TO OVERCOME PRESUMPTIONS RELATING TO THE APPLICATION OF THE VOLUNTARY LEAVING PROVISIONS.

As to the medical verification described in Section 207.045 of the Act, see Appeal No. 87-16083-10-091487 under VL 235.25.

Appeal No. 96-009627-10-082296. A claimant worked on a concrete crew for the employer. The claimant developed a skin condition so he consulted a medical doctor in the United States. The doctor prescribed a cream. Not satisfied with the medical treatment he received, the claimant consulted an allergist in Mexico. The claimant voluntarily resigned from his position of employment after being told by the allergist that he was allergic to dust and dirt and he should avoid working in this environment. **HELD:** Evidence presented by the claimant insufficient to satisfy the requirements of Section 207.045 of the Act to establish a voluntary resignation for health reasons as the claimant was not advised by his medical doctor in the United States to resign from his position of employment. Where a claimant has received conflicting medical opinions, the Commission will accord greater weight to the advice given by a physician in the United States or a physician duly licensed by a U.S. regulatory authority. Since the physician that the claimant consulted in the United States did not advise the claimant to resign, the claimant is deemed to have voluntarily resigned from his position of employment without good cause connected with the work. (Cross referenced under VL 235.25)

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 190.15

## VL EVIDENCE

**190.15 EVIDENCE: WEIGHT AND SUFFICIENCY.**

WHERE WEIGHT OR THE SUFFICIENCY OF EVIDENCE IS A MATERIAL FACTOR IN THE DECISION.

Appeal No. 86-03568-10-022587. A physician's advice to "consider employment in another area" is not the equivalent of advice to quit the job nor is it sufficient evidence to establish that the claimant's quitting was for medical reasons. (Cross-referenced under VL 235.05.)

Appeal No. 3668-CA-75. The claimant testified that she had resigned because of what she considered to be harassment due to her union activities. However, she presented no testimony or other evidence regarding any specific act of harassment. HELD: The evidence was undisputed that the claimant voluntarily quit because of alleged harassment. However, since she produced no specific testimony or other evidence to support that allegation, she thereby failed to establish good cause connected with the work for leaving. Disqualification under Section 207.045.

Appeal No. 2606-CA-75. The claimant had allegedly resigned due to medical reasons and on the advice of her doctor. In connection with two separate appeal hearings, she was requested to produce documentation from her doctor, describing her physical condition at the time of her separation from work, and at all times subsequent thereto, and indicating whether or not the doctor had advised her to quit her last job because of her physical condition. The claimant failed to produce such documentation on either of the two occasions that it was requested of her. HELD: In light of the claimant's repeated failure to produce the requested documentary evidence of the asserted reason for her resignation, the Commission concluded that the evidence was insufficient to support a finding that the claimant's leaving was involuntary or, if voluntary, that it was based on good cause connected with the work. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

## VL 190.15 (2)

## VL EVIDENCE

Also see Appeal No. 2128-CA-77 under VL 235.05 and Appeal No. 87-16083-10-091487 under VL 235.25.

Appeal No. 1480-CA-72. Although the claimant contended in her testimony before the Appeal Tribunal that she had quit work because of poor working conditions, she had informed the employer, at the time of her quitting, that she was doing so in order to move to another area. By the time she filed her initial claim, the claimant had moved to the other area as indicated at the time of her quitting. **HELD:** The fact that the reason given by the claimant to the employer for her quitting was her desire to relocate and the fact that she did, in fact, so relocate after quitting, were sufficient to support a finding that her quitting was for personal reasons and not based on good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 7109-CA-60. A claimant's statement on the initial claim as the reason for separation is given great weight and is presumed correct until the contrary appears from sworn testimony of record. There is no hard and fast rule to the effect that a claimant is bound by the statement on his initial claim. A claimant will be bound by the statement on his initial claim where the preponderance of the evidence supports the statement on the initial claim and the claimant is seeking to change his original statement in order to remove a disqualification.

Also see Appeal No. 87-07136-10-042887 under MC 190.15 and PR 190.00.

Also see Appeal No. 87-20865-10-121487 under VL 515.65 and Appeal No. 87-16083-10-091487 under VL 235.25.

# APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 195.00

<b>VL EXPERIENCE OR TRAINING</b>
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**VL 195.00 EXPERIENCE OR TRAINING.**

INCLUDES CASES IN WHICH A CLAIMANT LEFT WORK BECAUSE SUCH WORK DID NOT FULLY UTILIZE HIS SKILLS, BECAUSE HE BELIEVED THAT HE HAD INSUFFICIENT EXPERIENCE OR TRAINING TO PERMIT HIM TO DO THE JOB, OR BECAUSE HIS EMPLOYMENT DID NOT PRESENT AN OPPORTUNITY FOR HIM TO ACQUIRE THE EXPERIENCE OR TRAINING DESIRED.

Appeal No. 214-AT-68 (Affirmed by 85-CA-68). The claimant quit because he felt he was not qualified for his job as foreman. He had not previously worked as a foreman but accepted the job and performed it for some time. The employer was not dissatisfied with the claimant's work as a foreman and he could have continued on the job. HELD: The claimant voluntarily quit work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 32,403-AT-66 (Affirmed by 623-CA-66). The claimant quit with two days notice after he learned there was no approved apprenticeship program offered by the employer and he would have to advance on his own initiative. HELD: Since the claimant had had no firm agreement with the employer at the time of hire as to what training or advancement he would receive from the employer, the claimant's voluntary quit was without good cause connected with the work. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 210.00**

<b>VL GOOD CAUSE</b>
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**VL 210.00 GOOD CAUSE.**

THIS LINE IS USED TO CLASSIFY GENERAL DISCUSSIONS AS TO WHAT CONSTITUTES "GOOD CAUSE" FOR VOLUNTARY LEAVING.

Good cause connected with the work for leaving, as that term is used in the law of unemployment insurance, means such cause, related to the work, as would cause a person who is genuinely interested in retaining work to nevertheless leave the job.

Appeal No. 1089-CA-72. A claimant has good cause connected with the work for quitting after making a reasonable effort to resolve legitimate complaints with management.

Also see Appeal No. 5633-AT-63 (Affirmed by 9799-CA-63) under VL 180.00.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 235.00 - 235.05

<b>VL HEALTH OR PHYSICAL CONDITION</b>
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**VL 235.00 HEALTH OR PHYSICAL CONDITION.****235.05 HEALTH OR PHYSICAL CONDITION: GENERAL.**

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF LEAVING WORK FOR SAFETY OR HEALTH REASONS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 235, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 87-2369-10-021988. The claimant, a preschool teacher, walked off the job because she felt her work was creating a good deal of stress. She was seeing mental health professionals, and submitted a statement from them that the job, her separation from work, and "other stresses in her life and other problems" all caused problems. On the claimant's last day of work, the employer heard the claimant speaking loudly to the children. When the employer inquired if there was a problem, the claimant walked off the job. HELD: The medical opinion dealing with the claimant only indicated that the job was one of several stressful situations the claimant was dealing with. The claimant failed to show that the employer's action was unreasonable, and thus her response of quitting was a quit without good cause connected with the work.

Appeal No. 87-16714-10-092587. The claimant quit because she was stressed and fatigued by her work load which the employer had made efforts to reduce. Unlike her co-workers, the claimant stayed at work until all her work was done rather than complete it the next day as allowed by the employer. This caused her undue stress and fatigue. HELD: The claimant did not have good cause connected with the work for quitting because she could have reduced her pace by leaving unfinished work for the next day. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 235.05 (2)

**VL HEALTH OR PHYSICAL CONDITION**

Appeal No. 2128-CA-77. Where a claimant left her last work due to alleged medical reasons but produced no medical verification thereof, the Commission held that, absent any verification, it was forced to conclude that the claimant had voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 2606-CA-75 under VL 190.15.

Appeal No. 3210-CA-75. The claimant left her job because the work was too hard and because, in her opinion, the standing required by the work was causing her feet and legs to swell, thereby adversely affecting her health. She had not consulted a physician and thus had not been advised by a doctor to leave the job due to health reasons. She never made her complaints known to the plant foreman nor did she seek a transfer to other work. **HELD:** Since the claimant never advised the plant foreman of her health problem and never consulted a physician regarding it (and, thus, was never advised by a physician to quit work because of her health problem), the claimant's separation was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 86-03568-10-022587 under VL 190.15, Appeal No. 16083-10-091487 under VL 235.25 and Appeal No. 2177-CA-76 under VL 515.35.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 235.25

<b>VL HEALTH OR PHYSICAL CONDITION</b>
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**VL 235.25 HEALTH OR PHYSICAL CONDITION: ILLNESS OR INJURY.**

LEAVING WORK BECAUSE OF CLAIMANT'S ILLNESS, OR BECAUSE OF AN INJURY HE HAD RECEIVED.

Appeal No. 87-21491-10-122387. A claimant who has had a work-related injury and requires medical attention but is told by the employer that he will be discharged if he takes time off for such purpose, has good cause connected with the work for quitting under Section 207.045.

Appeal No. 87-16083-10-091487. The claimant quit due to physical problems allegedly caused by job related stress. He neither mentioned the problem in his resignation letter nor offered any medical documentation to the Appeal Tribunal. HELD: Voluntary quit for personal rather than work related reasons. To be considered as having quit involuntarily for health reasons, a nondisqualifying separation, the claimant must have complied strictly with the requirements of Section 207.045 of the Act. That is, the claimant must have submitted medical verification of his illness, injury, or disability. As the claimant did not do this and did not mention health as a reason in his written resignation, claimant was disqualified under Section 207.045. (Cross-referenced under VL 190.10, VL 190.15 and VL 235.05.)

Appeal No. 96-009627-10-082296. A claimant worked on a concrete crew for the employer. The claimant developed a skin condition so he consulted a medical doctor in the United States. The doctor prescribed a cream. Not satisfied with the medical treatment he received, the claimant consulted an allergist in Mexico. The claimant voluntarily resigned from his position of employment after being told by the allergist that he was allergic to dust and dirt and he should avoid working in this environment. HELD: Evidence presented by the claimant insufficient to satisfy the requirements of Section 207.045 of the Act to establish a voluntary resignation for health reasons as the claimant was not advised by his medical doctor in the United States to resign from his position of employment. Where a claimant has received conflicting medical opinions,

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 235.25 (2)

**VL HEALTH OR PHYSICAL CONDITION**

Appeal No. 96-009627-10-082296 (con't)

the Commission will accord greater weight to the advice given by a physician in the United States or a physician duly licensed by a U.S. regulatory authority. Since the physician that the claimant consulted in the United States did not advise the claimant to resign, the claimant is deemed to have voluntarily resigned from his position of employment without good cause connected with the work. (Cross referenced under VL 190.10)

Appeal No. 87-14576-10-081587. The claimant was an alcoholic who, because of his condition, had left his position as bar manager to work in the Pro Shop of the employer's country club. After returning to his former position, the claimant again had alcoholic problems. At the employer's insistence, the claimant started attending Alcoholic's Anonymous meetings. After a death in the family lead to a ten-day binge, the claimant saw a physician and checked into the VA hospital for tests. The claimant's physician advised the claimant to leave his bar manager position because of the proximity to alcohol. The claimant told the employer he was quitting to avoid the proximity to alcohol. He was offered a job in the Pro Shop and refused it because it was in the same building as the bar. HELD: Voluntary quit without good cause connected with the work because the claimant could have chosen to continue to work for the employer in a position that was not close to alcoholic beverages. Disqualification under Section 207.045.

Appeal No. 3557-CF-77. The claimant, a letter carrier suffering from arthritis and hypertension, was advised by his physician to inquire about disability retirement. The claimant made such inquiry at the employer's personnel office and applied for disability retirement and was not told at any time about the possibility of lighter work. The collective bargaining agreement between the claimant's bargaining unit and the employer set out the method by which an employee may seek light duty assignment and charged the employer's installation head with the implementation of the contract. The claimant, who was not aware of the contract provision regarding light duty assignment, reasonably believed that there was no light duty available and there was no evidence in the record to

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 235.25 (3)

<b>VL HEALTH OR PHYSICAL CONDITION</b>
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Appeal No. 3557-CF-77

(con't)

the contrary in that regard. HELD: Under the terms of the collective bargaining contract, the employer had the responsibility to at least mention to the claimant the contract provisions regarding application for light duty assignment but did not discharge that responsibility. Since the claimant was not aware of the contract provisions regarding application for light duty assignment and reasonably believed that no such work was available, his separation, on the advice of his doctor and with no light work available, was involuntary. No disqualification under Section 207.045.

Also see Appeal No. 3312-CF-77 under VL 345.00.

Appeal No. 2726-CA-77. On the claimant's last working day, she encountered medical difficulties and was taken to the hospital. She told the employer that she would not be returning and that the employer should get someone to replace her. While off work during this illness, the claimant learned that she had been replaced. She assumed that this meant that she had been discharged. As the claimant was under a medical restriction and thus felt that she could not resume her previous work for the employer, she did not attempt to return to her former job nor did she ask for other work with the employer. HELD: Although the claimant was off work because of illness, by not attempting to protect her job by seeking re-hire when again able to return to work, the claimant thereby voluntarily left her work without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 3595-CA-75 under VL 135.10 and Appeal No. 2200-CA-76 in this subsection.

Appeal No. 2440-CA-77. A claimant who was off work due to illness and who made repeated attempts to protect her job, but who was not reinstated following her doctor's release and her attempted return to work, is not subject to disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 235.25 (4)

**VL HEALTH OR PHYSICAL CONDITION**

Appeal No. 2032-CA-77. More than four months prior to the day she quit work, the claimant had consulted a physician who advised her to obtain work requiring less talking, as she had a medical problem involving her jaw. The claimant, a directory assistance operator for a telephone company, thereupon exercised her seniority to secure a split shift, which was less taxing to her and which she continued on for a time until the office where she was working was closed. She was then sent elsewhere for two weeks' training, upon the conclusion of which, because of her seniority, she would probably have been able to obtain shift work again. After the first week of such training, which required eight hours continuous work daily and considerable talking, the claimant quit the work because of the problem she was again having with her jaw. At no time during the four months prior to her separation did the claimant consult a physician. **HELD:** Since the claimant had not consulted a physician during the four months prior to her separation and since, when she quit, the claimant had completed one week of a two week training program, upon the conclusion of which she probably would have been able to secure a split shift job similar to that which she had been able to perform despite her health problem, the claimant voluntarily quit her last work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 1327-CA-77. The claimant quit work, stating to the employer that she was quitting to look for a better job. In fact, the claimant quit due to health reasons, as she had not fully recovered from recent surgery. **HELD:** By not telling the employer that she was leaving due to health reasons and not asking for a transfer to other work, the claimant deprived the employer of the opportunity to attempt to find work with his company which the claimant could perform. Accordingly, the claimant was held to have left her last work voluntarily without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 256-CF-77. The claimant, a U.S. Postal Service mail handler, was unable, due to a non-work-related back injury, to perform all the duties of his position. He was offered a promotion to a light duty job as a clerk, which medical evidence indicated he

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 235.25 - 235.40

#### VL HEALTH OR PHYSICAL CONDITION

Appeal No. 256-CF-77

(con't)

was able to do. He declined the promotion, preferring to remain as a mail handler, performing that part of such work of which he was capable. He was therefore terminated. HELD: Since the claimant refused a reasonable transfer, which constituted a promotion, to the only work which was then able to perform, the claimant thereby effectively voluntarily left his work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 2200-CA-76. The claimant was replaced by another person while she was off work, with notice, due to illness. The claimant filed her initial claim without having applied for reinstatement because she had been told by the employer that she had already been replaced. HELD: The claimant did not quit but was discharged and for reasons other than misconduct connected with the work. The case was distinguished from a case in which a claimant, without having been told that he has been replaced, files an initial claim after being medically released as able to work but without having applied for reinstatement with his former employer. No disqualification under Section 207.045 or Section 207.044.

Also see Appeal No. 2726-CA-77 in this subsection and Appeal No. 3595-CA-75 under VL 135.10.

#### **235.40 HEALTH OR PHYSICAL CONDITION: PREGNANCY.**

WHERE CLAIMANT LEFT WORK BECAUSE SHE WAS PREGNANT, OR BECAUSE OF AN EMPLOYER'S RULE AGAINST EMPLOYING PREGNANT WOMEN.

