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MISCONDUCT

Misconduct MC 5
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ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Bandemer v. IDES*, 562 N.E. 2d 6 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition (Potential Harm)**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes**

The claimant was sales manager for a retail store. She had the keys and was responsible for opening the store at 9:30 a.m. The employer had a rule requiring the claimant to call in if she would be absent. One morning, the claimant felt ill. She failed to contact the employer and the store did not open for business when scheduled.

The claimant argued that her actions did not constitute misconduct, because, among other elements of misconduct, the employer did not prove that it suffered any harm.

HELD: Potential financial loss caused by the conduct of an employee is harmful to an employer. Here, because of the claimant's actions, the employer was unable to open the store as scheduled and potential customers were therefore unable to shop at the store resulting in financial loss.

The statutory element of harm was proven.

ISSUE/DIGEST CODE	**Misconduct/ MC 5.05**
DOCKET/DATE	***Cannici v. Ill. Dep't of Empl. Sec. Bd. of Review*, 2021 IL App (1st) 181562**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition (Potential Harm)**
CROSS-REFERENCE	**MC 485.95 Residency Requirement**

The Village of Melrose Park (Village) employed Claimant as a firefighter from 2000 to 2016. In 2000, he bought a house in the Village. Claimant and children lived in the Village house until 2008 when Claimant purchased a house in Orland Park. His wife and the children lived in the Orland Park house while Claimant lived in the Village house. In June 2013, Claimant rented the Village house to tenants and lived with his family in the Orland Park house. Claimant continued to pay the utilities and taxes for the Village house. He continued to use the address of the Village house for his mail, including for personal and official business. In June 2016, Claimant learned that his residency was being questioned and he moved back into the Village house after the tenants moved out. His wife and children did not return to the Village house. Also, in June 2016, the Village fire chief filed written charges against Claimant, seeking termination of his employment for violating the Village's residency requirement by failing to maintain his principal residence in the Village. Following an August 2016 hearing before the Village's board of fire and police commissioners, Claimant's employment was terminated for violating the Village's residency ordinance. An IDES claims adjudicator determined that Claimant was disqualified from receiving unemployment benefits because he was discharged for misconduct since he had been discharged for violating the Village's residency requirement, which was a known and reasonable rule. Claimant appealed. At Claimant's hearing the Claimant argued that under the Illinois Supreme Court's decision in *Maksym*, 242 Ill. 2d 3030, he established his principal residency in the Village by living and owning his house there since he became a firefighter and never intended to abandon his Village residency. The Referee affirmed the Local Office determination and issued a decision stating that the Claimant was discharged for misconduct under the Act. Claimant appealed. The Board affirmed the Referee's decision, finding that Claimant's factual place of abode was with his family in Orland Park and not in the Village. The Board found that Claimant's violation of the reasonable residency rule harmed the Village by undermining his employer's authority because when employees "flout" their employer's rules, it creates confusion and morale problems among the offending employees' co-workers. Claimant appealed.

Held: In affirming the Board, the court first addressed the residency requirement. Claimant argued that under *Maksym*, a person establishes his residency by showing physical presence and an intent to remain in that place as a permanent house; however, once residency has been established, the test is no longer physical presence but, rather, abandonment. Claimant argued *Maksym* stated that residency is presumed to continue, and the contesting party has the burden to show that residency had been abandoned, and both the establishment and abandonment of residency is largely a question of intent as shown by a person's

acts and testimony. Claimant asserted that the Board incorrectly inferred that he intended to abandon his Village house based on his physical presence in Orland Park. The court stated that the issue involved statutory construction. The court stated that the best signal of legislative intent is the language used in the statute, which must be given its plain and ordinary meaning citing *Gillespie Community Unit School District No. 7 v. Wight & Co.*, 2014 IL 115330, ¶ 31. In reviewing the Village municipal code, the court stated that giving the statutory language its plain and ordinary meaning, the Village's residency requirement clearly and unambiguously provided that Claimant had to live within the boundaries of the Village in a house that was his primary or most important residence throughout his period of employment. Furthermore, the court rejected Claimant's argument that, pursuant to *Maksym*, defendants bore the burden to show that Claimant intended to abandon his established status as a resident of the Village. The court distinguished the *Maksym* decision as the Municipal Code in that case did not clearly define resident or residency, which was not the case in the Village Code which clearly defines resident and residence, and it requires its employees to maintain their status as residents during their employment. Regarding the intent to maintain or abandon residency, the court stated the Board properly interpreted the plain language of the residency requirement of the Village's Code and the *Maksym* analysis of the Illinois Municipal Code concerning a resident's intent to abandon an established residency is not relevant here. With regard to willful and deliberate conduct on Claimant's part the court stated that the evidence was Claimant's maintenance of the fiction that he lived in the Village while continually living in Orland Park with his family for three years and then promptly returning to the Village when he was caught, *i.e.*, notified of the investigation. There is no dispute that Claimant's conduct was a series of conscious choices regarding where he resided at a particular time.

Claimant stated that the Village did not present any witness to contradict any of his testimony and asserted that everything that he said was true. However, the Board, as the fact finder, was permitted to disbelieve testimony that was contradicted by the circumstances or inherently improbable. See *Crabtree v. Illinois Department of Agriculture*, 128 Ill. 2d 510, 518 (1989). The Board disbelieved Claimant's testimony that he did not understand that he was violating the residency ordinance, and the court cannot reevaluate that credibility determination on administrative review. Claimant further argued that others had violated the residency requirement. The court stated that even if there had been evidence of selective enforcement, that cannot excuse employee behavior where there is a finding that the employee violated employment rules; cause for discharge can be found regardless of whether other employees have been disciplined differently. Claimant further argued that the Village failed to present any evidence that his conduct harmed his employer because no evidence showed that his residency had any negative effect on his coworkers or that they even knew where he slept at night. The court reaffirmed that the weight of authority recognizes that harm to the employer can be established by potential harm and is not limited just to actual harm, *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). The court stated that violation of the residency ordinance was insubordinate and potentially harmful to the Village's interests.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Employment Division v. Smith*, 110 S. Ct. 1595 (1990)**
AUTHORITY	**Section 602A of the Act`**
TITLE	**Misconduct**
SUBTITLE	**Religious Practice that Violates Criminal Law**
CROSS REFERENCE	**MC 270.05, Intoxicants; MC 490.05, Violation of Law**

The claimants were discharged from their jobs at a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug. Generally, the use of peyote violated Oregon's controlled substance law. However, the claimants ingested the drug for sacramental purposes in connection with their Native American Church.

The question presented to the United States Supreme Court was whether the claimants could be disqualified for unemployment benefits for misconduct, or whether such a disqualification would violate the First Amendment's Free Exercise Clause.

HELD: Unemployment insurance benefits cannot be denied when the denial is specifically directed at religious beliefs (see, e.g., MC 5.05, *Hobbie*; RW 90.05, Frazee). However, benefits can be denied when there is a neutral, across-the-board, criminal prohibition on a particular form of conduct. Here, based upon Oregon's drug law, unemployment benefits could be denied.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	**ABR-85-8467/5-22-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition of Misconduct**
CROSS REFERENCE	**None**

The claimant worked for a commercial laundry. During the course of his employment he had received 1 oral warning and 1 written warning for his behavior. He was discharged as a result of the following incident: Upon being instructed by the plant foreman to perform a certain task, the claimant lost his temper and kicked a laundry cart with sufficient force that it caused a noise that could be heard above all the other noise normally present in the laundry when it caromed into a washer.

The claimant contended that his discharge was wrongful because, prior to discharge, the employer, per its procedures, was supposed to have issued 2 written warnings.
In his decision, a Referee stated:

> The claimant's discharge was not based upon misconduct...the employer having failed to follow required disciplinary procedures.

HELD: In determining whether or not a discharge is for misconduct, the employer's right to discharge a worker should never influence an Adjudicator or Referee to conclude that because the employer had the right to discharge the worker, the worker's action constituted misconduct. Similarly, in determining whether or not a discharge is for misconduct, Adjudicators and Referees should not be constrained by procedural rules which employers may prescribe. The focus must always be upon the act for which the claimant was discharged. Analyses of employers' procedural rules and concepts such as wrongful discharge are for another forum, and not for determining eligibility for benefits.

In the instant case, analyzing the conduct of the claimant which led to his discharge, the claimant engaged in an act of insubordination, manifested by kicking a cart into a washer, which could have damaged both the cart and the washer. A person who deliberately engages in conduct which can damage the employer's property should reasonably foresee that it will result in his discharge (and not, in anticipation of another warning, that he will be given a free pass).

The Agency's sole responsibility in this case was to determine whether the claimant became unemployed due to economic conditions beyond his control, or whether he bore responsibility for his unemployment. The claimant bore responsibility for his unemployment. He was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Hobbie v. Unemp. Appeals Comm'n*, 107 S. Ct. 1046 (1989)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Conscientious Objection**
CROSS-REFERENCE	**MC 255.303, Insubordination, Refusal to Work**

The claimant was employed as Assistant Manager of a retail jewelry store. In April, 1984, she informed her immediate supervisor that she was to be baptized into the Seventh-Day Adventist Church and that, for religious reasons, she would no longer be able to work on her Sabbath, from sundown on Friday to sundown on Saturday. Her supervisor agreed to substitute for her whenever she was scheduled to work on a Friday evening or Saturday; in return, the claimant agreed to work other evenings and Sundays.

In June, 1984, the general manager of the jewelry store learned of this arrangement and advised the claimant that she could either work her scheduled shifts or resign. When the claimant refused to do either, she was discharged. When she filed for unemployment benefits, she was disqualified on the basis that she had been discharged for misconduct connected with her work. This denial of benefits was affirmed by the Florida Unemployment Appeals Commission and the Florida Fifth District Court of Appeal. The United States Supreme Court agreed to hear the case directly from the Court of Appeal.

HELD: The Supreme Court ruled that the denial of benefits to the claimant violated the Free Exercise Clause of the First Amendment, as applied to Florida through the Fourteenth Amendment. The Court quoted the following passage:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, *or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs*, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.
>
> *Thomas v. Review Board of Indiana Employment Security Div.*, 450 U.S. 707 (1981). (Emphasis in original).

The Florida Appeals Commission had argued that the claimant caused the conflict between work and religious belief, by being the "agent of change," and, as a result, neither the employer nor the state imposed a burden upon free exercise:

> (I)t is...unfair for an employee to adopt religious beliefs that conflict with existing employment and expect to continue the employment without compromising those beliefs.