Appeal No. 87-11216-10-070287. The claimant declined a job assignment from her employer, a temporary agency, because it required long periods of standing which her doctor had advised her against because she was pregnant. The claimant told the employer that she could not stand but did not tell the employer that this was her doctor's advice. The employer did not contact the

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 235.40 - 235.45

VL HEALTH OR PHYSICAL CONDITION
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Appeal No. 87-11216-10-070287 (con't)

claimant again. HELD: The claimant quit without work-connected good cause because she neglected to tell the employer of her doctor's advice, thus depriving the employer of an opportunity to find her suitable work. Disqualification under Section 207.045. (Cross-referenced under VL 135.05.)

TEC vs. Gulf States Utilities, 410 S.W. 2nd (Texas Civ. Appeals 1967, writ denied, n.r.e.). A claimant who leaves her job as required by company policy, upon reaching the fifth month of pregnancy, does not leave her work voluntarily. The court held that, had her separation been held to be voluntary because she had agreed long before separation to resign upon reaching the fifth month of pregnancy, the provisions of Section 207.071(a) of the Texas Unemployment Compensation Act would void such an agreement since it provides that an individual cannot contract away or otherwise waive his right to unemployment insurance.

Appeal No. 1206-CA-74. The Commission has consistently held that, when a claimant is separated from his last work due to illness or disability and the claimant kept his employer properly informed of his condition, the separation is not voluntary. Therefore, no disqualification is imposed under Section 207.045 of the Act. No different treatment can be given a claimant simply because her physical inability to work is due to pregnancy.

**235.45 HEALTH OR PHYSICAL CONDITION: RISK OF ILLNESS OR INJURY.**

CONSIDERS THE EFFECT OF LEAVING WORK BECAUSE OF FEAR OF ILLNESS OR INJURY.

Appeal No. 87-16605-10-091687. The claimant, a dental assistant at a state prison, performed work requiring physical contact with inmates exposed or possibly exposed to the AIDS virus. Dental instruments often pierced the claimant's rubber gloves, causing her to bleed. The claimant's psychiatrist advised the claimant to quit her job because of her understandable fear of contracting the AIDS

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 235.45 (2)

<b>VL HEALTH OR PHYSICAL CONDITION</b>
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Appeal No. 87-16605-10-091687 (Cont'd)

virus through the blood and the resultant stomach aches and headaches suffered by her. HELD: Good cause connected with the work to quit because the claimant quit on her doctor's advice and because of her much higher risk of contracting AIDS as compared to that of the general public. The claimant's fear was justified by her close contact with a high risk group and it was clearly work-related because she was required by her employer to work on individuals exposed to the AIDS virus. No disqualification under Section 207.045 of the Act. Also see Appeal No. 87-474-10-010688 under MC 255.303.

Appeal No. 87-71846-1-0887 (Affirmed by 87-14494-10-081487). When an employer which is a health care facility provides an employee with protective clothing, such an employee does not have good cause to quit such work based on his or her asserted fear of contracting the AIDS virus. Disqualification under Section 207.045.

Appeal No. 1562-CA-78. A week prior to his separation, the claimant, a night security guard for a shopping mall, was assigned the additional duty of checking sixty-three air conditioning compressors located on the roof of the mall. The claimant was able to complete his tour of the roof on only two nights and was so severely frightened at the prospect of ascending the roof after having been caught there during a thunderstorm that he quit when the employer insisted that he perform the duty. HELD: The claimant's inability to complete his newly-assigned duty due to his fear of walking about the roof of the shopping mall and the employer's insistence that he perform this duty provided the claimant with good cause connected with the work for quitting.

Appeal No. 279-CA-78. On his employment application, the claimant indicated that he had no physical problems which would be affected by working around dust. After a few days work in another area, he was transferred to the employer's sandblasting area. On several occasions during the ensuing several days, the claimant indicated to his supervisor that he did not like working in that area;

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 235.45 (3)

<b>VL HEALTH OR PHYSICAL CONDITION</b>
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Appeal No. 279-CA-78

(Cont'd)

however, he gave no medical evidence to justify it. The claimant quit after several days, later indicating that this was due to his suffering allergic rhinitis for many years. At the hearing, he furnished a doctor's statement describing his ailment and indicating that he should work around dust as little as possible. HELD: The claimant did not establish good cause connected with the work for his leaving. Not only did he not reveal his ailment on his employment application, he did not advise his supervisor of his ailment. The claimant did not make proper efforts to protect his job by presenting medical evidence of his inability to work in the sandblasting area or by requesting a transfer for specific medical reasons. Disqualification under Section 207.045.

Appeal No. 1137-CA-77. Although the claimant had known at the time of his hiring that he would be working with a substance known as foam glass, he quit his job because he did not like working with the substance and believed that working with it without wearing a respirator was injurious to his health. However, his physician would not say definitely that working with foam glass was adversely affecting the claimant's health. Furthermore, respirators had been conveniently available yet the claimant never requested one nor indicated that one was not available to him. HELD: The claimant did not have good cause connected with the work for quitting, as no firm medical evidence was presented to establish that it was necessary for him to quit for medical reasons. Disqualification under Section 207.045.

Appeal No. 3049-CA-76. The claimant quit his job because he felt that the fumes and gases near where he was working were causing irritation to his lungs. However, he did not discuss the problem with his foreman before quitting and did not attempt to wear the respirator furnished by the employer to protect his lungs from fumes. HELD: Since the claimant did not discuss his problems with his foreman before leaving and did not attempt to wear the protective device furnished by the employer to prevent lung injury, the claimant's leaving was without good cause connected with the work. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 290.00**

**VL LEAVING WITHOUT NOTICE**

**VL 290.00 LEAVING WITHOUT NOTICE.**

INCLUDES CASES WHICH CONSIDER THE QUESTION OF THE CLAIMANT'S HAVING LEFT WORK WITHOUT NOTICE.

Appeal No. 87-09870-10-060987. The claimant, having received an unrestricted medical release from his doctor, returned to work after an absence of several months on medical leave. After working 45 minutes on the date of return, the claimant left without notice to his supervisor or anyone else in a management position, because he felt he was not physically able to do the work. HELD: The claimant had a duty to inform his supervisor or other management personnel that the work was beyond his physical capabilities in order to provide the employer an opportunity to take corrective action by giving him lighter duty or allowing him to seek further medical evaluation. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 305.00

<b>VL MILITARY SERVICE</b>
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**VL 305.00 MILITARY SERVICE.**

INCLUDES CASES IN WHICH A LEAVING OF WORK WAS CAUSED BY THE WORKER'S IMMINENT OR ACTUAL ENTRANCE INTO MILITARY SERVICE.

Appeal No. 97-009604-30-090497. The claimant, a civilian, was separated from her work as a secretary at a U.S. Naval Hospital overseas when her husband, a Navy enlisted man, was transferred to a base in the United States. Government regulations prohibit such military facilities facilities from continuing to employ military dependents once their enlisted sponsor is transferred out of the commuting area. HELD: The claimant's separation under these circumstances was a voluntary leaving with good cause connected to the work. No disqualification. (Cross reference at VL 155.05).

Appeal No. 5332-AT-68 (Affirmed by 632-CA-68). A claimant who quits his job two weeks before the date he expects to be inducted into military service leaves voluntarily without good cause connected with the work. Had he given the full two weeks advance notice prescribed by the company, he would have been entitled to a leave of absence which would have protected his job. Disqualification under Section 207.045.

Appeal No. 29,795-AT-66 (Affirmed by 268-CA-66). A claimant who resigns his job, with adequate notice, to enlist in the U.S. Navy is subject to a disqualification under Section 207.045.

Appeal No. 70,067-AT-59 (Affirmed by 6941-CA-60). The claimant quit his job when he received a notice to report for a physical examination for induction into the Armed Forces. Had he requested a leave of absence, he could have, after passing his physical, continued working the thirty to ninety days before induction. Since he did not request a leave of absence, he left his work voluntarily without good cause connected with the work. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 315.00**

**VL NEW WORK**

**VL 315.00 NEW WORK.**

THIS LINE IS USED ONLY WITH REFERENCE TO DETERMINATIONS AS TO WHAT CONSTITUTES "NEW WORK" WITHIN THE MEANING OF SECTION 1603(a)(5) OF THE INTERNAL REVENUE CODE (EFFECTIVE AUGUST 5, 1954, SECTION 3304(a)(5) OF THE FEDERAL UNEMPLOYMENT TAX ACT) OR STATE LABOR STANDARD PROVISIONS PATTERNED AFTER IT. INCLUDES CASES INVOLVING A NEW CONTRACT OF HIRE OR A TRANSFER TO A DIFFERENT TYPE OF WORK, A DIFFERENT DEPARTMENT, OR A DIFFERENT PLANT, OF THE SAME EMPLOYER.

U.S. DEPARTMENT OF LABOR  
Manpower Administration Bureau of Employment Security  
Washington, D.C. 20210

Unemployment Insurance  
Program Letter No. 984  
September 20, 1968

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

SUBJECT: Benefit Determinations and Appeals Decisions Which Require Determination of Prevailing Wages, Hours, or Other Conditions of Work.

REFERENCES: Section 3304(a)(5)(B) of Federal Unemployment Tax Act; Principles Underlying the Prevailing Conditions of Work Standard, September, 1950, BSSUI (Originally issued January 6, 1947, as Unemployment Compensation Program Letter No. 130)

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 315.00 (2)

#### VL NEW WORK

##### Purpose and Scope

To advise State Agencies and appeal authorities of the interpretation of the phrase "new work" for the purpose of applying the prevailing wage and conditions-of-work standard in Section 3304(a)(5)(B) of the Federal Unemployment Tax Act, particularly in relation to an offer of work made by an employer for whom the individual is working at the time the offer is made.

This letter is prompted primarily by a current problem arising from a number of recent cases in which findings were not made with respect to prevailing wages, hours or other conditions of the work, because apparently it was not considered that "new work" was involved.

##### Federal Statutory Provision Involved

Section 3304(a)(5) of the Federal Unemployment Tax Act, the so-called labor standards provision, requires State unemployment insurance laws, as a condition of approval for tax credit, to provide that:

"compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

\* \* \* \* \*

"(B) 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;"

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 315.00 (3)

#### VL NEW WORK

##### Legislative History

The prevailing wage and conditions-of-work standard, originally in Section 903(a)(5)(B) of the Social Security Act and since 1939 in Section 3304(a)(5)(B) of the Federal Unemployment Tax Act, applies only to offers of "new work".<sup>1</sup> The hearings before Congressional committees and the reports of these committees furnish little aid in construing the term.<sup>2</sup> The Congressional debates, however, clearly indicate that the labor standards provision was included in the bill for the protection of workers.<sup>3</sup> The objectives of the provision are clearly set forth by the Director of the Committee on Economic Security, which prepared the legislation:

" . . . compensation cannot be denied if the wages, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality. The employee cannot lose his compensation rights because he refuses to accept substandard work. That does not mean that he cannot be required to accept work other than that in which he has been engaged; but if the conditions are such that they are substandard, that they are lower than those prevailing for similar work in the locality, the employee cannot be denied compensation."<sup>4</sup>

It is plain that the purpose of Section 3304(a)(5)(B) is to prevent the tax credit from being available in support of State unemployment compensation laws which are used, among other things, to depress wage rates or other working

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<sup>1</sup>Many State Laws extend its application by specifying that "no work shall be deemed suitable" which fails to satisfy the standard.

<sup>2</sup>The Report of the Committee on Ways and Means on the social security bill (H.R. 7260), House Report No. 615, 74th Cong., 1st Session, page 35, uses the term "new job" and this is copied in the Report of the Senate Committee on Finance, Senate Report No. 628, 74th Cong., 1st Session, page 47, but the term "new job" is itself ambiguous and there is no indication that it was used by either committee in a narrow or exclusive sense.

<sup>3</sup>See statement of Senator Harrison, Congressional Record, Volume 79, page 9271.

<sup>4</sup>HEARINGS BEFORE THE COMMITTEE OF WAYS AND MEANS, HOUSE OF REPRESENTATIVES, 74th Cong., 1st Sess., on H.R. 4120, pp. 137-38.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 315.00 (4)

**VL NEW WORK**

conditions to a point substantially below those prevailing for similar work in the locality. The provision, therefore, requires a liberal construction in order to carry out the Congressional intent and the public policy embodied therein. Interpretation is required, for the term "new work" is by no means unambiguous. But any ambiguity should be resolved in the light of such intent and public policy.

Interpretation of "New Work"

For the purpose of applying the prevailing conditions-of-work standard in Section 3304(a)(5)(B) of the Federal Unemployment Tax Act, an offer of new work includes (1) an offer of work to an unemployed individual by an employer with whom he has never had a contract of employment; (2) an offer of reemployment to an unemployed individual by his last (or any other) employer with whom he does not have a contract of employment at the time the offer is made, and (3) an offer by an individual's present employer of (a) different duties from those he had agreed to perform in his existing contract of employment, or (b) different terms or conditions of employment from those in his existing contract.<sup>5</sup>

This definition makes the determination of whether an offer is of "new work" depend on whether the offer is of a new contract of employment. This we believe is sound.

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<sup>5</sup>The "group attachment" concept is outside the scope of this letter. "Group attachment" arises under the provisions of an industry-wide collective bargaining agreement between a group of workers and a group of employers whereby workers cannot be hired directly by individual employers but are referred to the employers by a hiring hall on a rotational basis and under which each worker has a legally enforceable right to his equal share of the available work with such employers. See *Matson Terminals, Inc. vs. California Employment Commission*, 151 P. 2d 202, discussed in the Secretary's decision with respect to Washington dated December 28, 1949, and the Secretary's decision in the California conformity case, Benefit Series, FLS 315.05.1.

**APPEALS POLICY AND PRECEDENT MANUAL****VOLUNTARY LEAVING****VL 315.00 (5)****VL NEW WORK**

All work is performed under a contract of employment between a worker and his employer. The contract describes the duties the parties have agreed the worker is to perform, and the terms and conditions under which the worker is to perform them. If the duties, terms or conditions of the work offered by an employer are covered by an existing contract between him and the worker, the offer is not of new work. On the other hand, if the duties, terms, or conditions of the work offered by an employer are not covered by an existing contract between him and the worker, the offer is of a new contract of employment and is, therefore, new work.

It is not difficult to agree that "new work" clearly includes an offer of work to an unemployed individual by an employer with whom he has never had a contract of employment; that is, an employer for whom he has never worked before. If the worker has never had a contract of employment with the offering employer, the fact finding and the application of the test are simple.

But if the phrase "new work" were limited to work with an employer for whom the individual has never worked, it is plain that the purpose of Section 3304(a)(5)(B) would be largely nullified. It can make no difference, insofar as that purpose is concerned, that the unemployed worker is offered reemployment by his former employer rather than employment by one in whose employ he has never been. It can make no difference either in the application of the test. The question is whether the offer of reemployment is an offer of a new contract of employment. If the worker quit his job with the employer, or was discharged or laid off indefinitely, the existing contract of employment was thereby terminated. An indefinite layoff, that is, a layoff for an indefinite period with no fixed or determined date of recall, is the equivalent of a discharge.

The existence of a seniority right to recall does not continue the contract of employment beyond the date of layoff. Such a seniority right is the worker's right; it does not obligate the worker to accept the recall and does not require the employer to recall the worker. It only requires the employer to offer work to the holder of the right, before offering it to individuals with less seniority.

**APPEALS POLICY AND PRECEDENT MANUAL****VOLUNTARY LEAVING****VL 315.00 (6)****VL NEW WORK**

Any offer made after the termination is of a new contract of employment, whether the duties offered to the worker are the same or different from those he had performed under his prior contract, or are under the same or different terms or conditions from those governed by his last employment. There is not, however, a termination of the existing contract when the worker is given a vacation, with or without pay, or a short-term layoff for a definite period. When the job offer is from an employer for whom the individual had previously worked, inquiry must be made as to whether the contract with the employer was terminated, and if so, how?

Although this has been more difficult for some to see, the situation is no different when an individual's present employer tells him that he must either accept a transfer to other duties or a change in the terms and conditions of his employment, or lose his job. Applying the test, it is clear that an attempted change in the duties, terms or conditions of the work, not authorized by existing employment contract, is in effect a termination of the existing contract and the offer of a new contract. Not only is this a sound application of legal principles, but it is thoroughly in harmony with the underlying purpose of the prevailing conditions of work provision. That purpose would be largely frustrated if benefits were denied for unemployment resulting from the worker's refusal to submit to a change in working conditions which would cause these conditions to be substantially less favorable to a claimant than those prevailing for similar work in the locality. The denial of benefits in such circumstances would tend to depress wages and working conditions just as much as a denial of benefits for a refusal by an unemployed worker to accept work under substandard conditions. If a proposed change in the duties, terms, or conditions of work not authorized by the existing employment contract were not "new work", the prevailing wage and conditions-of-work standard could be substantially impaired by employers who hired workers at prevailing wages and conditions, and thereafter reduced the wages or changed the conditions, thereby depriving workers of the protection intended to be given them by the prevailing wage and conditions-of-work standard. The terms of the existing contract, so important in this situation, are questions of fact to be ascertained as are other questions of fact.

**APPEALS POLICY AND PRECEDENT MANUAL****VOLUNTARY LEAVING****VL 315.00 (7)****VL NEW WORK**

The following are examples of offers of new work by the employer for whom the individual is working at the time of the offer:

- a. A worker employed as a carpenter is offered work as a carpenter's helper as an alternative to a layoff.
- b. A bookkeeper is transferred to a job as a typist.
- c. The hours of work of a factory worker employed for an eight-hour day are changed to ten hours a day.
- d. A worker employed with substantial fringe benefits is informed that he will no longer receive such benefits.
- e. A worker employed at a wage of \$3 an hour is informed that he will thereafter receive only \$2 an hour.

In each of these cases either the offered duties are not those which the worker is to perform for the employer under his existing contract of employment, or the offered conditions are different from those provided in the existing contract.

**APPLYING THE PREVAILING CONDITIONS-OF-WORK STANDARD**

The prevailing wage and conditions-of-work standard does not require a claims deputy or a hearing officer to inquire into prevailing wages, hours, or working conditions in every case of refusal of new work, or to determine in every such case in which he denies benefits whether the wages, hours, or other conditions of offered work are substandard. This would be unnecessarily burdensome. However, a determination must be made as to prevailing conditions of work when (1) the claimant specifically raises the issue, (2) the claimant objects on any ground to the suitability of wages, hours, or other offered conditions, or (3) facts appear at any stage of the administrative proceedings which put the agency or hearing officer on notice that the wages, hours, or other conditions of offered work might be substantially less favorable to the claimant than those prevailing for similar work in the locality.

**APPEALS POLICY AND PRECEDENT MANUAL****VOLUNTARY LEAVING****VL 315.00 (8)****VL NEW WORK**

State agency determinations and decisions at all levels of adjudication must reflect the State agency's consideration of prevailing conditions of work factors when pertinent. In particular, referees' decisions as to benefit claims must contain, in cases where issues arise as indicated above, appropriate findings of fact and conclusions of law with respect to the prevailing conditions-of-work standard. This is so whether the state ultimately determines the worker's right to benefits under the refusal-of-work provision of the State law or some other provisions, as, for example, under the voluntary quit provision. Since the Federal law requires, for conformity, that State laws include a provision prohibiting denial of benefits for refusal of new work where the conditions of the offered work are substantially less favorable to the individual than the conditions prevailing for similar work, there cannot be, under the State law, a denial in such circumstances regardless of the provision of State law under which the ultimate determination is made.

In applying the labor standards, the State agency must determine first whether the offered work is "new work". If it is "new work" a determination must be made as to (1) what is similar work to the offered work, and (2) what are the prevailing wages, hours, or other conditions for similar work in the locality, and (3) whether the offered work is substantially less favorable to the particular claimant than the prevailing wages, hours, or other conditions. The key words and phrases in this standard ("similar work", "locality", "substantially less favorable to the individual", and "wages, hours and other conditions of work") are discussed in detail in the Bureau's statement, Principles Underlying the Prevailing Conditions of Work Standard, Benefit Series, September, 1950, 1-BP-1, BSSUI (originally issued January 6, 1947, as Unemployment Compensation Program Letter No. 130).

Please bring this letter to the attention of State agency and Appeal Board personnel engaged in benefit claim adjudication at all levels.

RESCISSIONS: None

Sincerely yours,

Robert C. Goodwin  
Administrator

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 315.00 (9)

**VL NEW WORK**

Appeal No. 578-CA-70. A claimant has good cause to refuse transfer to another position which pays substantially less than the wage most commonly paid for such work in the area.

Appeal No. 7618-AT-69 (Affirmed by 794-CA-69). A claimant does not have good cause for quitting rather than changing to a different occupation when the change would have been temporary and the wage offered was not substantially lower than that paid in that occupation in the area and the claimant would have suffered no reduction in pay. Disqualification under Section 207.045.

Appeal No. 5981-AT-69 (Affirmed by 645-CA-69). A claimant does not have good cause connected with the work for quitting if she could have accepted a transfer to another job which would have posed no threat to her health, safety or morals and the wage and working conditions would have been the same as on the job she had been performing and were not less favorable than similar work in the area. Disqualification under Section 207.045.

Appeal No. 1698-AT-69 (Affirmed by 222-CA-69). A claimant has good cause to quit when he is to be transferred from day hours to night hours, a change in job conditions which would be less favorable to him.

Appeal No. 89-CF-69. A claimant had good cause to quit her new job with the employer because there were no separate restroom facilities, thereby making working conditions less favorable than those prevailing for similar work in the locality. (Cross-referenced under VL 515.70.)

Appeal No. 6755-AT-68 (Affirmed by 789-CA-68). A claimant does not have good cause to quit rather than accept a reduction in wage of 6.3 percent, when the employer was forced to reduce wages of all non-production employees due to an adverse turn in business, and it is shown that claimant's wage after the reduction would not have been substantially less than the prevailing wage for similar work in the area. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 345.00

## VL PENSION

## VL 345.00 PENSION.

INCLUDES CASES IN WHICH THE CLAIMANT LEFT EMPLOYMENT IN ORDER TO QUALIFY FOR OR TO RECEIVE SOME FORM OF PENSION, OR BECAUSE HE COULD NOT QUALIFY UNDER HIS EMPLOYER'S PENSION PLAN.

American Petrofina v. TEC, et al, 795 S.W.2d 899 (Tex. App.-Beaumont 1990). The employer instituted a change in the manner in which lump-sum retirement benefits were to be calculated for all employees retiring after a certain date. The two claimants' benefits would thereby have been reduced 23% and 24%, respectively. However, both claimants elected early retirement prior to the effective date of the employer's change. HELD: The court held that the Commission's decision that the claimants had not voluntarily left their last work without good cause connected with the work was consistent with prior Commission precedents holding that workers who have accrued benefits reduced without their consent have good cause connected with the work for resigning. The Commission ruling on the claimants' unemployment insurance entitlement did not constitute a ruling that the employer was guilty of an unfair labor practice, thereby intruding into an area preempted by federal law.

Appeal No. 3312-CF-77. The claimant, a U.S. Postal Service employee who was disabled except for light work, elected to take disability retirement. However, according to the claimant's doctor's report, he was able to do light work of the type he was doing at the time he retired. HELD: Since the work the claimant was performing at the time of his separation fit the light duty standards set by his doctor, the claimant's leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 3557-CF-77 under VL 235.25.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 345.00 (2)

VL PENSION
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Appeal No. 1120-AT-72 (Affirmed by 249-CA-72). A claimant does not have good cause connected with the work for quitting because she has earned the maximum allowed without affecting her Social Security payments which she receives as a widow.

Appeal No. 4386-AT-69 (Affirmed by 481-CA-69). A claimant had good cause connected with his work for requesting early retirement when the employer had recommended that the claimant accept early retirement and, after claimant's refusal to do so, the employer demoted the claimant and pointed out continued failure on the job would threaten his job and future retirement benefits.

Appeal No. 859-CA-68. A claimant's mandatory retirement under the employer's pension plan at an age and time determined by the employer is not a voluntary leaving. It is an action by the employer under the employer's retirement policy, constituting a discharge because of attaining a certain age and not for misconduct connected with the work. No disqualification under Section 207.045 or Section 207.044 of the Act.

Appeal No. 21,141-AT-65 (Affirmed by 475-CA-65). No disqualification is in order under Section 207.045 when a claimant accepts early retirement on the advice of her doctor due to her physical condition.

APPEALS POLICY AND PRECEDENT MANUAL

VOLUNTARY LEAVING

VL 360.00

**VL PERSONAL AFFAIRS**

**VL 360.00 PERSONAL AFFAIRS.**

INCLUDES CASES WHICH INVOLVE PERSONAL REASONS FOR LEAVING NOT CONTEMPLATED BY ANY OF THE OTHER LINES IN THE VOLUNTARY LEAVING DIVISION OF THE CODE.

Appeal No. 2400-CA-76. The claimant, a crew member of a shrimp boat, stated on his last voyage that he wanted to go on a vacation after the completion of the voyage. Therefore, he did not seek work on the next voyage nor did the employer attempt to hire him for it. HELD: By not attempting to obtain further employment with the employer, the claimant voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 365.00 - 365.15**

**VL PROSPECT OF OTHER WORK**

**VL 365.00 PROSPECT OF OTHER WORK.**

**365.05 PROSPECT OF OTHER WORK: GENERAL.**

INCLUDES CASES INVOLVING (1) A GENERAL DISCUSSION OF PROSPECTS OF OTHER WORK, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 365, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES UNDER LINE 365.

Appeal No. 1256-CA-77. The claimant, employed as a cashier and waitress in a restaurant, resigned while there was still work available because she wanted to seek office work. HELD: The claimant voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

**365.10 PROSPECT OF OTHER WORK: CHARACTERISTICS OF OTHER WORK.**

Appeal No. 31,958-AT-68 (Affirmed by 481-CA-66). A claimant who quit without notice to go into business for himself was disqualified under Section 207.045.

**365.15 PROSPECT OF OTHER WORK: DEFINITE.**

WHERE THE CLAIMANT'S JUSTIFICATION FOR LEAVING ONE JOB IS PREDICATED UPON THE QUESTION OF HIS HAVING HAD REASONABLY DEFINITE OR CERTAIN PROSPECTS OF OTHER EMPLOYMENT.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 365.15 - 365.25

**VL PROSPECT OF OTHER WORK**

Appeal No. 2541-CA-76. The claimant was asked to come to work for a former employer and agreed to work for him through March 31 but not thereafter, as she had another job beginning April 1. She worked through March 31, never advising the employer that she could work for him longer. The employer would originally have employed her for an indeterminate time had she not said that she was available for work only through March 31. The other job failed to materialize and the claimant thereupon filed her initial claim. HELD: As the claimant had stated to the employer that she could work only through March 31, and the employer would have been willing for her to work longer, it is the claimant who brought about her work separation, voluntarily and without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 1301-CA-76. The claimant resigned from his last work, with notice, in order to take another job. When the new job failed to materialize, the claimant promptly reapplied for his old job but was not reinstated because he had been replaced during the period of notice which he had given. HELD: By resigning in order to accept other employment which did not materialize, the claimant thereby voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045.

Also see VL 135.25 and MC 135.25.

**365.25 PROSPECT OF OTHER WORK: UNCERTAIN.**

WHERE THE CLAIMANT'S JUSTIFICATION FOR LEAVING A JOB IS AFFECTED BY HIS LACK OF REASONABLY DEFINITE OR CERTAIN PROSPECTS OF OTHER EMPLOYMENT.

Appeal No. 2396-AT-68 (Affirmed by 304-CA-68). A claimant does not have good cause connected with the work to quit a job when his acceptance by another employer is conditioned upon his passing a test. The claimant failed the test and thus the other work did not materialize. The claimant probably could have protected his job by asking for time off to take the test for the better job.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 385.00

**VL RELATION OF ALLEGED CAUSE TO LEAVING****VL 385.00 RELATION OF ALLEGED CAUSE TO LEAVING.**

INCLUDES CASES IN WHICH THERE IS A DISCUSSION OF WHETHER THE CLAIMANT'S REASON FOR LEAVING WORK WAS TOO REMOTE FROM THE TIME OF LEAVING TO CONSTITUTE A CAUSE THEREOF; ALSO, WHETHER THE ALLEGED REASON FOR LEAVING WAS THE PRIMARY CAUSE OF THE SEPARATION.

Appeal No. 87-00274-10-122987. The claimant voluntarily resigned approximately four weeks after his hours were reduced from 47 hours per week to 10 hours per week, such reduction caused by lack of work. The reduction did not affect the claimant's hourly wage. The reasons given by the claimant for his resignation were his inability to meet his expenses because of such reduced hours and, further, his having found another job (which did not materialize). HELD: The amount by which his hours had been reduced did not provide the claimant with good cause because the claimant had accepted this change in his hiring agreement by continuing to work four weeks after the change occurred. Furthermore, the claimant's decision to leave was based on his assumption that he had found another job which would provide more hours. Disqualification under Section 207.045. (Cross-referenced under VL 450.153.)

Appeal No. 86-09201-10-052687. The claimant accepted the job as the employer's shipping supervisor, a salaried position, with the understanding that little overtime would be required and there would be no overtime pay. Almost immediately after starting work for the employer, the claimant was working 60 to 80 hours per week and continued to do so. The claimant did not complain about the overtime until shortly before resigning. He resigned after some ten months of work when told that the overtime would continue. HELD: As the claimant continued working for the employer for almost one year after discovering that he would be expected to work overtime hours and that he would not be paid for any work beyond 40 hours per week, the claimant's quitting was without good cause connected with work. (Cross-referenced under VL 450.35.)

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 385.00 (2)

<b>VL RELATION OF ALLEGED CAUSE TO LEAVING</b>
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Appeal No. 1831-CA-77. About a month before the claimant quit work, her supervisor had given her certain directions about overtime and compensatory time. During the ensuing month, she was able to work within the framework of her supervisor's guidelines and the employer's formal policy on overtime. Had the claimant been unable, for a good reason, to comply strictly with the overtime policy, alternative arrangements could have been made; however, the claimant did not raise the issue at any time during her last month. HELD: Since the claimant continued to work for the employer for about a month after the conversation which caused her to quit, she did not have good cause connected with the work for quitting at the time that she did. Disqualification under Section 207.045.

Appeal No. 31,891-AT-66 (Affirmed by 452-CA-66). Although the claimant contended she quit because, some two months prior to her separation, her supervisor had complained of her taking off one day for a dental appointment, she admittedly told the employer she was resigning to look after her three children. HELD: Since the claimant worked for weeks after the incident of which she complained and such incident, as she described it, was not serious, the reason she gave the employer for leaving was deemed the primary reason. Disqualification under Section 207.045.

Also see Appeal No. 87-10684-10-061987 under VL 500.10 and Appeal No. 87-2916-10-022488 under VL 500.35.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 440.00

<b>VL TERMINATION OF EMPLOYMENT</b>
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**VL 440.00 TERMINATION OF EMPLOYMENT.**

INCLUDES CASES WHICH INCLUDE SEPARATION FROM EMPLOYMENT BASED UPON CONTRACT EXPIRATION, SALE OF CLAIMANT'S INTEREST IN BUSINESS, SEPARATION BY MUTUAL AGREEMENT, OR IMPOSITION OF TERMS WHICH ARE DIFFERENT FROM THOSE EXISTING AT THE TIME OF THE HIRING, AND WHICH RAISE A QUESTION OF WHETHER THERE WAS AN OFFER OF A NEW JOB. CASES WHICH RAISE A QUESTION OF COMPLIANCE WITH SECTION 1603(a)(5) OF THE INTERNAL REVENUE CODE OR OF STATE LABOR STANDARDS PROVISIONS PATTERNED THEREAFTER SHOULD BE CODED TO LINE 315, "NEW WORK".

Appeal No. 1689-CA-77. The claimant, president and minority stockholder of the employer corporation, was advised by the majority stockholders that they no longer wished to be associated with him and that, if he refused to resign from the presidency and sell his stock, he would be voted out of the office of president. HELD: Although according to the stock sale agreement, the claimant agreed to resign his position as president, he was actually discharged by the majority stockholders since his only real choice was whether he would be unemployed with or without the funds he could receive from the sale of his stocks. Finding no misconduct connected with the work on the claimant's part, the Commission imposed no disqualification under either Section 207.045 or Section 207.044.

Appeal No. 1760-CA-76. The claimant had a contract to work overseas for the employer for two years. Three months prior to the end of the term of his original contract, he was offered a one year extension of the contract. He declined the offer, advising the employer that he would be returning to the United States upon the completion of his two year contract. HELD: By choosing to terminate his employment by not extending his contract when continued work was indisputably available for him, the claimant voluntarily left his last work without good cause connected with the work. Disqualification under Section 207.045. (Cited in Appeal No. 87-98680-1-1187 (Affirmed by 87-19987-10-111787) under VL 135.25.