The Court rejected that argument, declining to single out the religious convert for different, less favorable treatment than that given an individual whose adherence to his or her faith preceded employment. The Court concluded that the timing of the claimant's conversion was immaterial to a determination that her free exercise of her rights had been burdened: the salient inquiry under the Free Exercise Clause was the burden involved, period. The claimant was forced to choose between fidelity to religious belief and continued employment; the forfeiture of unemployment benefits for choosing the former over the latter brought unlawful coercion to bear on the claimant's choice.

The claimant's refusal to work under the conditions set forth by her employer did not constitute misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Persaud v. IDES*, 2019 IL App (1st) 180964**
AUTHORITY	**Section 602A(5) of the Act**
TITLE	**Definition of Misconduct**
SUBTITLE	**General**
CROSS REFERENCE	**MC 255.1 Insubordination**

The claimant was a patient service representative for a healthcare company. She was terminated for violations of the employer's personal conduct rules, specifically deliberately refusing to obey the orders or instructions of a manager. She was asked six times within a day to speak with her supervisor about a disciplinary action report and performance improvement plan that were going to address her behavior and performance, but she refused. She was warned that if she continued to refuse to speak to her supervisor she would be terminated. She again refused and was terminated. The claimant filed for benefits.

An adjudicator Determination allowed benefits and the employer appealed. At a hearing the claimant argued that her actions did not constitute misconduct because she thought refusing the request and instead seeking to postpone the interview until after she returned from medical leave was, in essence, requesting a reasonable accommodation. Following the hearing, the Referee affirmed the adjudicator's determination allowing benefits, holding that the claimant's actions were "in good faith" and did not constitute misconduct. The employer appealed and the Board of Review set aside the decision, holding that the claimant's actions constituted misconduct under section 602A(5) of the Act. The claimant appealed and the circuit court affirmed the Board's decision. The claimant appealed to the Appellate Court.

HELD: The Appellate Court affirmed. The Court stated that Section 602A(5) contains no requirement that a refusal to obey an employer's reasonable and lawful instruction be willful or deliberate, nor does the law require proof that the employer was harmed or the conduct was repeated, or that the conduct have violated a reasonable work-related rule. The Appellate Court further noted that while the general definition of misconduct requires these things, "the statute continues to provide that 'notwithstanding' that previous definition, certain actions are deemed to be misconduct *per se*." The Court found that the claimant disobeyed the employer's instruction. The instruction in this case was not unlawful and it was reasonable as it related directly to the claimant's work as the employer wanted to discuss a work improvement plan for the claimant. The only exceptions to a finding of "misconduct" under this specific definition are (1) if the reasonable and lawful instruction could not be followed by the employee due to lack of ability, skills, or training or (2) if the instruction would require an unsafe act. Neither of these factors was present. As such, the conduct of the claimant constituted misconduct under section 602A(5) of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	**84-BRD-2756/2-28-84**
AUTHORITY	**Section 602A and Section 601B**
TITLE	**Misconduct - General**
SUBTITLE	**Distinguishing The Issue**
CROSS-REFERENCE	**VL 5.05, General under Voluntary Leaving**

The claimant was given an indefinite leave of absence to care for her mother who was seriously ill. Four months later, the claimant's sister became available to care for the mother, and she notified the employer that she could return to work. The

company told her work was slow and asked her to check back with them in a month. She was subsequently placed on layoff without returning to work.

HELD: The claimant's separation was neither a voluntary leaving nor a discharge but was due to lack of work. In the absence of any disqualifying issue, the claimant cannot be subject to a disqualification for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	**ABR-86-1890/7-24-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Distinguishing the Issue (Discharge vs. Lay-off)**
CROSS-REFERENCE	**MC 440.05, Termination of Employment**

On October 25, the claimant, a truck driver, was involved in an accident with the employer's truck, for which he was ticketed.

On October 26, for economic reasons, the employer reduced its work force; the claimant was one of the workers laid-off. The employer's terminal manager later testified that, since the day after the claimant's accident, there was no work available to assign to the claimant.

On October 29, the employer sent to the claimant a notice of suspension, pending investigation of the October 25 accident. The employer's policy provided for a such a suspension whenever a driver was involved in an accident for which he was ticketed.

On November 13, the claimant received a notice of discharge.

HELD: There cannot be a discharge from non-existing work. As soon as there is a work separation due to a lay-off, any subsequent action by the employer during the course of that lay-off is irrelevant.

In this case, the claimant was separated from work due to a lack of work resulting in an indefinite lay-off. By reason of that lay-off, the employer's subsequent review of the claimant's accident and the suspension and discharge were irrelevant.

The claimant was not subject to disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Cetnar v. Board of Review*, 495 N.E. 2d 1128 (1986)**
AUTHORITY	**Section 602 of the Act**
TITLE	**Misconduct**
SUBTITLE	**Sole Accountability**
CROSS-REFERENCE	**MC 602-05, Felony or Theft**

The employer discovered that a large-scale construction project was being carried out at the residence of its maintenance superintendent, and that employees were working on that project on company time, using materials transported from the employer's plants. The claimant, a Maintenance Electrician, was discharged for his part in what was deemed the misappropriation of company property (theft).

In his written statement to the Adjudicator, the claimant stated that on certain occasions his general foreman would send him out of the employer's plant to work on private property and would tell him what materials he needed for the job. The claimant would punch out for the day, then give his timecard to the foreman. The claimant maintained that he was given authorization by his foreman to remove materials from the plant and specifically stated, "I have not taken any materials from (the employer) without authorization." The claimant stated that it was customary for maintenance department workers to perform work at the residences of management personnel, and testified that in the early years of his employment he had performed such work at the home of the company's owner.

The claimant's testimony was unrebutted.

HELD: Before any form of behavior is determined to be an act of misconduct, it must be clearly established as factual that the discharge was due to the worker's behavior for which the employer was not at fault. Moreover, Section 602B clearly requires

that in cases involving a discharge based upon job-related theft, there be a demonstration that the employer was in no way responsible for the theft.

In the instant case, the facts led to the conclusion that the employer countenanced the claimant's activities. The claimant's sole accountability for his actions was not established. The act(s) for which he was discharged did not fall within the definition of misconduct in general, under Section 602A, or theft, under Section 602B.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	**ABR-80-10604/10-18-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**None**
SUBTITLE	**Misconduct**
CROSS-REFERENCE	**Distinguishing the Issue MC 440.05 Expiration of Contract**

The claimant, a Roman Catholic, worked for a Roman Catholic school, as a teacher. In November 1979, she married a divorced man of the Methodist faith. The marriage ceremony was not performed in the Roman Catholic Church and was not recognized as valid by that Church. One week later, the employer became aware of the claimant's marriage, and concluded that, by entering into the marriage, the claimant had breached her employment contract, which provided, in pertinent part: "(T)he teacher agrees to ... act in accordance with the doctrine and precepts of the Catholic Church." However, rather than discharge the claimant immediately, the employer decided to permit her to continue teaching until June 1980, the end of the academic year, at which time also the claimant's employment contract would expire. The employer decided not to renew the claimant's contract.

HELD: A work separation which is based upon the expiration of a contract does not fall within the purview of Section 602A of the Act. In the instant case, the claimant became an unemployed individual by operation of law, because her contract had expired, and for no other reason. This rendered any consideration of the misconduct issue moot; and, similarly, any reason the employer might have had for deciding not to renew the claimant's contract was irrelevant.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	**ABR-85-6617/2-28-86**
AUTHORITY	**Section 601A and Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Distinguishing the Issue**
CROSS-REFERENCE	**None**

While driving to work, the claimant saw a woman jogger at the roadside. He stopped his car, then proceeded to physically assault the woman. After that assault, but before he reached work, the claimant was apprehended by the police, arrested, and jailed. After the claimant had been in jail for several days, a representative of the employer visited him, and informed him that, due to his consecutive days' absences, he had been deemed to have abandoned his job and to have voluntarily resigned.

HELD: It often occurs that a party will incorrectly characterize a work separation issue. Therefore, it is the Agency's responsibility to determine the correct issue. In the instant case, despite the employer's characterization of the issue as "job abandonment" or "voluntary leaving," the facts indicated that the employer - not the claimant - decided to terminate the work relationship. The claimant was discharged.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Barry Pesce v. Board of Review, 161 Ill.App.3d 879(1987)***
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition**
CROSS-REFERENCE	**MC 300.1, Manner of Performing Work**

The claimant was employed as a driver in a medicar used to transport patients to and from hospitals and nursing homes. During the 3-1/2 months he was employed he was involved in 4 accidents with the employer’s vehicle. Each of these accidents occurred while the claimant was backing up and resulted in the claimant’s vehicle striking a stationary object. There were no patients in the medicar at the time of these accidents and none of the accidents caused severe damage.

The employer had a rule that 2 accidents with the employer's vehicle would result in discharge; but, because the employer did not know how many of the accidents might have been the claimant's fault, the employer did not discharge him until after his 4th accident.

The Board of Review stated that the claimant was discharged due to his inability to back up the employer's vehicle. The Board then went on to equate the claimant's inability to back up the vehicle with gross indifference to the interests of the employer, because, if the claimant had continued on that course, there was the potential of the claimant injuring or aggravating an existing injury of one of the patients who relied on him for transportation. The Board concluded that this was misconduct.

The claimant contended that, even if he may have been properly and justifiably discharged, his actions did not constitute misconduct. The circuit court reversed the Board and the Department appealed.

HELD: The appellate court affirmed the circuit court's reversal of the Board and allowed benefits. The court stated that every justifiable discharge does not disqualify the discharged employee from receiving unemployment benefits. An employee's conduct may be such that the employer may properly discharge him. Such conduct might not, however, constitute "misconduct connected with the work."

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Frederick Siler v. IDES*, No. 1-89-0149 (1989)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition**
CROSS-REFERENCE	**MS 95.2, Construction of Statutes, Legislative Intent**

The claimant was a maintenance worker for 7-1/2 years. During the last 1-1/2 years, his work performance deteriorated. Despite warnings, he continued to violate his employer's sanitation and safety rules, until he was fired.

Neither the Referee nor Board of Review made a finding that the violations were deliberate or willful. Still, both held that "not following correct procedures" and "disregarding the employer's requirements" constituted misconduct.

The claimant sought judicial review.

HELD: Effective January 1, 1988, a definition of misconduct was added to Section 602A of the Act. That definition provides, in pertinent part: "Misconduct" means the deliberate and willful violation of a reasonable rule or policy.

The definition includes the terms "deliberate" and "willful" and makes no reference to "carelessness or negligence" of any degree. This indicates that the legislature intended that persons discharged for incapacity, inadvertence, negligence or inability to perform assigned tasks should receive benefits.

Terms such as "not following correct procedures" or "disregarding the employer's requirements" do not suffice to comply with the statutory definition. It is necessary to show that a worker's non-compliance was deliberate and willful.

In this case, there being no finding of any "deliberate" or "willful" violation of rules, there could be no misconduct under Section 602A. Benefits were allowed without disqualification.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Winklmeier v. Board of Review*, 450 N.E. 2d 353 (1983)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition of Misconduct**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MS 95.4, Constr. of Statute**

Over a two-year period, the claimant submitted 13 medical insurance claims to his employer. Each claim was for medical treatment for his wife. On each claim he knowingly and falsely stated that his wife was unemployed and had no insurance of her own. His practice of filing false claims could result in higher insurance costs to his employer.

HELD: As opposed to mere insufficiency, ordinary negligence, or good-faith errors in judgment, misconduct is a deliberate act that manifests an intent to disregard employee responsibilities.

Here, the claimant's actions were deliberate and in total disregard of the standard of behavior expected of an employee. His actions constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	**ABR-95-6086/8-2-95**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition (Intent or Lack of Intent to Harm)**
CROSS-REFERENCE	**None**

The claimant had been warned about leaving work early. When she next sought permission to leave work early, permission was denied. Despite this, she arranged for another worker to cover her shift, and she left anyway. She was discharged. The claimant contended that this could not be misconduct, because, by arranging to have someone cover her shift, she did not intend to harm her employer.

HELD: The test is not whether an individual intends to harm her employer, but whether the individual intends to do the act that causes harm or violates prior warnings. Here, the claimant intended to do the act (leaving work early) that violated a prior warning. Therefore, her action constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct /MC 5.05**
DOCKET/DATE	***Brodde v. Didrickson*, 645 N.E. 2d 990 (1995)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Safety Regulation**
CROSS REFERENCE	**MC 485.8, Violation of Company Rule**

When a carton-opening machine jammed, the claimant, a production supervisor, out of frustration at not meeting her production schedule, bypassed the machine's safety system by deactivating its safety shield, then reached into the machine with her hands, while it was still operating. She was advised this was a rules violation, but responded it was her safety alone at stake. The claimant suffered no injuries from her actions but was fired anyway.

HELD: Section 602A defines "misconduct" as the deliberate and willful violation of an employer's work rule which harms the employer. Here, the employer's rule was reasonable (designed to safeguard employees). The claimant's violation of the rule was deliberate (irrespective of her intent not to cause anyone else injury). Although the claimant escaped actual harm, the term "should be viewed in the context of potential harm and not in the narrow context of actual harm." The claimant could have been injured, and, by her example, she suggested to subordinates that safety rules could be ignored, which could also result in harm. This was misconduct under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05-1**
DOCKET/DATE	***Mattson v. Dept. of Labor*, 455 N.E. 2d 278 (1983)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Discharge (as opposed to Suspension)**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes**

The claimant was employed as a maintenance worker in a hospital. On August 29, 1981, he appeared on the employer's premises after hours and under the influence of alcohol. On September 3, he was warned that if there was another such incident he would be discharged. On September 30, the claimant was seen, after hours, departing the kitchen of the hospital's dietary department, where the freezer had been tampered with and meat had been left sitting outside a food locker. The claimant's hasty exit had been observed by a security guard. It was also reported that the claimant had been drinking that night. The following day, October 1, the claimant was arrested at work on a theft charge. He was also suspended from duty and advised that he would not be allowed to return to work, pending the outcome of court action.

While the court action was still pending, on October 18, the claimant filed an application for unemployment insurance benefits. The claimant had not yet returned to work when, on January 22, 1982, he was tried and acquitted by a jury on the theft charges. Still, he was told he could not return to work, pending the employer's internal investigation. On February 18, a Claims Adjudicator issued a determination which disqualified the claimant for benefits, not on the basis of theft, but for misconduct connected with his work, because the claimant had been in an unauthorized area outside of his usual working hours and under the influence of alcohol. On March 9, a Referee issued a decision which affirmed the Claims Adjudicator's determination, that the claimant had been discharged for misconduct connected with his work. On July 16, the Board of Review affirmed the Referee's decision.

The claimant appealed, pointing out that Section 602A of the Act imposed a disqualification only when an individual had been "discharged" for misconduct connected with his work, and that, during the period in question, he had been serving a suspension -- which was not tantamount to a discharge. The Agency's policy was that a suspension from work for 7 or more days, or of indefinite duration, was tantamount to a discharge.

HELD: Although Section 602A is not ambiguous on its face, its literal application could lead to an ambiguous result: If "discharge" is not read to include "suspension," then an employee could commit an act of work connected misconduct and be compensated for it.

Courts will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with its administration and enforcement. In the instant matter, the Agency's policy was that a suspension from work of 7 or more days, or of indefinite duration, was a discharge, and, whether such suspension constituted a discharge for misconduct connected with work was decided by principles generally applicable to discharges. The Agency policy of including suspensions within the term "discharge" for the purpose of benefits disqualification did not extend the statute beyond its fair and reasonable meaning.

Because the record supported a finding of misconduct by the claimant, and because the claimant's indefinite suspension was tantamount to a discharge within the reasonable meaning of Section 602A, the Board of Review was correct in determining that the claimant had been discharged for misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814, 333 Ill.Dec. 1, 914 N.E.2d 208 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 554, 336 Ill.Dec. 492, 920 N.E.2d 1082 (Table) (11/25/09)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 190.05, Evidence, general; PR 195.05, Fair Hearing and Due Process; PR 400.05 Representation, By a Non-Attorney**

The claimant was employed as an apprentice electrician. He was discharged for misconduct for removing air conditioning equipment without authorization. After filing a claim for benefits, the local office and the Referee found that the claimant was guilty of misconduct and held him ineligible for benefits under Section 602 of the Act. The claimant argued that the employer's non-attorney representative engaged in the unauthorized practice of law during the hearing by examining and cross-examining witnesses. He also argued that he did not receive a fair hearing, that the evidence did not show that he was guilty of misconduct, and that the employer's testimony was inadmissible hearsay. The Board of Review affirmed the Referee's decision denying benefits and rejected all of the claimant's arguments against it.

HELD: The court discussed four issues. The first concerns the unauthorized practice of law. The court held that the practice of law turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation.

The second issue is whether the claimant received a fair hearing as required by due process of law. The court held that the claimant had received a fair hearing in that he was given an opportunity to be heard and to question the employer's witnesses. The fact that he chose not to take advantage of the opportunity to question the adverse employer's witnesses does not invalidate the proceeding on grounds of due process.

The third issue was whether the employer proved all the elements of misconduct under Section 602. The court held that all the elements of misconduct were met. In particular, the court noted that a rule or policy need not be written down in order to bind the employee. The claimant's violation of an oral directive not to be present in certain areas of the workplace also constitutes a violation of an employer rule or policy.

The fourth issue was the claimant's objection that testimony concerning the cost of the air conditioning units was inadmissible hearsay. The court noted that this testimony was introduced not for its factual accuracy but simply to show that the loss of the air conditioning units caused financial harm to the employer. Thus, strictly speaking, the testimony concerning the approximate cost of the air conditioning units was not hearsay at all.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Thermen v. Dep't of Emp. Sec., 2024 IL App (1st) 220541-U***
AUTHORITY	**Section 602A(5) of the Act**
TITLE	**Definition of Misconduct**
SUBTITLE	**General**
CROSS REFERENCE	**PR 195.05, Fair Hearing & Due Process**

Claimant was employed by an automobile agency and worked in the service department. On December 21, 2020, claimant was asked by three people to move a vehicle from a sales department staging area but refused to let it be moved, despite lacking the authority to deny another department use of the area. When a supervisor came to retrieve the vehicle's keys to move the vehicle, the claimant used verbally abusive language and grabbed the supervisor's hand, twisting his finger. Company policy prohibited "Any conduct which is determined to be against the Company's interests, including, but not limited to, vulgarity, fighting, *** interference with fellow workers through horseplay and other objectionable or immoral conduct." Claimant had signed an acknowledgement of receipt acknowledging that he had received and reviewed the employee handbook. Claimant was previously verbally reprimanded due to a "heated and unprofessional" exchange between himself and a coworker. Claimant was instructed to bring any issues with coworkers to his supervisor rather than to the coworker. Following the December 21, 2020, incident the claimant was discharged. Following a hearing, the Appeals referee found no disqualification under Section 602(A) of the Act, stating, in part, that no willful and deliberate violation of the employer's policies had been established. The employer appealed. The Board of Review reversed the referee, denying benefits under Section 602(A)(5), stating that subsection (A)(5) imposed a "lower threshold" for finding that an employee was discharged based on misconduct, as proof was no longer required that the employee's actions be "willful or deliberate," that the employer was harmed, or that the employee's conduct was repeated or in violation of a reasonable work-related rule. The claimant appealed.

The circuit court reversed the Board, stating that the Board's review of the referee's determination was a frank violation of the claimant's due process rights, as the Board had cast the Referee's decision aside in favor of an entirely different analysis governed by new subsection (A)(5) without providing the claimant notice and opportunity to be heard on that issue. The circuit court found that the record was "wholly undeveloped" regarding the new legal standard set forth in subsection (A)(5), which had not been mentioned at any point during the claims adjudication process or the appeal to the referee. The Department appealed.

HELD: The Appellate Court first concluded the Board's application of the statutory definition of misconduct was correct. The Board correctly determined that the plain text of section 602(A)(5) does not require an employee's refusal to obey a reasonable instruction to be willful or deliberate. Nor does it require proof of harm to the employer, that the conduct was repeated, or that the conduct violated a reasonable work-related rule. While those requirements apply to the general statutory definition of misconduct under section 602(A) of the Act, subsection (A)(5) gives an "independent example" of one particular type of per se misconduct that does not contain the same elements as the general definition. The claimant was previously instructed to bring any issues with coworkers to his supervisor. However, he disobeyed the instruction by engaging in an altercation with a coworker over a work-related disagreement. The Board properly found that this amounted to a refusal to obey the employer's reasonable and lawful instruction, and that the claimant therefore was ineligible for unemployment benefits as he was discharged for misconduct under section 602(A)(5) of the Act.