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 440.00 (2)

#### VL TERMINATION OF EMPLOYMENT

Appeal No. 264-CA-72. When a claimant sets in motion the circumstances which result in his separation by disposing of his stock, Section 207.045 of the Act is applicable even though the claimant works for the new stockholders a short period of time to acquaint them with the operation of the business.

Appeal No. 179-CA-65. The claimant, a principal stockholder and president of the employer bank, was aware that the bank's bylaws required the president to be a board member and a board member, in turn, to be a stockholder. He voluntarily sold all his stock in the bank and because of the requirements of the bylaws, resigned as president the day after the sale. HELD: The claimant's separation was tantamount to a voluntary resignation without good cause connected with the work. Disqualification under Section 207.045.

Also see Section 5(f) (now codified as Section 207.051) of the Act.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 450.00 - 450.10**

<b>VL TIME</b>
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**VL 450.00 TIME.**

**450.05 TIME: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF TIME, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 450, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 87-19666-10-111387. After being released to return to work from an injury, the claimant told the employer that she was no longer available to work Thursday evenings or weekday mornings at her waitress job because she had decided to enroll in a religious class and in school. The times for which the claimant was available were not open on the employer's schedule. HELD: The claimant voluntarily resigned without good cause connected with the work because she precluded her return to work by placing new restrictions on the time she was available for work. Disqualification under Section 207.045.

**450.10 TIME: DAYS OF THE WEEK.**

WHERE CLAIMANT LEFT WORK BECAUSE HE OBJECTED TO WORKING A PARTICULAR DAY, OR NUMBER OF DAYS, IN THE WEEK.

See Appeal No. 4901-AT-70 (Affirmed by 567-CA-70) under VL 90.00.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 450.152**

<b>VL TIME</b>
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**VL 450.15 TIME: HOURS**

**450.152 TIME: HOURS: IRREGULAR.**

WHERE WORK WAS LEFT BECAUSE OF THE EMPLOYER'S REFUSAL OF THE WORKER'S REQUEST FOR IRREGULAR HOURS, OR BECAUSE OF THE WORKER'S OBJECTION TO A REQUIREMENT THAT HE WORK SUCH HOURS.

Appeal No. 1977-CA-76. The claimant quit work because he could not be assured of regular employment as the employer did not guarantee forty hours of work per week. Work was available for the claimant with this employer when he resigned. **HELD:** The fact that the claimant could not be assured regular employment did not provide him with good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 1379-CA-76. The claimant, a nurse's aide, was originally hired to work a forty-hour week. Later, the employer wanted to double the number of patients for whom the claimant was to be responsible but she declined to take on the added responsibility. Thereafter, her working hours were reduced by about 50% and she was placed on an as-needed basis. When she was told that she would have to accept the reduced work schedule or quit, she quit. **HELD:** The reduction in the claimant's hours by half and her change from regular to as-needed basis amounted to such a substantial change in the claimant's hiring agreement as to have provided her with good cause connected with the work for her quitting.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

## VL 450.152 - 450.153

## VL TIME

Appeal No. 899-CA-76. The claimant had no set hours but was on call seven days a week. He resigned because he was averaging only twenty to thirty hours per week. HELD: Since the claimant knew when he was hired that his hours of work would be variable, he did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

## 450.153

**TIME: HOURS: LONG OR SHORT.**

INVOLVES LEAVING WORK BECAUSE THE HOURS WERE EITHER TOO LONG OR TOO SHORT.

Appeal No. 2076-CA-77. The claimant's hours were temporarily reduced for one week in order to alleviate an overstaffing problem in the department where she worked. When the claimant asked her, the claimant's immediate supervisor did not know the reason for the reduction. The claimant made no further inquiry of anyone in authority but simply decided, without notice, to not report for work at all. When the employer's manager called to find out why the claimant was not at work, her husband told him that she had resigned. HELD: By simply not showing up for work, without notice, during a week in which she was to work reduced hours, without making inquiry beyond her immediate supervisor as to the duration of the reduction, the claimant voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 450.153 - 450.154

## VL TIME

Appeal No. 4042-CA-76. Because of the decline in business, the weekly hours of the claimant and other full-time employees were reduced from 40 hours to about 25 hours and the claimant was required to work a split shift. Because of the split shift, the claimant's child care and transportation costs were as much, if not more than, they were before her hours were reduced. As it appeared that the reduction in hours would continue, the claimant gave notice and quit. HELD: Since the claimant's hours and earnings were substantially reduced by the employer in a manner which assured that the fixed expenses of the claimant's working would not be reduced, she had good cause connected with the work for quitting.

Appeal No. 1628-CA-76. The claimant quit work because she was reduced from full-time work (forty hours per week) to the part-time schedule (thirty hours per week) which she had originally worked. HELD: The claimant did not have good cause connected with the work for quitting since the reduction was not substantial and was simply a return to the same part-time schedule for which she had originally been hired. Disqualification under Section 207.045.

Also see Appeal No. 87-00274-10-122987 under VL 385.00.

**450.154 TIME: HOURS: NIGHT.**

LEAVING BECAUSE OF OBJECTION TO, OR INSISTENCE UPON, NIGHT WORK.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 450.154 (2)

## VL TIME

Appeal No. 615-CA-71. The claimant and her husband both worked for the employer but on different shifts. They were aware the employer would not allow them to work the same shift. When the claimant's husband chose to work the day shift and the claimant refused to transfer to the night shift, it was held that she quit voluntarily without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 13201-AT-70 (Affirmed by 119-CA-71). A claimant who has been working as a cook on the day shift for four years and cannot work nights because of family responsibilities, has good cause to quit rather than transfer to the night shift.

Appeal No. 8623-AT-69 (Affirmed by 36-CA-70). A claimant who is hired to work the day shift and makes known to the employer at the time of hire that she cannot work a night shift, has good cause to quit rather than accept transfer to a night shift.

Also see Appeal No. 184-CA-78 under MC 255.305.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 450.20

## VL TIME

## VL 450.20 TIME: IRREGULAR EMPLOYMENT.

WHERE THE LEAVING OCCURRED BECAUSE OF THE WORKER'S OBJECTION TO THE IRREGULARITY OF THE EMPLOYMENT RELATIONSHIP. CASES CLASSIFIED TO THIS SUBLINE ARE DISTINGUISHED FROM "HOURS: IRREGULAR" IN THAT THE FORMER RELATE TO THE IRREGULARITY OF THE EMPLOYMENT RELATIONSHIP, WHEREAS THE IRREGULAR HOURS CASES ARE THOSE IN WHICH THE EMPLOYMENT RELATIONSHIP CONTINUES STEADILY OVER A PERIOD OF TIME, BUT THE HOURS VARY.

Appeal No. 99-001852-10-022300. The claimant worked four hours for the employer on December 27, 1999. He did not work a full shift on this date due to inclement weather. The claimant did not work on December 28, 1999, due to inclement weather. The employer sent crews back to work December 29, 1999, since the weather had cleared up. However, the claimant did not report for work on this date. The claimant returned to work on December 30, 1999, and worked this day and the following day. The claimant filed his initial claim for benefits on December 28, 1999. The claimant knew he should return to work when the weather improved. HELD: The employment relationship continues whenever inclement weather causes a brief cessation of work, such as in this case, of three days or less. When a claimant files a claim during this time, a separation occurs and the claimant must show good cause connected with the work to avoid a disqualification for leaving without good cause connected with the work. The record reflects no evidence that the claimant had good cause connected with work for quitting, therefore, we will reverse the Appeal Tribunal decision by disqualifying the claimant from the receipt of benefits under Section 207.045 of the Act. (Also digested at MS 510.00).

Appeal No. 2398-CA-76. The claimant was employed by a temporary help service. Prior to the completion of an assignment of an expected duration of about thirty days, she resigned without notice, because she had an interview that day for a permanent job and wanted to be available for that and other permanent work, as she no longer regarded clerical work as suitable. HELD: Since the claimant had been aware of the clerical and temporary nature of the job when she accepted it, her preference for other types of work did not provide her with good cause connected with the work for quitting. Furthermore, her desire to attend a permanent job interview did not provide her with such good cause either. Disqualification under Section 207.045.

# APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 450.20 (2)

<b>VL TIME</b>
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Appeal No. 1197-CA-71. Claimant's work was in a type of work where an occasional day or two off due to bad weather is not unusual and he knew he should report back when the weather cleared. When he failed to do so and then filed his initial claim, he, in effect, abandoned his job without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 5076-CA-52. The claimant was an oil drilling crew member. It was necessary to shut down the claimant's rig for four days while it was being moved to a new location. All crew members were expected to report for work as soon as the rig reached its new location. The claimant failed to report as expected, and thus was replaced, because he was attending to personal business.

HELD: In the oil drilling business, it is customary for the drilling crew to be temporarily idle while the rig is being moved to a new location and for the crew to report for work as soon as the rig reaches its new location. In this case, neither the claimant nor the employer considered the claimant's employment terminated when the rig temporarily ceased operations in order to be moved. By failing to report for work as expected, the claimant voluntarily quit work without good cause connected with the work. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 450.30

## VL TIME

## VL 450.30 TIME: LEAVE OF ABSENCE OR HOLIDAY.

LEAVING BECAUSE OF THE EMPLOYER'S REFUSAL OF THE WORKER'S REQUEST FOR TIME OFF OR A LEAVE OF ABSENCE, OR BECAUSE OF A REQUIREMENT THAT THE WORKER WORK ON A HOLIDAY.

Appeal No. 719-CA-77. The claimant had previously worked for the employer for three years and was discharged. Thereafter he was rehired without reinstatement of fringe benefits. He quit eight months thereafter because he was denied a two-week paid vacation. In view of his rehire date and the fact that his fringe benefits were not reinstated when he was rehired, he would not have been entitled to a two-week paid vacation until four months thereafter.

HELD: The denial of the requested paid vacation did not provide the claimant with good cause connected with the work for leaving. Disqualification under Section 207.045.

Appeal No. 3399-CA-75. The claimant, a dispatcher, quit work after his request for a leave of absence had been denied. He had made the request because of an incident in which a driver had called him names, using vulgar terms, and had thereafter attempted to hit the claimant. The general manager had counseled both the claimant and the other employee but the claimant believed that he needed a leave of absence in order to calm down. HELD: The claimant's quitting because of the denial of his requested leave of absence was without good cause connected with the work since the employer's general manager took reasonable steps to resolve the situation and there had been no further incidents which would have justified the claimant's quitting. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 450.35

## VL TIME

## VL 450.35 TIME: OVERTIME.

LEAVING WORK BECAUSE THE EMPLOYER REFUSED THE WORKER'S REQUEST FOR OVERTIME, OR BECAUSE OF THE EMPLOYER'S INSISTENCE THAT THE WORKER PERFORM OVERTIME WORK.

Appeal No. 683-CA-78. The claimant quit primarily because, on two occasions, she had been promised overtime work but was not given such work because changes in work schedules removed the necessity for it. There was no agreement at the time of her hiring that the claimant would be given overtime work. HELD: There was no agreement at the time of her hiring that the claimant would be given overtime work and the fact that, on several occasions, the employer thought that he would need overtime but then did not, did not give the claimant good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 2626-CA-76. The claimant had previously quit work for the employer as a convenience store manager because of working conditions, including having to work excessively long hours to fill in for employees who did not report for work. She was subsequently rehired at one of the employer's stores as a cashier with the assurance that she would be expected to work overtime only in unexpected emergencies. On her first day, the claimant was not relieved at the end of her eight hour shift. Despite complaints to the employer, she worked twelve hours without relief and quit. HELD: Since the claimant had been assured that her store had a full crew and that she would be expected to work overtime only in unexpected emergencies, her quitting after not being relieved after twelve hours on duty was based on good cause connected with the work.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 450.35 - 450.40

## VL TIME

Appeal No. 3667-CA-75. The claimant, a salaried employee who had been hired to work fifty hours per week, later began to be expected, along with other employees, to work 52 to 55 hours a week without overtime pay. He discussed the matter with management but nothing was done as it was necessary to the business that everyone work some overtime as needed. The claimant felt that he should not have to work overtime hours without overtime pay so he quit. HELD: Since the increase in hours was not a substantial change in his hiring agreement and since the claimant was not being discriminated against, his quitting was without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 86-09201-10-052687 under VL 385.00.

**450.40 TIME: PART-TIME OR FULL-TIME.**

LEAVING WORK BECAUSE THE EMPLOYER REFUSED THE WORKER'S REQUEST FOR PART-TIME OR FULL-TIME WORK, OR BECAUSE THE WORKER OBJECTED TO PART-TIME OR FULL-TIME WORK.

Appeal No. 597-CA-78. A claimant who was working 36 hours a week on a regular basis and whose weekly hours were reduced by 20% and changed to an irregular basis, thereby impeding her work search, had good cause connected with the work for quitting.

Appeal No. 374-CA-74. The claimant was hired to work three days a week and quit because she was reduced to one day's work a week. HELD: The two-third's reduction in the amount of work provided the claimant constituted a substantial change in her hiring agreement which provided her with good cause connected with the work for quitting.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 450.40 - 450.55

## VL TIME

Appeal No. 38-CA-72. If a claimant's reduction from full-time to part-time work was at the claimant's request, any period of unemployment would be attributable to the claimant and a disqualification would be in order under Section 207.045 of the Act.

Also see Appeal No. 370-CA-70 under MS 510.00 and cases under VL 500.752.

**450.55 TIME: TEMPORARY.**

LEAVING WORK BECAUSE OF THE WORKER'S OBJECTION TO, OR INSISTENCE UPON, TEMPORARY EMPLOYMENT.

Appeal No. 2755-CA-77. The claimant had previously worked for the employer for twelve years and quit work to enter self-employment. At that time, she was told that the employer would have full-time work for her any time she wanted it. Thereafter, she worked for the employer on a temporary job which lasted two days. She completed that job and told the employer that she was available for occasional, future temporary assignments. At all times, the employer had had regular full-time work for her. HELD: Although the claimant completed the temporary assignment for which she had been called, since she had previously voluntarily quit the same employment in order to enter self-employment and had then been told by the employer that regular, full-time work would be available to her should she again desire it, the claimant was under some duty to let the employer know if she was available for more than the temporary job assignment. Her failure to do so amounted to a voluntary leaving without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 89-CA-64. At the time claimant accepted a two week temporary job, the employer offered her a permanent full-time job, which she declined. On the following day, the claimant advised the employer that she had reconsidered the offer but, by then, the permanent full-time vacancy had been filled. HELD: By declining the offer of permanent full-time work, the claimant in effect limited herself to the temporary job. Under such circumstances, she effectively voluntarily left her last work without good cause connected with the work. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 475.00 - 475.05

<b>VL UNION RELATIONS</b>
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**VL 475.00 UNION RELATIONS.****475.05 UNION RELATIONS: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF LEAVING BECAUSE OF UNION RELATIONS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 475 AND , (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 209-CA-73. Pursuant to the collective bargaining agreement between the National Maritime Union, the claimant's union, and various tanker companies, including the employer, National Shipping Rules were adopted by a joint labor-management board. The Rules provided that, when a seaman became eligible for, and availed himself of, vacation leave, a relief seaman was to be hired to replace him during his absence. The Rules further provided that, in order to protect the vacationing seaman's seniority, the relief seaman was to be separated when the regular seaman returned to duty. The claimant worked as a vacation relief cook and, under the Rules and collective bargaining agreement, was allowed to work only until such time as the regular cook returned from vacation. HELD: Since the National Shipping Rules were adopted pursuant to the collective bargaining agreement by a joint labor-management board, the Rules must be imputed to the employer as well as to the claimant's union and the claimant must be deemed to have had no greater control over the adoption of the Rules than the employer. Accordingly, a seaman separated under the circumstances in this case was actually discharged within the meaning of Section 207.044 of the Act and under circumstances which reflected no misconduct connected with the work on his part. No disqualification under Section 207.045 or Section 207.044.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 475.05 - 475.10

## VL UNION RELATIONS

Appeal No. 27,633-AT-65 (Affirmed by 37-CA-66). A claimant who, when notified of a reduction in force in his job classification, resigns rather than exercise his bumping privilege and accept a transfer to a different type of work pursuant to the terms of the agreement between the employer and the claimant's union, leaves voluntarily without good cause connected with the work. Under the terms of the agreement, had the claimant accepted the transfer, he would have received his regular rate of \$2.72 per hour for thirty days and then been reduced to \$2.27 per hour, the rate customarily payable for the job to which he would have been transferred. Disqualification under Section 207.045. (Cited as controlling in Appeal No. 86-00443-10-121886, digested under VL 135.05 and cross-referenced under VL 495.00.)

**475.10 UNION RELATIONS: AGREEMENT WITH EMPLOYER.**

WHERE THE WORKER'S DECISION TO LEAVE WORK IS MOTIVATED BY THE ALLEGED VIOLATION, BY THE EMPLOYER, OF AN EMPLOYER-UNION AGREEMENT. INCLUDES ONLY THOSE CASES DEALING WITH EMPLOYER-UNION AGREEMENT NOT SPECIFICALLY COVERED BY ANY OTHER SUBLINE UNDER LINE 475.

Appeal No. 671-CA-69. Although not a union member, the claimant had been a member of the bargaining unit covered by a contract between the employer and the union. The contract provided for a grievance procedure and for certain conditions which must be met before an employee could be assigned Sunday work. The claimant was assigned Sunday work without such conditions having been met. She objected to the assignment but did not file a grievance and quit when she was again assigned Sunday work. HELD: Since the claimant was assigned Sunday work contrary to the employer-union contract and despite her objections, her resignation was for good cause connected with the work regardless of whether or not she resorted to the grievance procedure to compel the employer to adhere to the terms of the employer-union contract.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 495.00

## VL VOLUNTARY

## VL 495.00 VOLUNTARY.

INCLUDES CASES IN WHICH THE DECISION IS BASED UPON A FINDING AS TO WHETHER OR NOT THE LEAVING WAS "VOLUNTARY".

Appeal No. 99-008549-10-090999. The claimant participated in a training program offered by the employer, earning an hourly rate while learning job skills. The claimant entered into the program with the knowledge that it was a work skills training program, designed to provide her with the skills needed to gain productive work. Separation occurred when she successfully completed the program. HELD: The Commission found that the claimant's separation from the skills training program was analogous to the circumstances in work study participant cases. The claimant's training was structured to continue only for the length of the work skills training program. As in the cases of work study participants, the work was not structured to continue beyond the end of her program participant status. When the program ended, the claimant's work ended. The claimant was aware when she entered into the program that this would be the case. Accordingly, the Commission held that the claimant voluntarily left the last work without good cause connected with the work. Cross referenced at VL 135.05 and MC 135.05.

TEC v. Clara Huey, et al, 342 S.W. 2d 544 (Texas Sup. Ct. 1961). The employer and the union entered into an agreement providing for vacation with pay if a person had been employed one year or more as of May 1. No provision was made either for employees who had worked less than one year or for a plant shutdown. The vacation period was set by the employer between June 1 and September 30. The claimant and others had not worked a full year by May 1 and were not entitled to vacation pay. No work was available for them when the employer decided, over the objection of the union, to partially shut down the plant during the period May 21 through June 4. (Cross-referenced under TPU 80.20.)

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 495.00 (2)**

<b>VL VOLUNTARY</b>
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TEC v. Clara Huey, et al.

Con't

The court stated that the test to determine the reason for separation under such contract was to ask "for whose primary benefit is the shutdown?". If the plant is shut down for the benefit or convenience of the employer, those employees who were laid off without pay and who meet eligibility requirements of the Commission, are entitled to benefits without disqualification. If the union seeks or demands a vacation shutdown for the benefit of all employees, then their vacation would be voluntary and they would not be entitled to benefits.

HELD: The court determined that: (1) the plant was shut down for lack of orders and to change styles; hence for the employer's benefit; (2) the contract did not state that all employees must take a vacation, paid or not, during shutdown; (3) there was no provision in the contract for vacations for employees with less than one year seniority; and (4) the union never agreed that vacation should be by shutdown. Accordingly, it was held that the claimants did not leave their work voluntarily without good cause.

Also see General Electric case under TPU 80.20.

Appeal No. 86-14984-10-111886. In an effort to avoid layoffs, the employer offered a monetary incentive to workers who opted to leave their work. Had layoffs been necessary, workers would have been laid off by seniority. However, the claimant, because of her seniority, would not have been subject to layoff. In the end, layoffs were not necessary as sufficient workers, including the claimant, elected to accept the monetary incentive and leave work. The claimant asserted that she had taken this action in order to permit a less senior co-worker to continue working. HELD: As the claimant could have, because of her seniority, continued working, her election to accept the employer's monetary incentive and leave the work constituted leaving the work voluntarily without good cause connected with the work. (Cross-referenced under VL 135.05.)

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 495.00 (3)

## VL VOLUNTARY

Also see Appeal No. 86-00326-10-121786 under MC 135.30 and VL 135.05, involving similar facts except that the claimant had not had sufficient seniority to be protected from layoff. There, the Commissioners held the claimant to have been discharged for reasons other than misconduct connected with the work.

Appeal No. 98-001421-10-021099. The claimant was a student at Prairie View A & M University and was a participant in the university's work study program. Student status was a requirement for participation in the work study program. Upon her graduation in August 1998, the claimant ceased her participation in this program. **HELD:** The Commission found the current case similar to Appeal No. 86-2055-10-012187 and Appeal No. 983-CAC-72. In the current case, the claimant's participation in the work study program had not been structured to extend beyond her graduation and the end of her student status. When the claimant graduated, she was no longer able to meet the requirements for participation in the work study program. Therefore, the Commission does not agree with the Appeal Tribunal's conclusion that the claimant was discharged. Rather, the Commission concludes that the claimant voluntarily left her last work in the work study program without good cause connected with the work. It is the opinion of the Commission that work study programs for students are to be encouraged. Therefore, this case is designated as a precedent at VL 495.00, and Appeal No. 2472-CA-77 (VL 495.00) of the Commission Appeals Policy and Precedent Manual was expressly overruled and removed from the precedent manual.

Appeal No. 983-CAC-72. If a student is available for only summer work between semesters and leaves at a mutually agreed time to return to school, he voluntarily leaves the work without good cause connected with the work, even though he was hired for the summer only. Hiring programs for students such as this are to be encouraged, and the employer provided work for the claimant for as long as he was available for work. No charge to the employer's account. (Also digested under CH 30.40; cross-referenced under MC 135.05 and MC 450.55.)

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 495.00 (4)

## VL VOLUNTARY

Appeal No. 86-2055-10-012187. The claimant, a student, last worked as a temporary warehouse assistant under the employer's temporary cooperative student summer employment program. The claimant had intended to return to school at the end of the summer vacation but later changed his mind. The employer was unable to retain the claimant because the temporary job was structured to end concurrent with the end of summer. HELD: The Commission expressly applied the policy established by Appeal No. 983-CAC-72 (digested under this subsection and under CH 30.40) although the claimant had indicated at the end of the agreed upon period that he did not intend to return to school. The Commission specifically noted that the claimant's job had not been structured for the retention of the claimant beyond the agreed upon period. Therefore, the Commission concluded that the claimant had voluntarily left his last work without good cause connected with the work. No charge to the employer's account. (Cross-referenced under CH 30.40, MC 135.05 and MC 450.55.)

Also see Appeal No. 86-00443-10-121886 under VL 135.05 and Appeal No. 27,633-AT-65 (Affirmed by 37-CA-66) under VL 475.05.

Appeal No. 300-CA-71. When a claimant works for a firm which supplies businesses with temporary workers, the fact that the employer had no work for the claimant on Saturday is not sufficient to establish the claimant was separated due to lack of work. The claimant had worked on Friday, further work was available on Monday, and it is not uncommon for businesses to be closed and to have no work available over a weekend. When the claimant failed to report for further work on Monday, he thereby left his last work voluntarily without good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 1252-CA-77 and Appeal No. 263-CA-68 under VL 135.05.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 495.00 (5)

VL VOLUNTARY
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Appeal No. 1259-CA-67. A former employer asked the claimant to work on a temporary basis for three weeks. The claimant lived in Dallas and the job was in Dallas but the employer had the claimant paid by a temporary agency operating out of Fort Worth, Texas. The claimant did not report to the temporary agency for further assignment upon being laid off from this temporary job. HELD: While the Commission has consistently held that a person who secures work through the offices of an organization which provides employers with temporary employees on a contract basis must inquire whether such organization has other work to which he may be assigned in order to avoid a disqualification under Section 207.045 of the Act, no disqualification assessed because it would have been unreasonable to expect the claimant to be available for work in Fort Worth when she lived in Dallas.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.00 - 500.05

## VL WAGES

## VL 500.00 WAGES.

## 500.05 WAGES: GENERAL.

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF LEAVING BECAUSE OF WAGES, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 500, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 94-009914-10-062794. The claimant, a restaurant waitress, quit work because of the employer's policy which required all waitresses on a shift to share in making up cash register shortages. HELD: As more than one waitress had access to the employer's cash drawer, the employer's policy was unreasonable and thus the claimant had good cause connected with the work for quitting.

Appeal No. 87-15411-10-083187. The employer required the claimant's participation in the employer-administered pension plan by monthly contribution. When the claimant discovered she had been under-credited for her contributions by about \$1,400.00 she spoke several times to the employer and his attorney about the discrepancy. When the employer failed to account for the claimant's past contributions, told the claimant her required monthly contributions would be increased, and refused to consider the claimant's objections to the increase, the claimant quit. HELD: The employer's continued mishandling of the claimant's pension plan contributions and his inability to account for a substantial portion of the funds gave the claimant good cause connected with the work for quitting. Additional good cause was provided by the employer's act of increasing the claimant's contributions while his management of her prior contributions was not fully explained.

Appeal No. 96-014008-10-121296. The claimant, a sales manager, left voluntarily when the employer adopted a new compensation method tied to higher performance standards. If met, those standards would allow both the claimant and the employer to benefit financially. Although the claimant had consistently met the prior standards, which were tied to a national average, she was

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.05 (2)

## VL WAGES

Appeal No. 96-014008-10-121296

(continued)

unsure whether she would be able to meet the new standards, and quit. HELD: The claimant did not have good cause to leave voluntarily under these circumstances. Where the performance based compensation plan is reasonable, the claimant has a duty to keep the job long enough to determine whether the performance standards can be met and whether the resulting compensation will be adequate.

Appeal No. 230-CA-77. The claimant, an experienced employee, quit her job when she learned that a new employee hired to work in another department but temporarily working in the claimant's department, was paid a higher wage than the claimant. HELD: The claimant did not have good cause connected with the work for quitting. The new employee had considerable relevant experience and was hired to work in another department where the duties were more complex than those of the claimant. Moreover, when she complained of the disparity in rates of pay, the claimant had been offered a 25-cent per hour increase which she did not accept but resigned her job instead. Disqualification under Section 207.045.

Appeal No. 1578-CA-76. The claimant, truck driver for a charitable institution, quit work because (1) he did not receive a raise although he was promised a raise if his work was satisfactory and his work had never been criticized and (2) he had been told that he, like other employees, would be expected to donate to the employer one afternoon's work per week. HELD: Since, at the time of his hiring, there had been no agreement that the claimant would receive a raise of a certain amount within any set period of time and since, although the claimant may have been told that he would be expected to donate some of his work time, the claimant was, in fact, paid for all time worked and there was no evidence that he would not have been paid for all time worked if he did not choose to volunteer some time, the claimant's leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.10

## VL WAGES

**500.10 WAGES: AGREEMENT CONCERNING.**

WHERE CLAIMANT LEFT WORK BECAUSE HIS PAY WAS NOT INCREASED, OR WAS REDUCED IN VIOLATION OF HIS UNDERSTANDING WITH, OR AS PROMISED BY, THE EMPLOYER; OR BECAUSE HE WAS PAID LESS THAN THE AGREED-ON RATE.

Appeal No. 2631-CA-77. The claimant had formerly owned the newspaper for which she last worked, having been retained as a salaried employee after she sold the business. About one month after the sale, the claimant was put on a commission basis, selling advertising. Since her commission rates were much lower than she had previously been paid and some of her advertising accounts were taken away from her, which resulted in a significant decrease in her earnings, the claimant resigned. HELD: In view of the change in the claimant's hiring agreement and the resulting substantial decrease in her earnings, the claimant had good cause connected with the work for quitting.

Appeal No. 87-10684-10-061987. The employer changed the claimant's compensation method from \$12.25 per hour to a 3.5% commission on sales. The claimant tried the commission method for nearly two months, then quit because he realized he would need to sell nearly twice as much as he had been to earn the same amount as his hourly rate had provided. HELD: The claimant's decision to work under the new pay method for about two months did not necessarily constitute acceptance of the new pay method but, rather, was the claimant's attempt to make an informed decision as to whether the new pay method was going to be adequate prior to quitting. No disqualification under Section 207.045. (Cross-reference under VL 385.00.)

Appeal No. 599-CA-76. In March, the employer's president promised the claimant a raise, both of them aware that any such action required the approval of the employer's board of directors. At no time thereafter did the claimant remind the president of his promise. When the September board meeting produced no raise for her, the claimant quit. HELD: Since the claimant realized that the

APPEALS POLICY AND PRECEDENT MANUAL

VOLUNTARY LEAVING

VL 500.10 (2)

VL WAGES

Appeal No. 599-CA-6

(Continued)

employer's president did not have the authority to grant her a raise without the approval of the employer's board of directors and since the claimant did not remind the president of his conditional promise, the claimant's quitting was without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 651-CA-72. A claimant does not have good cause connected with the work for quitting a job because his salary was not raised, if he is being paid the wage agreed on at the time of hire.

Appeal No. 452-CA-68. A claimant has good cause to quit a job after the employer assigns her additional responsibilities and promises her a raise and such raise is not forthcoming after a reasonable period of time (in this case, ten months).

Appeal No. 393-CA-67. The claimant had not been told when hired that he would have to make up any cash shortages. He tried to work out an arrangement where he could check to see how and where the shortages occurred. When this could not be arranged, there was absolutely no way he could check on how shortages occurred. The shortages continued to occur and, for eight days' work, the claimant received net pay of \$37.25 (he had been hired at a rate of \$250 a month). HELD: Since the claimant had no way of protecting himself from having to make up the shortages, which amounted to a substantial reduction in his salary, and since he had not been told at the time of his hiring that such deductions would be made from his salary, the claimant had good cause connected with the work for quitting. (Cross-referenced under VL 500.30.)

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.25 - 500.30

**VL WAGES****VL 500.25 WAGES: EXPENSES INCIDENT TO JOB.**

LEAVING WORK BECAUSE THE EXPENSES INCIDENT THERE-TO HAD A MATERIAL EFFECT UPON A CLAIMANT'S NET INCOME.

Appeal No. 5979-CA-57. A claimant has good cause to quit his job when he is working solely on a commission basis one hundred miles from his home, has to pay all of his own expenses, and is unable to realize any profit from his sales. (Cross-referenced under VL 500.50.)

Also see Appeal No. 87-10325-10-061887 under VL 500.45.

**500.30 WAGES: FAILURE OR REFUSAL TO PAY.**

WHERE CLAIMANT LEFT WORK BECAUSE THE EMPLOYER WITHHELD PART OR ALL OF HIS PAY, DEDUCTED SHORTAGES FROM HIS PAY, REFUSED TO MAKE UP BACK WAGE PAYMENTS, MADE PAYMENT OF WAGES SUBJECT TO A FURTHER CONDITION, ETC. ALSO WHERE FULL OR PARTIAL PAYMENT OF WAGES WAS NOT MADE BECAUSE OF SOME ERROR ON THE PART OF THE EMPLOYER.

Appeal No. 87-01256-10-012088. The claimant quit because, despite her complaints, the employer did not pay her on designated paydays. Although the claimant did not threaten to quit because of this, she did remind the employer of her need to be timely paid. HELD: The claimant did not condone the late paydays simply because she did not threaten to quit if she were not timely paid. Rather, it was sufficient for the claimant to apprise the employer of her need for timely paydays. No disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.30 (2)

**VL WAGES**

Appeal No. 1375-CA-77. The claimant quit work because he was receiving his pay from a few days to ten days after the scheduled pay days. The paycheck given the claimant on December 17, 1976, was not honored until January 6, 1977, on which day the claimant quit. **HELD:** An employee should be able to rely on the employer paying wages on scheduled paydays. When an employer does not meet regularly scheduled paydays, its employees have reason to question its ability to continue to pay for work performed. Under the circumstances, the claimant had good cause connected with the work for quitting.