Next, the Appellate Court addressed the circuit court's finding that the claimant was denied due process when the Board applied the section 602(A)(5) definition of misconduct. The Court stated that throughout the proceedings and prior to the appeal hearing before the referee, the Department notified the claimant that the relevant issue was whether his conduct constituted misconduct under section 602(A), which had already been amended to include the per se categories of misconduct. Multiple notices that

the Department sent to the claimant, including the notice of reconsideration and appeal to the referee, expressly listed the eight per se categories of misconduct, including the category of misconduct set forth in subsection 602(A)(5). Thus, the record shows that the claimant had been notified repeatedly that the issue before the agency concerned misconduct under section 602(A) in its entirety, i.e., under all of the categories of misconduct set forth in the statute including section 602(A)(5), and he was afforded an opportunity to be heard thereon. The Appellate Court found that no due process violation occurred during the administrative proceedings.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

Absence MC 15
General MC 15.05

ISSUE/DIGEST CODE	**Misconduct/MC 15.05**
DOCKET/DATE	**84-BRD-2968/2-29-84**
AUTHORITY	**Section 602A**
TITLE	**Absence**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant and his wife were having marital problems. On the claimant's last day at work, he received a telephone call from his wife informing him that she was going to seek a divorce. After receiving the call, the claimant clocked out. When his supervisor asked him why he was leaving before the end of his shift, the claimant refused to discuss the reason because he wanted to go home to talk with his wife. The claimant was discharged the next day because he had left work without permission.

HELD: The claimant refused to tell his supervisor why he was leaving early, and he was discharged for failing to do so and not seeking permission to leave work. He was discharged for misconduct connected with his work and is disqualified for benefits.

Notice MC 15.1

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	**83-BRD-6713/5-31-83**
AUTHORITY	**Section 602A**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**None**

The claimant was arrested on a charge of assault and battery, and he was incarcerated for nine months and ten days because he could not afford a bail bond. The claimant could not contact the employer by telephone because he was only allowed to make a "collect" phone call, and the employer would not accept such calls. Some time after the required period of notification, he wrote a letter to the employer explaining the circumstances of his continued absence from work, but he received no response. He had no family or friends in the area who could notify the employer.

The claimant was later acquitted of all charges. After his release, he contacted the employer who informed him that he had been replaced.

The employer stated that the claimant's separation from work was processed when he was absent from work without notification for five consecutive days.

HELD: The claimant used the only method available to him in an effort to notify the employer of the reason for his absence. His separation was, therefore, a discharge and not a voluntary leaving.

Compelling circumstances precluded both the claimant's attendance at work and a timely notification to the employer of the circumstances. He further had no opportunity to arrange a leave of absence. The claimant's actions do not exhibit a wilful

disregard of duties owed the employer, and he was discharged for reasons other than misconduct. He is not disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	**83-BRD-12598/11-8-83**
AUTHORITY	**Section 602A**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**None**

The claimant had been warned and disciplined regarding poor attendance. On Thursday, the claimant, with her supervisor's permission, left work early because she was experiencing dizziness. The claimant was ill and unable to report to work on Friday, and she telephoned the employer before the beginning of her shift and left a message for her supervisor informing him of her absence because of illness. The claimant's supervisor did not receive the message that the claimant had telephoned and, accordingly, believed that the claimant had failed to call in as required. The employer discharged the claimant because of her poor attendance record.

HELD: The claimant's last absence was due to illness, and, since she gave proper notification, she was discharged for reasons other than misconduct. She is not disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	**83-BRD-14530/12-7-83**
AUTHORITY	**Section 602A**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**None**

The claimant was ill on Monday and asked a co-worker to report his absence to the employer. He was also absent the remainder of the week but did not report his absence to the employer. When the claimant reported to work on the following Monday, the employer discharged him for failing to report his absence daily in accordance with the company's rule. The employer had no knowledge of the nature or seriousness of the claimant's illness. The claimant testified that he knew he was to report his absence on daily basis.

HELD: The claimant failed to report his continuing absence daily to the employer in accordance with the company rule. The claimant was aware of the rule and had no explanation of his failure to give notification.

The claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	**ABR-90-7216/10-17-90**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**None**

The claimant violated parole and was jailed. He made no personal effort to contact his employer and did not direct people who knew his whereabouts to contact his employer for him, because he was embarrassed about his predicament. The employer fired him after he was absent without notice for three days.

HELD: Absenteeism or a failure to notify the employer that is willful and deliberate constitutes misconduct.

Incarceration might constitute good cause for failing to report to work. It might also constitute good cause for failing to notify the employer about it. Here, however, the claimant could have notified his employer. His failure to do so was willful and deliberate and constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **84-BRD-285/1-10-84**
AUTHORITY **Section 602A**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **None**

The claimant's doctor informed the employer's benefit department on December 7th that the claimant had undergone a gallbladder operation and that her date of return to work was unknown. The employer, by letter dated January 25th, asked the claimant to provide medical documentation for her continued absence by February 8th. It further asked for reasonable assurance as to when she would return to work. On January 28th, the employer's benefit department received a medical form from the claimant's doctor which still stated that her date of return was unknown. The employer discharged the claimant because the information was not supplied direct to the employer's medical or personnel departments and because it did not give some idea of her date of return.

HELD: The claimant complied with the employer's request, to the extent that it was possible, and in a reasonable manner. The claimant had been sending reports of her medical prognoses to the employer's benefit department, and it was reasonable to assume that such information would be available to any of the employer's other departments that might require such information. The indefiniteness of the claimant's expected date of return to work was beyond the claimant's control. The claimant was not disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE ***Wilson v. IDES*, 554 N.E. 2d 1006 (1990)**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **None**

The employer required its workers to notify the company of intended absences. Workers who did not comply with the policy for three consecutive days would be fired. During the past year, the claimant had been absent 48 times; about one-half of those absences were unexcused.

Then, on a Thursday, the claimant called in to request time off through that Friday. When he was absent on Monday, Tuesday, and Wednesday of the following week and did not call in, he was fired. The claimant testified that he was too sick to call in; but he also testified that he had been calling his doctor.

HELD: "Misconduct" means the willful violation of a reasonable policy. The failure, without good cause, to notify one's employer about an absence falls within that definition; i.e., it is willful. Here, the employer's policy and the claimant's testimony established that he should and could have called in. His failure to do so was willful and constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **84-BRD-213-FSC/3-2-84**
AUTHORITY **Section 602A**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **None**

The claimant reported to work with an injury and was unable to perform his job. He was granted a medical leave of absence with the understanding that he contact the employer in two weeks about his condition and planned date of return. Three weeks later the claimant called the employer and stated that he could not return to work for two more weeks; he had forgotten to call the employer as directed. The claimant was discharged for his failure to call as scheduled.

HELD: The claimant's failure to notify the employer as scheduled was not due to circumstances beyond his control or for reasons which constitute good cause. Therefore, the claimant was discharged for misconduct connected with the work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **ABR-85-2543/9-20-85**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **MC 485.1, Violation of Company Rule**

The claimant was employed as a Housekeeper, until August 21, 1984, when she became ill at work and was sent home. A doctor examined her that same day, and in the days following, and diagnosed her condition as ptomaine poisoning/bladder disease. The doctor recommended bed rest for 1-2 weeks.

The claimant spoke with her employer on August 22, 23, and 24, explaining that she was seeing her doctor for tests, but otherwise was confined to her bed, per the doctor's instructions. The claimant did not speak with her employer again, until August 31, when her supervisor telephoned. The supervisor informed her that she had been discharged because she had not continued to call in every day that she had been ill.

HELD: An employer has the right to expect its workers to come to work promptly as scheduled unless prevented from doing so by compelling circumstances. An employer has the right to expect prompt notification from the worker when the worker is prevented from reporting to work. Prompt notification often means notification as required by the employer under rules it has specifically promulgated. At the same time, the circumstances which bring about a worker's absence from work may, of themselves, constitute notice to the employer. Thus, the nature of a worker's illness may put the employer on notice that she will be absent from work for some time. To require daily notice in such instances, before the individual knows precisely when she will be able to return to her job, would not be of any assistance to the employer and would serve no practical purpose.

In the instant case, despite the claimant's failure to call in every day, the employer had knowledge of the nature of the claimant's illness, and had no reasonable expectation that her return to work would be imminent. Because the employer had already been put on notice, the claimant's discharge could not have been for misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **ABR-85-2000/6-13-85**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **MC 485.1, Violation of Company Rule**

The employer had a rule, which stated, in pertinent part:

> Absence for three consecutively scheduled work days without making proper notification to the employee's supervisor, in accordance with department call-in procedures ... can lead to ... immediate discharge.

The claimant acknowledged that she had been aware of the rule.

On Saturday, April 28, 1984, the building in which the claimant resided burned down. The claimant's apartment, including her belongings, was destroyed. An infant died in the claimant's arms. On Monday, April 30, the claimant's first scheduled work day after the fire, she telephoned her employer, stating that she would be unable to report to work as scheduled because of her need to obtain new housing for herself and her daughter. The claimant assumed that her employer understood that she would return to work as soon as she had obtained new housing. On Monday, May 7, having obtained new housing, the claimant reported to work. She was informed that she had been discharged, effective May 3, for not reporting her absence for three consecutive days.

The employer contended that the claimant's failure to abide by the employer's known rule concerning absenteeism and notice constituted misconduct:

> (T)he claimant proved her ability to contact the employer regarding her absence by her call on the first day. The claimant also testified that during the period in question, she was looking for new living quarters.

The Referee in his decision (allowing benefits without a disqualification under Section 602A) seems to state that the trauma the claimant had suffered was the factor that prevented her from calling. However, it was not stated that the claimant was under a doctor's care, or that she was otherwise disabled. Indeed, her ability to engage in an active search for housing would seem to preclude a decision that the trauma suffered was disabling.