Appeal No. 657-CA-77. The claimant had worked for the employer for almost four years. During the two months prior to the claimant's separation, she had been late on one occasion. On the day she quit work, she received pay one day late due to the employer's financial difficulties. **HELD:** Since the claimant was paid on the day following the normal payday and there was no evidence that the employer had established a pattern of delaying payment or making only partial payment to its employees, the employer was not failing substantially in its responsibility to pay its employees. Accordingly, the claimant did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 4076-CA-76. A claimant who has had his pay delayed by the employer on three occasions during a four month term of employment has good cause connected with the work for quitting.

Appeal No. 2444-CA-EB-76. A claimant who is not paid for the actual number of hours he had worked, despite his several complaints to the employer, has good cause connected with the work for quitting.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.30 - 500.35

## VL WAGES

Appeal No. 1326-CA-75. During the last two months of her employment, the claimant and other employees frequently received paychecks which were not honored upon first presentation at the bank. The employer made the checks good but sometimes took as long as three weeks to do so. Moreover, there was frequently a five dollar bank charge which was not reimbursed by the employer. The claimant and others called this situation to the employer's attention but the situation continued and the claimant quit. HELD: The claimant had good cause connected with the work for quitting.

Also see Appeal No. 393-CA-67 under VL 500.10.

**500.35 WAGES: FORMER RATE, COMPARISON WITH.**

DISCUSSION OF THE SUFFICIENCY OF CLAIMANT'S WAGES AS COMPARED WITH HIS FORMER EARNINGS.

Appeal No. 806011-3. A claimant who quits work, rather than accept a reduction in pay caused by the claimant's work-connected misconduct, which the employer clearly establishes, does not have good cause connected with the work for leaving unless the claimant can establish the pay cut would be in excess of twenty-five percent.

Appeal No. 84-05367-10-051485. The employer and the claimants' union entered into a new collective bargaining agreement which provided for a reduction in wages of approximately 46%, with other benefits being frozen. Following the agreement's ratification by the union membership but prior to its effective date, the claimants, all of whom were union members, disagreed with the reduction in wages and exercised their option of resigning and accepting a lump sum special resignation payment. HELD: As a general rule, a wage reduction of 20% or more is substantial and will provide a claimant with good cause connected with the work for voluntarily resigning rather than submit to such reduction in wages. In the present case, the claimants were justified in refusing to continue to work under the newly-ratified collective bargaining agreement because of the substantial reduction in pay. (Cross-referenced under MC 255.302.)

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.35 (2)

## VL WAGES

Appeal No. 97-003975-10-041697. The claimant, a maintenance worker assigned to the Lubbock territory, left voluntarily when his \$150 per month car allowance was discontinued effectively reducing his pay 11%. Car allowances were not authorized in any other territory, and the employer made the change to keep its pay structure uniform. HELD: The Commission will examine the entire compensation package to determine whether a salary reduction is 20% or more; if so, good cause will be found. Here, elimination of claimant's car allowance does not provide him with good cause to quit because it reduced his pay only 11%.

Appeal No. 87-2916-10-022488. The claimant voluntarily quit his job due to a decrease in salary. The claimant originally worked for the company in New York, earning \$10.00 per hour. After he was transferred to Texas, the claimant's wage was reduced to \$6.50 per hour. He worked on the job for two weeks, then realized he was not making enough money. HELD: The 35% decrease in the claimant's pay constituted a substantial change in the hiring agreement. As the claimant was not informed of the change until he arrived in Texas, it was reasonable for him to not quit immediately upon learning of the decrease in salary but, rather, to attempt to make the situation work prior to quitting. No disqualification under Section 207.045. (Cross-referenced under VL 385.00.)

Appeal No. 1436-CA-78. The claimant was transferred from his position as assistant foreman on the employer's night shift to that of receiving clerk on the employer's day shift. Although, in the latter position, the claimant was to be paid the same wage as the day shift's assistant foreman, because of shift differential in pay his transfer resulted in a wage reduction of approximately 8%. The claimant quit because of this reduction in pay. HELD: An 8% reduction in pay is not a substantial reduction giving good cause connected with the work for a voluntary quit. Disqualification under Section 207.045.

Appeal No. 351-CA-77. The claimant was to be laid off due to lack of work from her job of electrical assembler which paid \$6.43 per hour. She resigned rather than accept the more strenuous job as a janitor at \$5.97 per hour, a 7.2% reduction in pay. HELD: Since

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.35 - 500.40

## VL WAGES

Appeal No. 351-CA-77 (con't)

the position offered the claimant was more strenuous than her previous position and would have represented a 7.2% reduction in pay, the claimant had good cause connected with the work for quitting.

Appeal No. 873-CA-76. The claimant, a welder earning \$4.50 per hour, was laid off due to lack of work but was offered continued employment as a helper at \$3.84 per hour. The claimant declined the offer. HELD: Since the reduction in pay amounted to only 15% and since the claimant could have accepted the lower paying job and continued working while seeking other employment, the claimant voluntarily quit without good cause connected with the work. Disqualification under Section 207.045.

Also see cases digested under VL 500.75.

**500.40 WAGES: INCREASE REFUSED.**

LEAVING BECAUSE A REQUESTED INCREASE IN WAGES WAS REFUSED.

Appeal No. 1095-CA-77. The claimant resigned because she had been unable to face her co-workers since she did not receive a promotion which she had believed she was going to receive. She had not been promised the promotion, nor even offered a promotion, and could have continued working in the same job at the same pay. No one connected with management had told the claimant's co-workers that she was being considered for the promotion.

HELD: Since the employer had had only a preliminary discussion with the claimant regarding the new job and had never offered it to her, the claimant did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 274-CA-76. The claimant, a sales clerk, received a \$60 per month pay increase when her immediate supervisor was transferred and a new office manager was assigned. The claimant was expected to assist the new office manager during a brief

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.40 - 500.45

## VL WAGES

Appeal No. 274-CA-76

(Cont'd)

transitional period; however, her duties were still essentially those of a sales clerk and she did not have to work any overtime as a result of the change in office managers. She demanded an additional pay increase over and above the \$60 per month pay increase she had been given. The demand was based on a prospective increase in the duties expected of her; however, this increase in duties had not take place. When she was not granted the additional pay increase, the claimant resigned without notice. HELD: Since the evidence in the record failed to establish that the claimant's wage increase demand was reasonably warranted by any substantial change or increase in her job responsibilities, the claimant's leaving was without good cause connected with the work. Disqualification under Section 207.045.

**500.45 WAGES: LIVING WAGE.**

WHERE JUSTIFICATION FOR LEAVING IS BASED UPON A DETERMINATION AS TO WHETHER EARNINGS CONSTITUTED A LIVING WAGE.

Appeal No. 87-10325-10-061887. The claimant, a commission sales agent, was provided with a \$400 weekly training allowance for the first 16 weeks of employment, after which period the weekly allowance was reduced to \$180. The claimant performed to the best of his ability but was unable to increase his sales to the level expected by the employer and needed by the claimant to produce a living wage. The claimant resigned after his sales did not improve by a deadline mutually agreed upon by the claimant and the employer. HELD: After the claimant's training allowance was substantially reduced, his inability, despite his best efforts, to realize any profits from his sales provided him with good cause to quit. A claimant has good cause to quit his job when he is working on a commission basis and is unable to realize any profits from his sales. (Cross-referenced under VL 500.50.)

Also see Appeal No. 5979-CA-57 under VL 500.25.

APPEALS POLICY AND PRECEDENT MANUAL

VOLUNTARY LEAVING

VL 500.50 - 500.60

**VL WAGES**

**VL 500.50 WAGES: LOW.**

LEAVING BECAUSE OF WORKER'S CONTENTION THAT THE WAGES WERE TOO LOW.

See Appeal No. 5979-CA-57 under VL 500.25 and Appeal No. 87-10325-10-061887 under VL 500.45.

**500.60 WAGES: MINIMUM.**

DISCUSSION OF THE SUFFICIENCY OF CLAIMANT'S WAGES AS COMPARED TO THE AMOUNTS SET UP IN STATE OR FEDERAL MINIMUM WAGE LAWS.

Appeal No. 985-CA-70. When an employer is subject to the Texas Minimum Wage Act, a claimant has good cause to quit her job if the employer is not paying her the Texas minimum wage.

Appeal No. 173-CA-70. A claimant has good cause connected with the work for quitting when an employer, who is subject to the Federal Fair Labor Standards Act, does not pay the claimant overtime pay of not less than one and one-half times his regular rate of pay after forty hours in a workweek as required by that Act.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 500.75 - 500.751**

<b>VL WAGES</b>
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**VL 500.75 WAGES: REDUCTION.**

**500.751 WAGES: REDUCTION: GENERAL.**

INVOLVES A REDUCTION OF WAGES UNDER CIRCUMSTANCES OTHER THAN THOSE SPECIFIED IN ONE OF THE OTHER SUBHEADINGS OF THIS SUBLINE, OR COVERED BY THREE OR MORE SUBHEADINGS IN THIS SUBLINE.

Appeal No. 732-CA-78. Regardless of whether a reduction in his remuneration would have alone provided a claimant with good cause connected with the work for quitting, where the claimant was not notified of the reduction until two weeks after it became effective, the retroactive nature of the change in the claimant's remuneration provided him with good cause connected with the work for quitting.

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 500.751 - 500.752

<b>VL WAGES</b>
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Appeal No. 12,355-AT-71 (Affirmed by 1408-CA-71).

A claimant does not have good cause connected with the work for quitting rather than exercising bumping privileges when his pay would have been reduced from \$4.24 an hour to \$3.72 per hour, which latter wage was not substantially less favorable than that paid for similar work in the locality. Such bumping privileges were provided for in the company-union contract. Disqualification under Section 207.045.

Appeal No. 598-CA-70. A claimant has good cause to refuse to exercise his bumping privileges when the reduction in wage would have been in excess of thirty percent. No disqualification under Section 207.045.

Also see cases digested under VL 315.00 and VL 500.35.

**500.752 WAGES: REDUCTION: HOURS, CHANGE IN.**

WHERE CLAIMANT LEFT BECAUSE A DECREASE IN HOURS RESULTED IN A REDUCTION IN WAGES OR WHERE AN INCREASE IN REGULAR HOURS WITHOUT A PROPORTIONATE PAY INCREASE RESULTED IN A LOWER RATE OF PAY.

Appeal No. 87-01720-10-020188. The claimant had been working at minimum wage two hours per day, 5 days a week, on a job that was approximately 36 miles round trip from her home. On December 12th, the claimant was informed that effective December 21st, her hours would be reduced to one hour per day. She immediately quit to seek other work because she determined that the reduction in hours would not justify her commuting costs. HELD: The Commission concluded that the proposed reduction in hours would constitute a substantial change in the hiring agreement and the claimant therefore had good work-connected cause for quitting the job.

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

**VL 500.752 - 500.753**

<b>VL WAGES</b>
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Appeal No. 19,545-AT-65 (Affirmed by 281-CA-65).

The claimant worked on a regular, part-time basis as a salad maker and cook. Her hourly rate of pay differed according to the type of work she did. She was offered full-time work as a cook which had been part of her duties on certain days but quit rather than accept the offer. Acceptance of the offered job would have resulted in an initial reduction in the claimant's hourly rate of pay for work as a cook (from \$1.86 per hour to \$1.75 per hour); however, the pay rate would have exceeded that prevailing for similar work in the area for a person of the claimant's qualifications.

HELD: Since the pay rate for the offered job was consistent with the prevailing wage and the claimant had had no other employment prospects, she did not have good cause connected with the work for quitting even though her pay in the full-time job as a cook would have meant some reduction from what she had been making on a part-time basis as a cook. Disqualification under Section 207.045.

Also see cases under VL 450.40.

**500.753 WAGES: REDUCTION: OVERTIME WITHOUT COMPENSATION.**

QUITTING BECAUSE CLAIMANT WAS REQUIRED TO WORK BEYOND HIS USUAL WORKING HOURS (OVERTIME) WITHOUT PAY, OR WITHOUT ADEQUATE INCREASE IN PAY.

Appeal No. 55,399-AT-59 (Affirmed by 5784-CA-57).

A claimant working 54 hours a week has good cause connected with the work for leaving when assigned extra duties which would require working sixty hours a week without overtime compensation.

Also see cases under VL 450.35.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.754 - 500.755

## VL WAGES

**500.754 WAGES: REDUCTION: TERRITORY, CHANGE IN.**

LEAVING BECAUSE A CHANGE IN CLAIMANT'S WORKING TERRITORY RESULTED IN A WAGE REDUCTION. THESE CASES GENERALLY ARE THOSE OF COMMISSION SALESMEN AND ROUTE SALESMEN.

Appeal No. 87-00458-10-010888. The employer changed the claimant's vending routes to include 5% commission accounts in addition to the 12% commission accounts she had been servicing. The result was a \$400 per month decrease from the claimant's average monthly income of \$1700. The claimant complained about the decrease and quit when management took no steps to resolve the complaint. HELD: The substantial decrease in pay resulting from the change in vending routes constituted good cause connected with the work for leaving.

**500.755 WAGES: REDUCTION: TYPE OF WORK OR MATERIALS, CHANGE IN.**

QUITTING BECAUSE AN ACTUAL OR PROSPECTIVE TRANSFER TO WORK OF ANOTHER TYPE OR TO WORK ON DIFFERENT MATERIALS WOULD RESULT IN A REDUCTION IN PAY.

Appeal No. 86-15472-10-110786. The claimant had injured his hand and was released to return to work but did not have full hand coordination and strength. The employer transferred the claimant to another department, resulting in a pay cut from \$6.37 to \$5.25 per hour, for fear the claimant could not safely operate the radial saws. The claimant quit rather than accept the pay cut. HELD: In light of the employer's

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 500.755 (2)

## VL WAGES

Appeal No. 86-15472-10-110786

(Cont'd)

legitimate concern over the claimant's ability to perform his usual duties, the employer had the right to place the claimant in a less dangerous job. The reduction in pay, although significant, was not so substantial as to give the claimant good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 309-AT-70 (Affirmed by 85-CA-70). A claimant has good cause connected with the work for quitting when the employer advised her she is being transferred from her responsible position to a job of a routine clerical nature at a reduction in salary from \$450 to \$400 per month and does not advise her that the change would be temporary.

Appeal No. 32,722-AT-66 (Affirmed by 740-CA-66).

The claimant had been working as an advertising salesperson at \$110.00 a week and reluctantly accepted the job of director of that department at \$125 per week with the understanding it would be temporary until a new director could be hired. She freely agreed to step down when told the employer had a chance to hire a director; however, she quit when she discovered her salary had been decreased to \$110 a week. HELD: Since her increase in pay was given in conjunction with her temporary assumption of the duties of director, the claimant should have known that to step down from these duties would mean a return to her original salary. Accordingly, the reduction in the claimant's salary did not provide her with good cause connected with the work for quitting. Disqualification under Section 207.045.

APPEALS POLICY AND PRECEDENT MANUAL

VOLUNTARY LEAVING

VL 500.755 (3)

**VL WAGES**

Appeal No. 81,028-AT-61 (Affirmed by 7914-CA-61).  
The employer found it necessary to reduce the force in the claimant's department. In accordance with the contract between the employer and the claimant's union, the claimant, who had been earning \$2.96 an hour, was offered continued employment in the highest classification in another department to which his seniority entitled him, which would have paid him \$2.33 an hour. HELD: Since the provision for transfer of the kind offered the claimant was provided for in the contract between the employer and the claimant's union, the claimant's leaving was without good cause connected with the work. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 505.00

<b>VL WORK, DEFINITION OF</b>
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**VL 505.00 WORK, DEFINITION OF.**

INCLUDES CASES WHICH CONTAIN DISCUSSIONS AS TO WHAT CONSTITUTES "WORK" WITHIN THE MEANING OF THE VOLUNTARY LEAVING DISQUALIFICATION; i.e., WHETHER IT MEANS "MOST RECENT WORK", COVERED EMPLOYMENT, REGULAR PERMANENT WORK AS DISTINGUISHED FROM TEMPORARY, STOPGAP, ETC.

Appeal No. 62-CA-65. After a short period of working as a laborer for the employer, the claimant, at his own instigation, negotiated a contract with the employer to provide window-cleaning services for the employer on an independent contractual basis. The contract was later terminated by the employer due to lack of work. HELD: Sections 207.045 and 207.044 of the Act provide for a possible disqualification based upon the claimant's separation from his last work, whether that be covered or exempt "employment" or independent contract work or other work. In the present case, the claimant was separated from his last "work", his independent contractual association with the employer, due to lack of work, a nondisqualifying separation under Section 207.045 and Section 207.044 of the Act. On the other hand, the chargeback provisions in Section 204.022 of the Act provide for the protecting of an employer's account where the claimant's last separation from the employer's employment, prior to the benefit year, was under disqualifying circumstances under Section 207.045 or Section 207.044 of the Act. In the present case, since the services performed by the claimant for the employer on a contractual basis did not constitute "employment", the separation occurring upon the termination of the contract was not a separation from the employer's "employment" and could not be the basis for a decision on the chargeability of benefits to the employer's account. (It was then held that the claimant's last separation from the employer's "employment" occurred when the claimant, at his instigation, was terminated from his work as a laborer and began working as an independent contractor. As that separation was deemed to have been disqualifying in nature

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 505.00 (2)**

**VL WORK, DEFINITION OF**

Appeal No. 62-CA-65

(Cont'd)

under Section 207.045 of the Act, the employer's account was protected from chargeback under Section 204.022 of the Act.) (Also digested under CH 30.50 and cross-referenced under MC 5.00.)

Also see Appeal No. 370-CA-70 under MS 510.00.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 510.00 - 510.35

VL WORK, NATURE OF
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**VL 510.00 WORK, NATURE OF.****510.05 WORK, NATURE OF: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF LEAVING BECAUSE OF THE NATURE OF THE WORK, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 510, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 1047-CA-71. Although the claimant was dissatisfied with the duties she was required to perform, she quit without discussing the situation with her employer in an attempt to work things out. Accordingly, her leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

**510.35 WORK, NATURE OF: LIGHT OR HEAVY.**

LEAVING BECAUSE OF INSISTENCE UPON LIGHT WORK OR OBJECTION TO HEAVY WORK.

Appeal No. 25,831-AT-65 (Affirmed by 942-CA-65). The claimant quit her job as a fountain waitress because she had had surgery and felt the work was too hard for her. She quit without notice and without giving the employer a reason. HELD: Since the claimant quit without notice and without giving the employer an opportunity to remedy the situation to which she objected, her quitting was without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 4140-AT-63 (Affirmed by 9588-CA-63). The claimant worked several years as a welder and was then transferred to the forge shop where she had to handle hot pieces of metal weighing more than seventy-five pounds. She tried to perform the work but found it to be beyond her capacity. She quit after her request for more suitable work was denied. HELD: Since the claimant was transferred to much heavier work which, despite her good faith efforts, was impossible for her to perform, her quitting was with good cause connected with the work.

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 510.40

VL WORK, NATURE OF
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#### VL 510.40 WORK, NATURE OF: PREFERRED EMPLOYER OR EMPLOYMENT.

LEAVING BECAUSE OF THE WORKER'S PREFERENCE FOR OTHER WORK OR ANOTHER EMPLOYER.

Appeal No. 97-006341-10-060597. In the home health care referral industry, either the worker or the referral service may initiate reassignment. In this case, the claimant was removed from her current assignment at her own request because she was dissatisfied. When the employer offered claimant reassignment later that same week, claimant declined because the only way she could get to the new client's home was by bus. The employer had never furnished transportation. **HELD:** Separation is an issue that can only be determined after an examination of all the facts and circumstances. An employment relationship such as this one continues until one party clearly notifies the other party that the employment relationship has ended, even if there is some passage of time during which the employee performs no services and earns no wages. This employment relationship was ended by claimant's action of declining the new assignment offered to her. This action clearly notified the employer that the relationship had ended. Claimant's separation occurred when she refused reassignment, not when she requested removal from her previous client. Claimant's dislike of the only available means of transportation—riding the bus—does not constitute good cause to leave voluntarily, because transportation was claimant's responsibility. (Cross referenced at VL 150.20 & VL 515.90).

Appeal No. 2238-CA-77. The claimant, a machine operator, was offered a job as a supervisor trainee, a somewhat heavier job. He was told that, if he could not do the work of a supervisor trainee, he would be returned to the operator's job. He sustained an injury while working as a supervisor trainee. When he was released by his physician, he insisted on being given the trainee job, although it had become clear that the work was too heavy for him and that he could not have performed all the duties of that job. The claimant was offered reinstatement in the operator's job but he refused and the employer would not put him in any other job. **HELD:** Since the claimant was physically unable to perform the duties of the job that he last held and would not return to his former job, the claimant's leaving was voluntary and without good cause connected with the work. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 515.00 - 515.05

<b>VL WORKING CONDITIONS</b>
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**VL 515.00 WORKING CONDITIONS.****515.05 WORKING CONDITIONS: GENERAL.**

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF LEAVING BECAUSE OF WORKING CONDITIONS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 515, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Appeal No. 2610-CA-77. Dissatisfaction with working conditions is generally not considered to be good cause connected with the work for quitting unless the claimant can show that the conditions were intolerable. Although such a showing was not made in this case, the fact that the claimant had been forced to perform janitorial duties which her job description of bookkeeper did not include, when considered in combination with deteriorating working conditions, provided the claimant with good cause connected with the work for quitting.

Appeal No. 1123-CA-77. The claimant quit work because, despite her repeated objections during an eleven month period and the employer's repeated promises to take corrective actions, the employer failed to pay the claimant for all of her sick leave time and failed to allow her time off for lunch, both contrary to the original hiring agreement, and failed to pay for her overtime work as promised. HELD: The employer's inaction, despite the claimant's frequent complaints and his frequent assurances, provided the claimant with good cause connected with the work for quitting.

Appeal No. 502-CA-77. Dissatisfaction with working conditions, under which the claimant had worked for two years, did not provide the claimant with good cause connected with the work for quitting. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 515.05 - 515.15

#### VL WORKING CONDITIONS

Appeal No. 3613-CA-76. A claimant who quits work because of some dissatisfaction with working conditions without affording the employer any opportunity to resolve the situation thereby voluntarily quits without good cause connected with the work.

Also see Appeal No. 86-14984-10-11886 under VL 495.00, holding that an employee who, because of seniority, is protected from layoff but who accepts the employer's monetary incentive and quits work, assertedly to protect the job of a less senior co-worker, thereby voluntarily quits work without good cause connected with the work.

Also see the Employee Polygraph Protection Act of 1988, P.L. 100-347, digested under MC 485.83.

#### **515.15 WORKING CONDITIONS: AGREEMENT, VIOLATION OF.**

WHERE CLAIMANT LEFT WORK BECAUSE OF ALLEGED VIOLATION OF WORKING AGREEMENT BY EMPLOYER.

Appeal No. 86-13688-10-091586. As a result of an amendment to the Texas Education Code, all public school educators were required to pass the Texas Examination of Current Administrators and Teachers (TECAT). The claimant, a teacher, resigned rather than submit to the TECAT exam because it assertedly sought to measure literacy only and not actual competency in a teacher's subject area; thus, it was arguably not reasonably job-related. HELD: The claimant's separation was voluntary without good

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 515.15 (2)

<b>VL WORKING CONDITIONS</b>
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Appeal No. 86-13688-10-091586 (Cont'd)

cause connected with the work. The requirement that the claimant submit to the TECAT exam did not constitute a substantial change in the claimant's hiring agreement and did not threaten the claimant with any tangible harm. Furthermore, the requirement to submit to the exam was reasonably job-related. Disqualification imposed under Section 207.045.

Appeal No. 2690-CA-77. When the claimant accepted promotion to the job of assistant branch manager, which entailed a transfer from Beaumont, Texas, to Omaha, Nebraska, he did so with the understanding that he would be in charge of all but one phase of the employer's Omaha operation. After the claimant had worked in Omaha for a time, it came to his attention that he did not, in fact, possess the authority that he had been promised he would have. He, therefore, sought to transfer back to Beaumont and, when he could not be given such transfer, he resigned. HELD: The employer materially violated its agreement with the claimant and failed to take any action to remedy such violation when offered the opportunity, thereby providing the claimant with good cause connected with the work for quitting.

Appeal No. 514-CA-77. The claimant, a traveling sales representative, quit work because of the excessive travel required. When hired, her territory was north and west Texas and Oklahoma, subject to an agreed gradual reduction in the amount of travel to be required of her. Also, the El Paso area was to be assigned to another territory but this was done only temporarily. Also, it had been agreed that the claimant was to receive assistance from a specialist in opening new accounts, but never did. Instead of decreasing pursuant to the claimant's employment agreement, the travel required of the claimant increased throughout her employment. HELD: The claimant had good cause connected with the work for quitting, in that the employer had violated her hiring agreement in several material aspects, the cumulative result of which was that the claimant's job made excessive travel demands upon her.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 515.15 - 515.20

**VL WORKING CONDITIONS**

Appeal No. 2902-CA-75. The claimant, who had been working for the employer as a waitress on a part-time basis, agreed to transfer to full-time work as a cook, with the understanding that she could return to waitress work whenever she wanted to. When the claimant, upon the advice of her doctor that she should not continue cooking, sought to revert to work as a waitress, she was not permitted to do so and, therefore, quit. HELD: The claimant's quitting was voluntary but the employers' failure to abide by his agreement that the claimant could revert to waitress work whenever she wanted to do so provided the claimant with good cause connected with the work for quitting.

**515.20 WORKING CONDITIONS: APPORTIONMENT OF WORK.**

LEAVING WORK BECAUSE OF SOME OBJECTION AS TO THE DISTRIBUTION OF WORK. THE USE OF THIS LINE IS RESTRICTED TO GRIEVANCES WHICH ARE NOT CONNECTED WITH UNION REQUIREMENTS.

Appeal No. 87-11378-10-070287. The claimant resigned after being told by the employer that he would be expected to do the work alone while his co-worker was on vacation. The employer denied the claimant's request for a helper beforehand because work was slow and the co-worker would be gone only two weeks, but told the claimant that help may be available if needed. HELD: The claimant did not have good cause connected with the work to quit because he had not yet experienced the increased workload but resigned in anticipation of it without knowing if he would, in fact, need a helper.

Appeal No. 1978-CA-77. The claimant, a nurse's aide, was transferred to laundry work at her own request. Thereafter, the laundry work load increased because there were more patients. Also, the janitor quit and the claimant was given certain of his minor duties to perform. She quit the work because of the increased work load. HELD: Since the claimant was paid for all the time she put in, was not required to work overtime, and was not assigned any janitorial work which was not reasonably within the scope of the duties as a laundry worker, the claimant's quitting was without good cause connected with the work. Disqualification under Section 207.045.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 515.20 - 515.25

**VL WORKING CONDITIONS**

Appeal No. 1962-CA-77. The claimant quit work because she was required to do work which had previously been assigned to another worker, even though the other worker had nothing to do and the claimant was busy. Furthermore, when she complained of the matter, she was transferred to another part of the plant, her complaints about what she considered unfair treatment were not listened to, and she was insulted by the manager. HELD: The claimant had good cause connected with the work for quitting.

**515.25 WORKING CONDITIONS: COMPANY RULE.**

WHERE A CLAIMANT LEFT WORK BECAUSE OF SOME OBJECTION TO HIS EMPLOYER'S REQUIREMENTS, APPLICABLE TO AN ENTIRE CLASS OF EMPLOYEES, OR TO ALL EMPLOYEES, WHICH WERE GENERALLY KNOWN AND ENFORCED.

Appeal No. 507-CA-78. The claimant, a convenience store clerk, walked off the job when ordered by her supervisor to instruct her son and her niece to leave the store. The son and niece had made purchases in the store on the occasion in question but the supervisor reminded the claimant of the company policy, of which she had been aware, prohibiting an employee's relative from being present in a store when the employee was on duty. The claimant questioned the application of the policy to the particular situation but did not seek clarification from the store owner until after she gave her keys to her supervisor and walked off the job. HELD: The claimant could have determined the employer's policy, without leaving her work station. Consequently, her walking off the job without first seeking to clarify the policy with the store owner constituted a voluntary quit without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 2340-CUCX-76. The claimant originally worked for this employer full-time as a mechanic. When the volume of business declined, he was offered the option of continuing to work as a mechanic, but only on a half-time basis, or of continuing to work full-time but spending half of that time working on the sales floor. As the latter would have required dealing with the public, he would have had to wear his hair shorter than he had been accustomed.

## APPEALS POLICY AND PRECEDENT MANUAL

### VOLUNTARY LEAVING

VL 515.25 - 515.30

<b>VL WORKING CONDITIONS</b>
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Appeal No. 2340-CUCX-76

(Cont'd)

As the claimant did not wish to do this, he quit. HELD: On the sales floor, the claimant would have been dealing with the public. Hence, the employer's request that the claimant upgrade his grooming standards was not an unreasonable one. Accordingly, the claimant did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 52-CA-72. A claimant does not have good cause to quit rather than secure a doctor's release as requested by the employer.

Appeal No. 545-CF-60 (Affirmed by 41-CF-60). A claimant does not have good cause to quit rather than take a company sponsored lie detector test which, at the time of hire, he had agreed to take in the event a shortage occurred.

As to polygraph or other examinations, see MC 485.83.

**515.30 WORKING CONDITIONS: DUTIES OR REQUIREMENTS OUTSIDE SCOPE OF EMPLOYMENT.**

WHERE CLAIMANT QUIT BECAUSE HE WAS ASSIGNED DUTIES OTHER THAN THOSE FOR WHICH HE HAD BEEN HIRED, OR BECAUSE HIS EMPLOYER REQUIRED HIM TO DO SOMETHING WHICH ORDINARILY WOULD NOT BE DONE UNDER SUCH AN EMPLOYMENT RELATIONSHIP.

Appeal No. 2198-CA-77. The claimant, a bookkeeper, left her last work because of a change in her job assignment whereby she would be expected to do some janitorial duties. She had never done janitorial work before and the chemicals used in the cleaning aggravated an allergic condition for which the claimant had been consulting a specialist. Although the claimant gave notice of her intention to quit as of March 11, 1977, she worked a total of 51 hours between March 11, 1977, and April 15, 1977, training her

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### VOLUNTARY LEAVING

VL 515.30 -515.35

<b>VL WORKING CONDITIONS</b>
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Appeal No. 2198-CA-77

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replacement and assisting the employer in filling out tax forms.

HELD: The fact that, after resigning, the claimant continued working until a replacement could be trained and in order to assist the employer with tax forms, did not change the nature of the separation from a voluntary quit to a discharge. As to the merits of her separation, the employer's substantial alteration in the claimant's working conditions, and the claimant's allergic condition which was aggravated by this change, provided the claimant with good cause connected with the work for quitting.

Appeal No. 1836-CA-76. The claimant, who was primarily employed as a truck driver, quit work rather than empty some trash cans as he had been instructed. He did not want to do this task because he did not think it was part of his duties. Although he had never carried out trash before, he had previously done other tasks while not occupied in driving a truck and had taken orders from supervisors in several different departments. HELD: In view of the fact that the claimant was not employed solely as a truck driver, the employer's order was a reasonable one and the claimant did not have good cause connected with the work for quitting rather than obey such order. Disqualification under Section 207.045.

#### **515.35 WORKING CONDITIONS: ENVIRONMENT.**

INVOLVES A LEAVING BECAUSE OF OBJECTIONS TO THE LOCATION OR PHYSICAL CONDITIONS SURROUNDING THE WORK.

Appeal No. 2177-CA-76. The claimant was last employed at a sewage plant site. The fumes and stench assertedly caused him to have headaches and convulsions and made it impossible for him to retain his food. He, therefore, quit work, although he had not been advised by a doctor to do so, as he had at no time sought medical advice for his problem. HELD: Absent a doctor's advice that a

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**VOLUNTARY LEAVING**

**VL 515.35 - 515.45**

<b>VL WORKING CONDITIONS</b>
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Appeal No. 2177-CA-76

(Cont'd)

claimant's job was adversely affecting his health, a claimant's voluntary separation for reasons of personal health shall not be found to have been based on good cause connected with the work. Disqualification under Section 207.045.

Also see Appeal No. 3210-CA-75 under VL 235.05.

**515.40 WORKING CONDITIONS: FELLOW EMPLOYEE.**

LEAVING BECAUSE OF A SPECIFIC ANNOYANCE FROM A FELLOW EMPLOYEE WHILE ON THE JOB, OR BECAUSE OF A GENERAL DISLIKE OF A FELLOW EMPLOYEE.