HELD: An employer has the right to expect its workers to come to work promptly as scheduled unless prevented from doing so by compelling circumstances. An employer has the right to expect prompt notification from the worker when the worker is prevented from reporting to work. Prompt notification often means notification as required by the employer under rules it has specifically promulgated. Where, however, unusual facts exist, what constitutes prompt notification may be other than the employer's rules, insofar as unemployment insurance eligibility is concerned. While, generally, infractions of an employer's attendance rules are held to constitute misconduct, absences, generally, are not caused by a fire destroying a worker's home or resulting in a child dying in a worker's arms, as happened in the instant case. Where no reasonable person would have concluded that an employer would discharge a worker, it could not be held that the worker's actions constituted misconduct. Accordingly, this claimant was discharged not for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	***Thomas v. Ward*, 570 N.E. 2d 477 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**MC 190.15, Evidence; PR 380.25, Review, Scope**

The claimant had received numerous warnings for absenteeism. He was last absent because he was seeking admission to a hospital because of a reaction to heroin. The employer discharged him for being absent without notice.

The claimant testified that he tried to contact his employer by telephone. The employer testified that there was no message on its answering machine.

HELD: Failure, without good cause, to give notice of an absence constitutes misconduct.

Here, whether the claimant attempted to call was a factual question. The employer's testimony that there was no message on its answering machine was sufficient to resolve the factual question.

Benefits were denied.

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	**83-BRD-5577/5-16-83**
AUTHORITY	**Section 602A**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**None**

The claimant was bedridden due to a chronic back condition. His wife telephoned the employer on September 27, 1982 when she explained the circumstances to a coworker. The wife telephoned again on September 29th and spoke to her husband's supervisor. The supervisor told her that he had not received any word concerning the claimant's condition and that he had prepared discharge papers. He further told the claimant's wife that he would not process the papers and that he would contact the claimant at a later date. When the claimant did not hear from his supervisor, he attempted to telephone him but was unable to reach him. Subsequently, the claimant received a letter informing him that he had failed to report and that the employer had accepted his resignation.

The employer admitted that the claimant's wife contacted the supervisor on September 29, but that another employee had forgotten to convey her earlier message. The supervisor had expected the claimant to contact him. When the supervisor did not hear from the claimant, he attempted to telephone the claimant at a number which proved to be out of date. The claimant was then discharged.

The claimant had informed the employer when he changed telephone numbers and had, in fact, been reached at home on prior occasions by a different supervisor at the new number.

HELD: The claimant did not intend to quit work, and the issue, as a result, is a discharge and not a voluntary leaving.

The claimant and employer failed to communicate with each other for several days due to a series of misunderstandings. However, the employer was aware of the claimant's whereabouts and the reason for his absence, and the claimant attempted to comply with the employer's rules by providing proper notification. The claimant did not wilfully violate the employer's attendance rules and, therefore, was discharged for reasons other than misconduct connected with his work. He is not disqualified from receiving benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **ABR-85-9417/5-28-86**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Permission**
CROSS-REFERENCE **None**

The claimant, a Library Assistant, asked for 3 weeks' leave, in order to spend time with her daughter, whom she had not seen since the daughter's abduction 14 years earlier. The claimant's supervisor told her that she could not be absent, in any event, for the first of those 3 weeks. The claimant complied with the supervisor's demand that she work the first week. Then, after notifying the supervisor, the claimant took the next 2 weeks off, applying accrued vacation time to the first 6 working days; the claimant took leave without pay for the final 4 days. The claimant was discharged for her final 4 days off, which the employer determined to be unauthorized.

At an appeal hearing, the claimant testified that it was the employer's policy that employees simply notify the employer of intended absences; express approval was not required; approval could be inferred from the absence of disapproval. The claimant testified that, although her supervisor had disapproved of her taking off the first week, she said nothing after being informed that the claimant would be absent the next 2 weeks. The employer did not appear at the appeal hearing.

HELD: Generally, a worker who is discharged for taking a leave simply pursuant to notice, without the employer's express approval, is discharged for misconduct. However, an exception to this general rule is where it is established that there has been an employer's practice to grant leave without express approval, so long as there has been no disapproval.

In the instant case, the claimant's unrebutted testimony was that it was the employer's practice to grant leave without express approval and in the absence of disapproval, and that, by her silence, the claimant's supervisor manifested her assent. The claimant's unrebutted testimony was not inherently improbable.

Because the evidence established that the claimant's absence was in accordance with her employer's practice, it could not be concluded that the claimant's absence was without permission, and that it constituted misconduct, within the meaning of Section 602A.

Permission MC 15.15

ISSUE/DIGEST CODE **Misconduct/MC 15.15**
DOCKET/DATE **83-BRD-15631/12-28-83**
AUTHORITY **Section 602A**
TITLE **Absence**
SUBTITLE **Permission**
CROSS-REFERENCE **None**

The claimant requested a leave of absence in order to play with a band. His supervisor approved the leave and forwarded the paperwork to personnel. The claimant had only been employed three months, and he was unaware that the personnel department had to approve the leave. While the claimant was on leave, he spoke with both his supervisor and the head of his department who were aware of his taking leave. When the claimant returned to work, he was discharged because his leave of

absence had not been approved by the personnel department.

HELD: The claimant was separated from his job as a result of lack of communication. His supervisor had approved a leave of absence, but, unknown to the claimant, the required approval of the personnel department had not been given. The claimant was discharged for reasons other than misconduct connected with the work and is not subject to a disqualification of benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 15.15**
DOCKET/DATE	**85-BRD-04514/6-18-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Permission**
CROSS-REFERENCE	**MC 485.05, Violation of Company Rule, Awareness of Rule**

The claimant was employed as a Night Auditor for three years. Prior to taking a previous vacation, the claimant had sought approval from the Office Manager. This time, the claimant approached the Assistant Office Manager, and stated that she intended to take a vacation which would commence in the following days. The Assistant Office Manager "never told me I could not go, so I assumed it was okay." The claimant then took her vacation, and was discharged, because it was determined that her vacation time had not been approved.

HELD: The approval of vacation leave requires an affirmative response to a worker's request, and approval cannot be reasonably construed merely from the absence of specific disapproval, unless there has been an employer's custom to that effect. In this case, the claimant's previous course of conduct indicated that the employer did not have a custom of allowing vacation leave without express approval. Therefore, the claimant took leave without permission, and her actions constituted misconduct within the meaning of Section 602A.

Reasons MC 15.2

ISSUE/DIGEST CODE	**Misconduct/MC 15.2**
DOCKET/DATE	**ABR-85-467/7-8-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**MC 85.05, Connection With Work**

The claimant, a receptionist, was on a medical leave of absence. In a letter dated September 21, 1984, her physician informed the employer that the claimant would not be released to work for 3 or 4 weeks. (The physician later extended the recovery period until "about December 1, 1984"). In addition, the claimant had told her employer that her physician did not want her to return to work until she was fully recovered, because, due to the nature of her illness, she would become re-infected if she was out in public and exposed to "excessive germs."

In the meantime, the claimant, who was a volunteer in her community's program to counter drug abuse, accepted an invitation from a local high school to lecture to two health education classes, and, on October 1, 1984, the claimant spent 1-1/2 hours in contact with students at the high school.

The claimant was discharged from her receptionist job after the employer learned that she had conducted those lectures in public.

HELD: An employee's obligations to her employer are not necessarily extinguished by the granting of a leave of absence or time off due to illness. An employee who is granted time off due to illness owes her employer a duty to convalesce under conditions which will not extend or unnecessarily prolong the period of recovery. An employee's actions which are inconsistent with that duty will constitute misconduct connected with the work.

In the instant case, both the claimant's and her physician's representations to the employer, that the claimant should not work, let alone venture into the public, made it clear that the claimant's duty to her employer was to remain at home until she was completely recovered from her illness. The claimant's subsequent actions, which included speaking to students in a high school, were certainly incompatible with the representations made to her employer, and were potentially damaging to the employer's

interest that the claimant return to work as soon as possible. The claimant's actions constituted misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 15.2**
DOCKET/DATE	***Garner v. IDES*, 269 Ill App. 3d 370 (2nd Dist. 1995)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**MC 485.05, Harm/Warnings, Reasonableness of Rule; MC 485.1, Absence**

The claimant was employed as a custodian/janitor by the employer, a janitorial services provider. The claimant was paid twice a month and was told he would receive his checks on the 1st or 2nd and the 15th or 16th of the month. However, the claimant always received his checks after the 2nd and 16th of the month, and on several occasions took a day off from work to get a replacement check at the employer's headquarters. The claimant did not receive a check on August 1st or 2nd, 1991. Because he had not received his check, on August 5th he reported to work only after being telephoned by his supervisor after his shift had started, and on August 6th through the 9th he did not report to work at all. During this week his supervisor counseled him that he had been paid in the past and would be paid, and that his absenteeism would only hurt him and would be reflected on his employment record. The claimant received his check on August 9th after his shift ended. The claimant reported to work on August 12th and was terminated for violating the employer's rule that an employee's failure to appear for assigned duties on three consecutive working days constitutes employee resignation or termination by management.

The Board of Review found the claimant was ineligible for benefits under Section 602A of the Act because he had been discharged for misconduct. The Board determined that the claimant had wilfully disregarded the employer's interests and had caused the employer harm, and that he had been warned that his job could be jeopardized. The Circuit Court affirmed the decision of the Board.

HELD: The determination of the Board is against the manifest weight of the evidence. There is no evidence the employer had or would suffer an actual loss of property or other harm due to the claimant's absence from work. There is no evidence the claimant's absence resulted in uncompleted work, loss of productivity, complaints by the employer's client, loss of business for the employer, or even caused the claimant's supervisor to reschedule. In addition, the employer's rule as applied to the claimant is not reasonable because it is not reasonable to require an employee to call in and report his own absence when the absence relates to chronic non-payment of wages. Further, the warnings and instructions contemplated under Section 602A of the Act must be both explicit and specific to the conduct for which an employee is discharged. Here, there is only evidence that the complainant's supervisor "counseled" the claimant that his absence would only hurt him and would be reflected on his record. There is no evidence the claimant ever was explicitly warned his absences would not be tolerated. Similarly, there is no evidence the claimant was explicitly instructed to report to work. Therefore, the claimant did not commit misconduct as defined under Section 602A of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 15.2**
DOCKET/DATE	**ABR-87-3581/8-14-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**MC 270.05, Intoxicants; MC 385.05, Relation of Offense**

The claimant had been absent and tardy on a number of occasions, resulting in 2 suspensions and a final warning. In February, she acknowledged that her use of drugs might be the cause of her problems. Her employer referred her to a drug rehabilitation program; the employer, under its employees' health insurance package, was to pay for hospitalization. The claimant entered the rehabilitation program on February 6, and remained in the program until March 2, after which she continued to participate in support groups.

On February 26 - while the claimant was participating in the rehabilitation program - the employer discharged her for her prior absenteeism.

HELD: Absenteeism without justification constitutes misconduct. In this case, the claimant's previous absences were the result of drug usage; at the time and under the circumstances those absences occurred, they might have constituted misconduct. But, at the time of the work separation, the claimant, having sought medical attention to cure her condition, was participating in a

drug rehabilitation program, to which she had been referred by the employer. The employer, having referred the claimant to its rehabilitation program - so that she might recuperate or make amends, in lieu of discharge - cannot 3 weeks later insist that the claimant's absences constituted misconduct for which she was discharged. The relation between the previous absences due to drug usage and the discharge was tenuous. The claimant was discharged for reasons other than misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 15.2**
DOCKET/DATE	**83-BRD-8475/7-20-83**
AUTHORITY	**Section 602A**
TITLE	**Absence**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**None**

The claimant had been warned about her absenteeism. She fell and injured herself on her way to work and sought medical attention immediately. She was under the care of a physician for the following three working days. Her physician verified in writing that he had attended to her injury, and the employer was in possession of the physician's statement. The claimant had properly notified the employer of her injury and had explained that the injury was the reason for her absence from work. However, she was discharged.

HELD: The claimant properly notified the employer that she would be absent because of her injury, and she provided the employer with her attending physician's statement. She was discharged for reasons other than misconduct connected with her work, and she is not disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 15.2**
DOCKET/DATE	**83-BRD-10846/9-23-83**
AUTHORITY	**Section 602A**
TITLE	**Absence**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**None**

The claimant was last absent on October 29, 1982, because of a scheduled court appearance in connection with an automobile accident in which he was involved. He notified the employer of his intended absence. He had a considerable number of previous absences and had always provided the employer with proper notification. The claimant was discharged following his last absence.

HELD: The claimant was not discharged until after his final absence which was due to a compelling reason and after he gave his employer proper notice. The claimant's conduct does not exhibit a willful disregard of duties owed the employer, and he was discharged for reasons other than misconduct. Thus he is not disqualified.

ISSUE/DIGEST CODE	**Misconduct/MC 15.2**
DOCKET/DATE	**83-BRD-13730/11-23-83**
AUTHORITY	**Section 602A**
TITLE	**Absence**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**None**

The claimant worked for a hospital as a dietary worker for six years. The claimant had been warned about her absenteeism; and when she was absent again, she was discharged.

The claimant was absent because she had no one to care for her children, ages 8 months and 2 1/2 years old. On the date of discharge, the babysitter was sick, and the claimant's husband was not at home to care for her children. The claimant reported the reason for her absence to the employer in a timely manner.

HELD: An absence from work for good cause and with proper notice to the employer does not constitute misconduct. The claimant notified the employer in a timely manner that she would be absent from work due to her domestic responsibilities. The claimant's absence from work was due to a compelling circumstance with proper notification and was, therefore, not a willful violation of the employer's attendance rules. The claimant was discharged for reasons other than misconduct connected with her work, and she was not disqualified from receiving benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE **ABR-85-71-FSC/12-11-85**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **MC 270.05, Intoxication and Use of Intoxicants**

The claimant reported for work early Saturday morning as scheduled, but shortly after appearing, had to leave due to illness. He was sick because he had been drinking Tequila since 8 p.m. Friday. The claimant was told that his services were no longer needed.

HELD: An employer has a right to expect its workers to report to work in a condition to do the work assigned to them. At the same time, if a worker gives notice that he cannot work because he has suffered a disabling illness -- beyond his control, then a resultant discharge cannot be for misconduct.

In the instant case, the claimant may very well have been too ill to work. However, his illness, being the direct result of his deliberate and heavy consumption of alcohol during the hours shortly before he was scheduled to work, was avoidable. Therefore, the claimant's absence from work was due to intoxication, not illness, which showed a disregard of duties he owed his employer. He was discharged for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE **ABR-85-9770/7-25-86**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **None**

The claimant, an Order Filler, had received warnings concerning unexcused absenteeism. He was discharged after consecutive days' unexcused absences, which resulted from being

> ... exhausted because I had been conducting revival meeting during that week at my church. I am a minister with my own church. The revival would be over at 10 p.m. but I had to wake up at 2 a.m. in order to get to work ...

HELD: Implicit in every employment contract is the duty of the worker to report to work in accordance with the reasonable requirements of the employer. If an absence is without good cause, a discharge for absence is generally a discharge for misconduct.

Work, by its nature, tends to be tiring. Further, balancing work schedules and personal business can be difficult. Yet, there are substantial numbers of individuals who regularly report to work under such circumstances. And their circumstances are not dissimilar to what the claimants were.

The instant case was not one of infringement upon religious practice; the issue was personal comfort and convenience. There was no conflict between the claimant's work schedule and his personal schedule for participation in church activities. Therefore, it was the claimant's obligation to take reasonable measures to obtain the necessary rest in light of his participation in both activities. He could have taken such measures and could have reported to work as scheduled. His absences, under those circumstances, were without good cause and his discharge was for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE ***Candace Medvid v. IDES*, 542 N.E. 2d 852 (1989)**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **MC 140.05, Dishonesty**

The claimant worked at two jobs. The employer's rule requires that if the employee is not going to be at work, the employee is required to call in before the start of her working day. On October 25, she did not report to work or call to notify her first employer of her absence. On October 26, she called 3 hours after her shift began, explaining that she had overslept and would not be at work. On October 27 and 28, she called in sick. The employer discovered that the claimant, during those same days and hours when she was scheduled to work, was working for her other employer. On October 29, the claimant was fired.

HELD: Failure to give proper notice of absences to an employer constitutes misconduct, if the failure to give proper notice is without good cause.

Proper notice means timely notice, and, if the worker provides reasons for absences, they must be legitimate.

Here, the claimant deliberately failed to give proper notice. Her failure to give proper notice constituted misconduct.

Attitude Toward Employer MC 45
General MC 45.05

ISSUE/DIGEST CODE	**Misconduct/MC 45.05**
DOCKET/DATE	**ABR-85-9144/7-14-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Seeking Other Employment**
CROSS-REFERENCE	**MC 135-2, Discharge or Leaving; VL 135.2**

The claimant, an Automobile Service Manager, did not receive the wage increase he had anticipated. Subsequently, during his lunch hour, he pored over job advertisements in a newspaper. He was observed doing this by a superior, who questioned the claimant's intentions. The claimant stated that, as a result of the lack of a wage increase, he felt compelled to seek other work. He informed his superior that, when he found other work, he would give the employer appropriate (2 or 3 week) notice. The claimant worked the rest of his shift that day, after which he was again questioned about his intentions. He repeated what he had said earlier, whereupon he was instructed to leave work immediately.

HELD: If misconduct is to be found, it must stem from a breach of some duty owed the employer. Pursuant to any contract of hire, a worker owes his employer a duty to do his job in a reasonably workmanlike manner and to refrain from willfully doing anything against the employer's interests.

But a worker's duty extends only so far. It is a worker's prerogative to explore other job possibilities. So long as the worker does so on his own time and in such a fashion as to not interfere with his employer's operations, a worker's desire to locate other employment does not constitute a breach of duty owed the employer.

In the instant case, there was no showing that the claimant was not doing his job in a workmanlike fashion. Meantime, it was the claimant's prerogative to seek other employment. Reading job advertisements during his lunch period (on his own time) did not
interfere with the employer's operations. Therefore, it could not be concluded that the claimant's actions constituted misconduct.

Agitation or Criticism MC 45.1

ISSUE/DIGEST CODE	**Misconduct/MC 45.1**
DOCKET/DATE	**ABR-85-6431/2-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Agitation or Criticism**
CROSS-REFERENCE	**MC 255.35, Insubordination, Ridicule of Authority**

The claimant, a Salesperson, had been criticized by her supervisor. The claimant felt that the criticism had been unwarranted, and that, in general, the supervisor was not supportive of her work. Later, in the employees' lunchroom, the claimant repeated a rumor to her co-workers: that the supervisor had been fired from previous jobs due to her inability to work with people. The claimant herself was discharged when management learned she had made this remark.

HELD: Making disparaging remarks about a superior may constitute misconduct. The determinative factor is whether the worker has merely shown a lack of good judgment or an intentional disregard of the employer's interests. An intentional disregard of the employer's interests will not have been shown unless the worker has failed to heed warnings concerning making such remarks, or, the remarks were made in a place or under circumstances that might tend to damage the employer's interests; damage in this context might include deterioration of employer control over employees, harmful effect on employee morale, or negative reaction of customers or the public. Nonetheless, realistically, in most normal working situations, a considerable amount of give and take is exchanged between co-workers, and, although some of it may be in poor taste, such exchanges confined to private conversations between workers would infrequently result in damage to the employer's interests.

In the instant case, the claimant's comment, made in an employees' lunchroom setting, was not dissimilar from the types of remarks employees often make privately among themselves. While the claimant might have exercised better judgment, her statement about her supervisor could not reasonably have been construed to have constituted an intentional disregard of her employer's interests amounting to misconduct within the meaning of Section 602A.

Competing with Employer or Aiding Competitor MC 45.15

ISSUE/DIGEST CODE	**Misconduct/MC 45.15**
DOCKET/DATE	**ABR-89-5174/1-19-90**
AUTHORITY	**Section 602A of the Act**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Competing with Employer or Aiding Competitor**
CROSS-REFERENCE	**None**

While working as a delivery driver for the employer, the claimant became involved in a business that competed with the employer for customers. The employer discovered this, and even though the claimant had not taken away any of its current customers, fired him.

HELD: To constitute "misconduct," an act must harm the employer. A discharge for competing with the employer or aiding the employer's competitors harms the employer and constitutes misconduct. The harm does not necessarily result from luring the employer's existing customers to another place of business; harm also occurs when prospective customers do not patronize the employer because they are being lured elsewhere. Here, the claimant was discharged for misconduct.

Complaint or Discontent MC 45.2

ISSUE/DIGEST CODE	**Misconduct/MC 45.2**
DOCKET/DATE	**ABR-85-2758/2-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Complaint or Discontent**
CROSS-REFERENCE	**MC 255.2, Insubordination, Negation of Authority**

The claimant alleged that she had been the "victim of sexual bondage and terrorization as a condition of her continued employment" - that she had been required to perform sexual acts with both the employer's president and vice-president, and that, ceasing such conduct, she suffered job consequences including demotion. In October, 1984, her attorney delivered to the employer's president and vice-president a letter, concluding with this language:

> We recognize that public disclosure of the facts concerning ... this conduct could be embarrassing to you, and therefore are taking this opportunity to advise that we have been instructed by (the claimant) to file suit ... if the matter has not been resolved to (the claimant's) satisfaction ... If you would like to discuss the matter, we would be pleased to hear from you or your attorneys ...