Appeal No. 23-CA-77. The claimant quit her job because she allegedly had been threatened by a co-worker who possessed a gun. However, the claimant did not at any time complain to management about the matter because the co-employee was a friend and the claimant felt that such a complaint would be disloyal. **HELD:** Since, among other things, the claimant did not report the matter to management, because of a feeling of friendly loyalty rather than fear of harm, she did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 1409-CA-76. A claimant has good cause connected with the work for quitting where a co-worker has cursed her on numerous occasions and, despite the claimant's several complaints to management, management has taken no corrective action.

**515.45 WORKING CONDITIONS: METHOD OR QUALITY OF WORKMANSHIP.**

WHERE THE CLAIMANT LEFT BECAUSE OF SOME OBJECTION AS TO THE MANNER IN WHICH THE WORK WAS TO BE PERFORMED, OR TO THE QUALITY OF WORKMANSHIP, OR MATERIALS USED.

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 515.45 - 515.50

**VL WORKING CONDITIONS**

Appeal No. 2182-CA-76. The claimant, a topstitcher in a garment factory, was assigned to work sewing linings in garments because work as a topstitcher had run out. Having worked less than one day sewing linings, the claimant quit because she found the work burdensome as it involved making repairs on incorrectly sewn garments. **HELD:** Since the work of sewing linings did not involve a pay reduction and was somewhat similar to the work the claimant had been doing, she did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

**515.50 WORKING CONDITIONS: LAW AND/OR MORALS.**

WHERE CLAIMANT LEFT BECAUSE HE WAS EXPECTED TO VIOLATE THE LAW OR SOME PRINCIPLE OF GOOD MORAL CONDUCT.

Appeal No. 285-CA-78. The claimant, a nursing home assistant administrator, resigned because the employer was falsifying records in order to retain its classification as a skilled nursing home. Participation in such falsification could have jeopardized the claimant's license. **HELD:** Since the claimant's professional license would have been jeopardized by her continued association with the employer, which was falsifying records, the claimant had good cause connected with the work for resignation.

Appeal No. 27,037-AT-65 (Affirmed by 1156-CA-65). A claimant who does not tell her superior she disapproves of the language he is using and does not ask him to discontinue it in her presence, has failed to give the employer an opportunity to take corrective measures. When she quits, without notice, for this reason, she does not have good cause connected with the work for leaving. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 515.50 - 515.60**

**VL WORKING CONDITIONS**

Appeal No. 150-CA-40. A claimant who resigns rather than sell chances on a punchboard, which was unlawful and which the employer cautioned her to handle in a secret manner, has good cause connected with the work for leaving.

**515.60 WORKING CONDITIONS: PRODUCTION REQUIREMENT OR QUANTITY OF DUTIES.**

LEAVING BECAUSE THE WORK REQUIRED WAS EXCESSIVE OR INSUFFICIENT OR BECAUSE OF SPEED REQUIREMENTS.

Appeal No. 4704-CA-76. The claimant, the employer's bookkeeper/secretary, complained to the employer about the continual interference with her bookkeeping duties caused by her having to answer the phone, greet customers, and obtain merchandise from the warehouse. The claimant quit when the employer told her that her work routine was not going to change. HELD: Since the claimant suffered no financial or physical losses as the result of her problems at work she did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

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## VOLUNTARY LEAVING

VL 515.60 (2)

**VL WORKING CONDITIONS**

Appeal No. 2696-CA-76. About a month prior to her separation, the claimant, a grocery delicatessen clerk who had originally agreed to work some nights, had been assigned to work three nights a week rather than one or two nights a week as previously. She quit work because she assertedly had more work to do at nights, including some occasional overtime hours (for which she was compensated), because there was no part-time help at nights. HELD: Since the night work to which the claimant was assigned was consistent with her original hiring agreement and the work previously performed by her and since the overtime hours worked by her were insubstantial and, at any rate, were compensated, the claimant's assignment to increased night work did not provide her with good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 2594-CA-76. The claimant quit her work because she was not able to meet even the low temporary quota for the new operation she was performing. However, she was not being threatened with discharge but, in fact, was being given special training in order to improve her proficiency. HELD: Since the claimant was not in danger of being discharged at the time she quit and was being given special training to help her meet the temporary quota, her leaving was without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 76-CA-76. A claimant who quits work because of an anticipated increase in her work load, which was to follow a period of additional training to assist her in meeting the increase, does not have good cause connected with the work for quitting when she has not undergone the training nor had the increased quota imposed upon her nor, necessarily, made any effort to meet the increased quota.

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## VOLUNTARY LEAVING

VL 515.65

<b>VL WORKING CONDITIONS</b>
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**VL 515.65 WORKING CONDITIONS: SAFETY.**

LEAVING BECAUSE WORKING CONDITIONS WERE UNSAFE.

Appeal No. 87-20865-10-121487. The claimant suffered an on-the-job injury when a dirt wall collapsed in an excavation he was working in. The matter was reported to the federal Occupational Safety and Health Administration (OSHA). The latter advised the claimant that the walls of the excavation should have been shored-up. While off work due to the injury, the claimant requested the employer to provide shoring in accordance with OSHA regulations. The employer did not comply. The claimant then resigned upon release by his doctor due to his concern about the safety of the job. Subsequent to the separation, the employer was investigated, cited and penalized by the OSHA for safety violations including failure to shore excavations. HELD: As a result of the OSHA investigation, sufficient evidence existed to show that unsafe working conditions existed where the claimant was required to work. The claimant gave the employer an opportunity to rectify the unsafe conditions but the employer refused. In light of the claimant's legitimate concern for his safety and the employer's refusal to take corrective measures, the claimant had good work-connected cause to quit the job. (Cross-referenced under VL 190.15.)

Appeal No. 86-01017-10-010887. The claimant quit his job as a boilermaker because he feared for his life when required to work in the rain on a steel framework 60 feet above ground in order to meet the employer's deadline. HELD: The claimant had good cause connected with the work for quitting because he was required to work under life-threatening conditions.

Appeal No. 957-CA-77. The claimant, a taxi driver, quit his job because the cars which he drove were in substandard condition. He was particularly upset with two of the vehicles which had leaky exhaust systems. He complained about the matter once, about a month before his discharge. On or about the claimant's last day of work, he was assigned one of the two cars with leaky exhausts, as his regular car was in for repairs. The claimant refused to drive the

## APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 515.65 (2)

<b>VL WORKING CONDITIONS</b>
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Appeal No. 957-CA-77

(Cont'd)

car with the leaky exhaust. As there was no other car available, he resigned. HELD: The evidence was not sufficient to support a conclusion that the claimant's working conditions were so hazardous that he could not continue working. The claimant made only one complaint to the employer of his dissatisfaction with the working conditions; if conditions were truly unsafe, he should have made more frequent complaints about the condition of the employer's cars. Accordingly, the claimant did not have good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 3474-CUCX-76. The claimant was employed as a security guard at a motel. The day before the claimant quit, the desk clerk received notification of a bomb threat, repeated several times. Law enforcement officers checked out the threat and found no bomb. After the officers left, the threat was repeated. The officers refused to return, believing that the threats were hoax. The claimant thereupon called the motel manager and the branch manager of the security service. Those persons were upset at the claimant's having called at 5 a.m. and seemed to make light of any danger to which the claimant may have been exposed. The claimant was upset at the matter having been treated lightly and quit without notice and without seeking a transfer or taking up with higher management his dissatisfaction with the matter's having been taken lightly. HELD: Some degree of danger is implicit in the job of security guard and, absent extraordinary circumstances, instances of personal danger should not provide a security guard with good cause connected with the work for quitting since it might be said that he assumed that risk when he accepted the job. Since the risk to which the claimant was subjected was not extraordinary and the threat had been checked out, the nonchalance of those later notified of the threat, which was the primary reason for the claimant's quitting, did not provide the claimant with good cause connected with the work for quitting, particularly since the claimant neither complained to higher management nor requested a transfer to another assignment. Disqualification under Section 207.045.

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### VOLUNTARY LEAVING

VL 515.65 - 515.80

#### VL WORKING CONDITIONS

Appeal No. 2083-CA-76. A claimant who quits work because of unsafe working conditions, of which he had not been aware when he took the job and with respect to which he has made numerous complaints to the employer which, despite assurances, have not been acted upon, has good cause connected with the work for quitting.

Also see cases under VL 235.45.

#### **515.70 WORKING CONDITIONS: SANITATION.**

LEAVING WORK BECAUSE OF UNSANITARY CONDITIONS.

See Appeal No. 89-CF-69 under VL 315.00.

#### **515.80 WORKING CONDITIONS: SUPERVISOR.**

LEAVING BECAUSE OF SOME ANNOYANCE OF CLAIMANT BY THE SUPERVISOR, OR BECAUSE OF GENERAL DISLIKE OF SUPERVISOR.

Appeal No. 87-17200-10-092987. A claimant who twice requests that the employer cease addressing him by means of a racial slur ("nigger") has good work-connected cause to quit work when the employer persists in such conduct. (Cross-referenced under MC 390.20.)

Also see Appeal No. 87-18554-10-102687 under MC 390.20.

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## VOLUNTARY LEAVING

VL 515.80 (2)

**VL WORKING CONDITIONS**

Appeal No. 2782-CA-77. Shortly after the claimant reported to work on her last day, her fiancée, a fellow employee, told her that he had been discharged. The manager who had discharged the claimant's fiancée noticed the claimant and her fiancée together. He told the fiancée to leave and told the claimant, in crude terms that, if she did not straighten up, she could leave. The claimant had never before been spoken to in that way by the manager. She became upset and quit, as she felt that the manager's actions indicated that he had a grudge against her. HELD: Since the employer's manager had never been rude to the claimant before, the single emotional outburst by the manager, in the stressful context of his having just discharged another individual, did not provide the claimant with good cause connected with the work for quitting. Disqualification under Section 207.045.

Appeal No. 1452-CA-77. The claimant quit her job because she began feeling extremely nervous and felt that she was being unduly harassed by the employer by his constant corrections of her work. Although the claimant was advised by her doctor to quit work if it was adversely affecting her health, she did not mention ill health at the time of her quitting nor at any other time did she mention to the employer that his actions might be causing her distress. HELD: Since the claimant did not discuss the matter with the employer, did not present the employer with any medical evidence of the necessity for her quitting, and gave the employer no opportunity to correct the behavior to which she objected, the claimant did not have good cause connected with the work for leaving. Disqualification under Section 207.045.

Appeal No. 1493-CA-76. After the claimant began working for the employer, she found that her supervisor had a tendency to engage in emotional outbursts upon the slightest provocation. She complained to the supervisor and to a vice-president of the company about these outbursts. After one such outburst, the claimant requested a transfer and, when she found that a transfer was not available, she resigned. HELD: The claimant had good cause connected with the work for quitting and had exhausted all means available to her to correct the situation in an effort to keep her job.

Also see cases under VL 138.00.

# APPEALS POLICY AND PRECEDENT MANUAL

## VOLUNTARY LEAVING

VL 515.85 - 515.90

### VL WORKING CONDITIONS

#### VL 515.85 WORKING CONDITIONS: TEMPERATURE OR VENTILATION.

LEAVING WORK BECAUSE OF TEMPERATURE OR VENTILATION.

Appeal No. 127-CA-76. The claimant quit work after having complained to the employer's office manager to no avail about having to work in an office in which, for no reason, the temperature was set at 85 or 90 degrees and in which unpleasant working conditions were brought about by the actions of the employer's nurse-receptionist. The employer refused to meet with the claimant and other complaining employees. HELD: In view of the conditions under which she was having to work and the fact that she had, without success, sought correction of such conditions, the claimant's quitting was with good cause connected with the work.

#### 515.90 WORKING CONDITIONS: TRANSFER TO OTHER WORK.

WHERE A LEAVING OCCURRED BECAUSE THE CLAIMANT OBJECTED TO BEING TRANSFERRED TO OTHER WORK, OR BECAUSE A DESIRED TRANSFER TO OTHER WORK WAS NOT EFFECTED.

Appeal No. 97-008709-30-081397. After a month on the job, the claimant was told her job performance as a meat wrapper in a grocery store was unsatisfactory, and she was going to be transferred to a comparable position as either a cashier or a deli clerk. The claimant resigned without notice rather than accept the proposed reassignment. HELD: An employer may reassign workers to different positions within the same enterprise where doing so is reasonable, and the job location, pay rate and working conditions are substantially similar. A worker so transferred must try out the new position for a reasonable time before quitting. Here, the claimant failed to do so and thus did not have good cause to leave voluntarily.

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## VOLUNTARY LEAVING

VL 515.90 (2)

<b>VL WORKING CONDITIONS</b>
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Appeal No. 97-006341-10-060597. In the home health care referral industry, either the worker or the referral service may initiate reassignment. In this case, the claimant was removed from her current assignment at her own request because she was dissatisfied. When the employer offered claimant reassignment later that same week, claimant declined because the only way she could get to the new client's home was by bus. The employer had never furnished transportation. HELD: Separation is an issue that can only be determined after an examination of all the facts and circumstances. An employment relationship such as this one continues until one party clearly notifies the other party that the employment relationship has ended, even if there is some passage of time during which the employee performs no services and earns no wages. This employment relationship was ended by claimant's action of declining the new assignment offered to her. This action clearly notified the employer that the relationship had ended. Claimant's separation occurred when she refused reassignment, not when she requested removal from her previous client. Claimant's dislike of the only available means of transportation—riding the bus—does not constitute good cause to leave voluntarily, because transportation was claimant's responsibility. (Cross referenced at VL 150.20 & VL 510.40).

Appeal No. 1643-CA-77. The claimant quit her job because she was to be transferred from senior patient representative to receptionist, although her pay would have remained the same. She considered the action as a demotion as many entry level persons were assigned to work as receptionists. HELD: The employer has the right to establish and fill positions with whatever personnel it desires. The fact that many entry level personnel were employed as receptionists did not establish that the claimant was being demoted, as there was to be no decrease in pay. Furthermore, there was no evidence that the transfer would have caused the claimant any hardship. Accordingly, the claimant's quitting was without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 4633-CA-76. A claimant who quits work by refusing to transfer to other work in lieu of being discharged for poor performance, with no reduction in pay intended, because she believed a decrease in pay would be involved but who does not seek to clarify the matter with the employer, thereby quits work without good cause connected with the work. Disqualification under Section 207.045.

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## VOLUNTARY LEAVING

VL 515.90 (3)

<b>VL WORKING CONDITIONS</b>
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Appeal No. 4599-CA-76. The claimant's job in Tyler was eliminated. Under union contract, he had the right to displace ("bump") other employees in the employer's other Texas locations. Although the claimant had exercised this privilege before, he did not wish to do so on this occasion because the nearest location as to which he had seniority was not within commuting distance of his home. He was also offered the opportunity to exercise his seniority rights and retain a job by moving to Memphis, Tennessee or Dallas, Texas, which he did not choose to do. Under the contract, such failure would cause a loss of seniority, which would result in the loss of his job. HELD: As the claimant had been aware of and had accepted the provisions of the union contract, including the provisions as to systemwide transfers if offered a position away from his home base, his failure to transfer when his job in Tyler was abolished amounted to a voluntary leaving of work without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 3711-CA-76. The claimant quit work rather than accept a transfer to another department. The transfer would not have resulted in any change in the claimant's rate of pay, hours, or working conditions, and was to have been made because of a shortage of qualified personnel in the department to which the claimant was to have been transferred. HELD: Since the transfer was based on the employer's production requirements and would not have involved any change in the claimant's hours, rate of pay, or working conditions, her quitting was without good cause connected with the work. Disqualification under Section 207.045.

Appeal No. 3186-CA-75. During the claimant's two weeks absence for medical reasons, the claimant's job was changed from truck driver to tree trimmer, the job for which he had originally been hired. Although the claimant's pay would have been the same, he declined to accept the change when he returned from his leave. HELD: The claimant did not have good cause connected with the work for quitting in view of the fact that there would have been no decrease in his pay and the work to which he was to be transferred was that for which he had originally been hired. Disqualification under Section 207.045.

**APPEALS POLICY AND PRECEDENT MANUAL**

**VOLUNTARY LEAVING**

**VL 515.90 (4)**

**VL WORKING CONDITIONS**

Appeal No. 28,998-AT-66 (Affirmed by 119-CA-66). A claimant does not have good cause to quit work rather than transfer to another of the employer's stores located in the same metropolitan area but further away from her home, where the claimant had previously submitted to such transfers and the proposed location would still have been within reasonable commuting distance. Disqualification under Section 207.045.