The employer responded by discharging the claimant, and, when the claimant filed her claim for unemployment benefits, the employer protested, contending that she had been discharged for misconduct connected with her work: The employer had considered the claimant's attorney's letter to have been equivalent to blackmail or extortion. The claimant's rebuttal was that since her problems at work concerned the employer's president and vice-president -- the highest levels of authority -- it would have served no purpose to have made her complaints through ordinary channels.

HELD: If a worker's discontent is unreasonable, and to the point where it adversely affects her work, or, the manner in which she tries to alleviate an unsatisfactory working condition is unreasonable, a resultant discharge may be for misconduct connected with her work.

In the instant case, the evidence did not show that the discontent underlying the claimant's complaint had been unreasonable. Nor, under the circumstances, was the method by which she chose to proceed unreasonable.

Duties owed the employer do not require that an individual forego a judicial avenue of redress or a disclosure of such intentions to the employer. The claimant, in her communications to her employer, did not initiate anything more than a disclosure to the employer of her intentions to utilize the judicial system afforded the general public for redressing a grievance. Putting the employer on notice was not patently extortionate. Neither the claimant's anticipated actions, nor the disclosure of her intentions to the employer, exhibited a willful disregard of duties owed the employer. The claimant was discharged for reasons other than misconduct connected with her work.

Damage to Equipment or Materials MC 45.25
No Decisions

Disloyalty MC 45.3
No Decisions

Indifference MC 45.35

ISSUE/DIGEST CODE	**Misconduct/MC 45.35**
DOCKET/DATE	**ABR-85-2982/10-17-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Indifference**
CROSS-REFERENCE	**MC 45.4, Injury to Employer, Relations with Patrons**

The claimant was Assistant Manager of a liquor store, which was the subject of a local referendum, which might result in the liquor store being closed down. The claimant was being interviewed at work by a representative of a local businessman's organization and was asked his opinion on the referendum. The claimant responded:

> I don't care whether they close this store or not...If the Jews want to keep this store open, they can...

When the employer learned of this remark, the claimant was discharged. The employer stated that, inasmuch as local precincts could vote to close down the liquor stores, it was important to maintain a good relationship with people and groups within the community. The employer stated that the claimant's remark was offensive, and, therefore, detrimental to the employer's interests.

HELD: Indifference is generally a matter of attitude which of itself is meaningless, unless such attitude is displayed by acts which tend to damage the employer's interests. Whenever the indifference manifests itself in acts detrimental to the employer, the discharge is for misconduct connected with the work.

When a worker comes in contact with the employer's customers or prospective customers in the course of his work, he is under a duty to conduct himself in such a manner as not to injure his employer's interests. A violation of this duty is considered misconduct connected with the work.

In the instant case, the evidence established that the claimant knew that the interviewer was soliciting his opinion about a matter of serious, perhaps vital concern to the employer. The claimant, who worked in a position of some management responsibility, gratuitously offered a comment manifesting -- at best -- indifference to his employer's interests, and which, if repeated, would have caused offense to the employer's customers and the public generally. The claimant was either indifferent to his employer's interests, or intended them harm; in either case, his actions constituted misconduct connected with his work.

Injury to Employer through Relations with Patrons MC 45.4

ISSUE/DIGEST CODE	**Misconduct/MC 45.4**
DOCKET/DATE	**ABR-85-6855/2-26-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Injury to Employer Through Relations with Patrons**
CROSS-REFERENCE	**MC 190-15, Evidence, Weight and Sufficiency**

A woman came into the employer's furniture department, where the claimant worked as a Salesman, and asked for his assistance in connection with an insurance claim. The claimant was paid by commission and considered this to be a non-productive use of his time. Later, it was reported, by both the woman and a co-worker, that the claimant had remarked: "I've just spent one hour with this fucking bitch."

When confronted with this accusation in the employer's personnel office, the claimant told the personnel manager: "I do not recall saying that at all." Subsequently, the claimant told the Adjudicator: "I have no recollection of swearing at all."

At an appeal hearing, neither the woman nor the co-worker appeared. Claimant's counsel objected to all testimony concerning their statements as hearsay.

HELD: A Referee must base his decision upon competent evidence in the record. Admissions do not constitute hearsay and can be the basis for a decision to disqualify. Admissions need not be explicit but may arise from an individual's silence or equivocal responses.

In the instant case, irrespective of the non-appearing witnesses' statements, the claimant had 2 opportunities to deny categorically that he had remarked, "I've just spent an hour with this fucking bitch." Yet, he made no such denial. Had the claimant not made such a remark he would have recalled that he had not. To believe otherwise would be contrary to reason. By his equivocal responses, the claimant admitted to having made a remark which was impudent and discourteous. He breached his duty to his employer to behave properly toward the employer's patrons. The claimant was discharged for misconduct.

(See MC 190.15, Evidence, Weight and Sufficiency.)

ISSUE/DIGEST CODE	**Misconduct/MC 45.4**
DOCKET/DATE	**ABR-85-2982/10-17-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Injury to Employer Through Relations with Patrons**
CROSS-REFERENCE	**MC 45.35, Indifference**

The claimant was Assistant Manager of a liquor store, which was the subject of a local referendum, which might result in the liquor store being closed down. The claimant was being interviewed at work by a representative of a local businessman's organization, and was asked his opinion on the referendum. The claimant responded:

> I don't care whether they close this store or not...If the Jews want to keep this store open, they can...

When the employer learned of this remark, the claimant was discharged. The employer stated that, inasmuch as local precincts could vote to close down the liquor stores, it was important to maintain a good relationship with people and groups within the community. The employer stated that the claimant's remark was offensive, and, therefore, detrimental to the employer's interests.

HELD: Indifference is generally a matter of attitude which of itself is meaningless, unless such attitude is displayed by acts which tend to damage the employer's interests. Whenever the indifference manifests itself in acts detrimental to the employer, the discharge is for misconduct connected with the work.

When a worker comes in contact with the employer's customers or prospective customers in the course of his work, he is under a duty to conduct himself in such a manner as not to injure his employer's interests. A violation of this duty is considered misconduct connected with the work.

In the instant case, the evidence established that the claimant knew that the interviewer was soliciting his opinion about a matter of serious, perhaps vital concern to the employer. The claimant, who worked in a position of some management responsibility, gratuitously offered a comment manifesting - at best - indifference to his employer's interests, and which, if repeated, could have caused offense to the employer's customers and the public generally. The claimant was either indifferent to his employer's interests, or intended them harm; in either case, his actions constituted misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 45.4**
DOCKET/DATE	**ABR-87-7647/12-3-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Injury to Employer Through Relations with Patrons**
CROSS-REFERENCE	**None**

The claimant, a member of a Buddhist organization, worked as an x-ray technician in a hospital. He was discharged after complaints by a patient that he was endorsing his religious faith during the performance of his x-ray duties; it was alleged, for example, that he had told a patient that he could make x-rays negative by chanting.

The claimant admitted that during the course of administering to hospital patients he would try to recruit them as new members into Buddhism. He would tell the patients a little history about Buddhism and chanting. He would dispense information such as the phone number and the address where his organization met.

HELD: When a worker comes in contact with his employer's patrons in the course of his work, he is under a duty to conduct himself in such a manner as to not injure his employer's interest. A violation of this duty is considered misconduct connected with the work.

In this case, the claimant was discharged not for his particular religious beliefs but because of conduct which interfered with the employer's business. The claimant's discharge was the result of his unsolicited attempts to distribute information about his religion. It was not within the claimant's responsibility as an x-ray technician to speak to patients on religious matters. It was the claimant's responsibility to provide service in his department. This was a discharge for misconduct.

Note: This is a pre-statutory language and pre-*Petrovic* case. It would be incumbent on the Hearings Referee to inquire whether the employer had any rule prohibiting this conduct and whether the claimant had been warned about such conduct.

Connection With Work MC 85
General MC 85.05

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR99133/1-30-90**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Possession and Sale of Drugs Off the Job**
CROSS-REFERENCE	**MC 270.05, Drugs; MC 490.05, Violation of Law**

The claimant worked for the Department of Corrections as a youth supervisor. He was arrested, then convicted, for possession of a controlled substance with intent to deliver. Neither the drug incident nor arrest took place during working hours or on the employer's premises. Still, after he was convicted, the employer fired him.

HELD: To constitute "misconduct," an act must violate a policy that governs the individual's performance of work. Ordinarily, a distinction would be made between an individual's personal affairs and his obligations to his employer. However, a worker's obligations to his employer are broader in some occupations than in others, such as where the worker is a public servant and the public's trust, and confidence are involved. Here, the claimant owed a duty to the public through his employer and he breached that duty. This was a discharge for misconduct.

I**SSUE/DIGEST CODE**	**Misconduct/MC 85.05**
DOCKET/DATE	**85-BRD-04805/6-26-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**

SUBTITLE **Position of Trust**
CROSS-REFERENCE **None**

The claimant was employed as Senior Vice-President of Accounting for a financial institution, to which he applied, personally, for a mortgage loan. He knowingly failed to indicate on his loan application that a co-worker had lent him $35,000. The employer discharged him, contending that the claimant's falsification of his loan application reflected adversely upon his credibility as an officer of the institution.

HELD: Ordinarily, a distinction would be made between an individual's personal affairs and his obligations to his employer. However, as an officer, the claimant owed to his employer, in addition to his other duties, a duty of trust. He breached that duty when he failed to disclose a substantial outstanding debt, without any compelling or justifiable reason for doing so. The claimant's breach of his duty of trust constituted misconduct connected with his work.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-85-467/7-8-85**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Actions While on Medical Leave of Absence**
CROSS-REFERENCE **MC 15.2, Absence, Reasons**

The claimant, a receptionist, was on a medical leave of absence. In a letter dated September 21, 1984, her physician informed the employer that the claimant would not be released to work for 3 or 4 weeks. (The physician later extended the recovery period until "about December 1, 1984"). In addition, the claimant had told her employer that her physician did not want her to return to work until she was fully recovered, because, due to the nature of her illness, she would become re-infected if she was out in public and exposed to "excessive germs."

In the meantime, the claimant, who was a volunteer in her community's program to counter drug abuse, accepted an invitation from a local high school to lecture to two health education classes, and, on October 1, 1984, the claimant spent 1-1/2 hours in contact with students at the high school.

The claimant was discharged from her receptionist job after the employer learned that she had conducted those lectures in public.

HELD: An employee's obligations to her employer are not necessarily extinguished by the granting of a leave of absence or time off due to illness. An employee who is granted time off due to illness owes her employer a duty to convalesce under conditions which will not extend or unnecessarily prolong the period of recovery. An employee's actions which are inconsistent with that duty will constitute misconduct connected with the work.

In the instant case, both the claimant's and her physician's representations to the employer, that the claimant should not work, let alone venture into the public, made it clear that the claimant's duty to her employer was to remain at home until she was completely recovered from her illness. The claimant's subsequent actions, which included speaking to students in a high school, were certainly incompatible with the representations made to her employer and were potentially damaging to the employer's interest that the claimant return to work as soon as possible. The claimant's actions constituted misconduct connected with her work.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-85-1231/7-26-85**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Pre-Employment Activities**
CROSS-REFERENCE **None**

The claimant became employed by the State of Illinois in 1981. During the course of her employment, the claimant became the subject of a United States mail fraud investigation, concerning a mail fraud which had been perpetrated in 1980. Subsequently, the claimant was indicted by a grand jury. After she was convicted of mail fraud and sentenced to probation in 1984, she was discharged by her employer, the State of Illinois, for "conduct unbecoming an employee." The claimant then filed a claim for

unemployment benefits. The Claims Adjudicator concluded that a conviction for mail fraud was in fact "conduct unbecoming an employee of the State of Illinois" and issued a determination which disqualified the claimant for benefits for misconduct connected with her work.

HELD: A worker's actions prior to entering into employment generally are not connected with the work even though she may subsequently be discharged for such actions. In the instant case, the evidence established that the claimant was discharged after she was convicted of an offense against the United States.

However, the evidence also established that this offense was committed prior to her employment by the State of Illinois. There was no contention that the claimant falsified her application for work at the onset of employment, or that during the course of employment she violated any of the employer's rules. While the claimant's conviction may have rendered her a person who no longer met the employer's expectations, the claimant did not commit any act that could have been termed a violation of the working agreement. Under those circumstances, it could not be concluded that the claimant's "misconduct" was connected with her work. Therefore, the claimant was not subject to a disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR-85-5353/1-16-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Public Trust/Condition of Employment**
CROSS-REFERENCE	**None**

The claimant was employed as a Police Officer, upon the condition that he would not violate the laws of any municipality or state. He was discharged following his conviction for theft. The theft occurred in a municipality other than the one in which he worked.

HELD: A worker's actions, even if they occur off duty or away from the usual place of business, may be connected with work if they adversely affect the public trust and confidence upon which the employer is dependent. Also, an employer may impose certain conditions upon a worker's off duty activities, where the nature of the work requires it.

In the instant case, the claimant, as a Police Officer, held a position of public trust. Also, it was a condition of his employment that he abide by the law at or away from his workplace. That condition was reasonable in view of the nature of his work. His violation of a law, which, as a Police Officer, he was sworn to uphold, constituted misconduct, whether or not it occurred at or away from his workplace.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR-86-889/4-30-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Actions Subsequent to Work Separation**
CROSS-REFERENCE	**None**

During her afternoon work shift, the claimant was informed that, due to economic considerations, she was being laid off. She was directed to leave the employer's premises.
The employer took offense at the claimant's subsequent actions and deemed them to constitute misconduct.

HELD: When an individual is no longer employed, her actions, regardless of what they are or where they occur, cannot, by definition, by themselves constitute misconduct connected with work. That is because a finding of misconduct is dependent upon a work separation resulting from, not occurring before, such acts.

In the instant case, the claimant's actions, subsequent to her lay off, could not by themselves constitute misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR-85-5351/12-19-85**
AUTHORITY	**Section 602B of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Theft under Section 602B**

CROSS-REFERENCE **MC 602-05, Theft; MS 95.1, Construction of Statutes**

The claimant worked as Office Manager for a Dentist. In her statement to the Adjudicator, the claimant admitted that she had knowingly filed a false insurance claim - for dental services allegedly performed upon her by her employer. The claim for those non-existent services was filed against the claimant's husband's insurance policy. The claimant had used, without authorization, her employer's signature stamp, in order to ensure that the claim would be processed without question. The claimant stated that she had filed the false claim because she needed the money.

The claimant received payment from her husband's insurance company. When her employer learned what had transpired, he discharged the claimant for "insurance fraud."

The issue presented was whether the claimant had committed a theft within the meaning of Section 602B, since, technically, she had committed a theft against the insurance company and not her employer.

HELD: The disqualifying provisions of Section 602B of the Act do not require that the theft for which the claimant is discharged be committed against the employer, but only that the theft be connected with her work.

In the instant case, the claimant's unauthorized use of the employer's signature stamp implicated the employer in the fraud, even if only to the extent that it required the employer to take time away from his work to deal with the matter by accounting for his services. There was also the potential for damage to the employer's reputation and business.

The claimant's actions were sufficiently material to the employer's interests as to be connected with her work. The claimant was properly subject to the disqualifying provisions of Section 602B.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-85-4079/10-9-85**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Off-Duty Illegal Act/Public Trust**
CROSS-REFERENCE **None**

The claimant, a Nursing Assistant employed by a hospital, was arrested near her home and charged with selling cocaine. An account of her arrest appeared in a local newspaper. It was not alleged that the claimant had obtained the cocaine from the hospital, or that she had sold it on the hospital premises. In fact, the evidence disclosed that the claimant did not handle drugs while on duty. Following her conviction for selling cocaine, the claimant was fired.

HELD: A worker's off-duty legal or illegal actions may be connected with the work if the worker's actions adversely affect the public trust and confidence on which the employer's business is dependent. A hospital, which is entrusted with the treatment and care of patients, including the legitimate prescription of drugs, is dependent upon the public's trust and confidence, and may expect a certain standard of conduct from its employees, at work and in the community. In the instant case, the claimant's conduct was unbecoming a health care worker and could only have tarnished the employer's reputation in the community. Her actions constituted misconduct connected with her work.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-85-7438/3-13-86**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Social Relationships**
CROSS-REFERENCE **MC 485.05, Violation of Company Rule**

The claimant, a 30-year-old High School Teacher, was physically attracted to one of his 17-year-old students, and asked her for a date. The student did not make a date with the claimant. The claimant persisted in trying to talk with her, including going to the student's home. Following his visit to her home, the student's mother complained to the high school principal, who issued a warning to the claimant: He was to have no more personal contact with the student.

Although the claimant did not subsequently meet or talk directly with the student, he did, upon occasion, go out of his way to drive past her home. Then, at the onset of summer vacation, he went to the student's workplace, where he discussed with the

student's work supervisor his (the claimant's) prospects of dating the claimant during the summer. Following this incident, the student's mother again complained to the claimant's principal, that her daughter was being harassed, whereupon the claimant was discharged.

HELD: Discharges because of social relationships outside of working hours and away from the employer's premises are not generally considered to be connected with the work, even though there may be a rule or order prohibiting such relationships. However, discharges arising out of a worker's private activities may be connected with the work if the acts in question are sufficiently identified with the work or tend to injure the employer's interests.

In the instant case, the claimant was a teacher. Both he and his employer, a school, were responsible to the community, in that they had been entrusted to look after the well-being of students - many of them minors. The claimant's conduct toward one of his students - a minor - was violative of the public's trust, and therefore tended to injure his employer's interests. The claimant's actions were inherently misconduct connected with his work, regardless of the fact that many of the claimant's acts took place outside of working hours and away from the employer's premises.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	***Winklmeier v. Board of Review,* 450 N.E. 2d 353 (1983)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**General**
CROSS-REFERENCE	**MC 5.05, Def. of Misconduct; MS 95.4, Constr. of Statutes**

Over a two-year period, the claimant submitted 13 medical insurance claims to his employer. Each claim was for medical treatment for his wife. On each claim he knowingly and falsely stated that his wife was unemployed and had no insurance of her own. His practice of filing false claims could result in higher insurance costs to his employer.

HELD: Section 602A provides that misconduct must be connected with work. However, misconduct need not have a direct connection with work. Instead, the connection with work is determined in light of the specific facts of each case.

Here, the claimant's behavior arose out of duties and obligations owed his employer, was directed at his employer's insurer, and could have resulted in a substantial financial loss to his employer.

This was misconduct connected with work.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR-89-2827/9-12-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Alcohol Rehabilitation**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

In 1986, the claimant was hospitalized for alcoholism. As a condition of her continued employment, she was required to obtain follow-up treatment, and she agreed that, for a period of 1 year, she would attend alcoholism counselling sessions.

For 1 year, the claimant attended the counselling sessions. She continued to attend counselling sessions well into a second year. She herself paid for these sessions. Toward the end of the second year, she began missing meetings with her counselor. This was partly because of her schedule: counseling plus work, including overtime, ran from 1 p.m. until 2 a.m. Also, she did not have sufficient funds to continue to pay for the sessions.

From the time the claimant began her counselling sessions, she committed no work infractions - except that the employer desired that she continue participating in the rehabilitation program. In January 1989, because she failed to keep up her attendance in the program; she was discharged.

HELD: Section 602A of the Act requires that misconduct be connected with work.

Generally, if a worker has a substance abuse problem, causing difficulties on the job or absences from work, a requirement that she enroll in a rehabilitation program (in lieu of being discharged outright) is connected with the work and is reasonable. Generally, the worker's failure to enroll in or continue to attend such a program will constitute misconduct.
However, in the instant case, the relationship between continuing rehabilitation and work was tenuous. The original incident occurred in 1986. The claimant fulfilled her obligation to attend counselling for 1 year. For that year, and until her discharge in 1989, she committed no infractions that caused difficulties on the job or absences from work.

The counselling sessions that continued after 1 year, being off duty, personally financed, and not warranted by behavior at work, were not connected with work; therefore, missing them could not constitute misconduct.

The claimant was allowed benefits without disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	***Robinson v. IDES* (1994)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connection with Work**
SUBTITLE	**Off-Duty Drug Use**
CROSS-REFERENCE	**MC 270.05, Use of Intoxicants; MC 485.45, Company Rule**

The employer had a drug-free workplace policy, which included drug tests for work-related injuries, and, if drugs were found, subsequent unannounced tests, then, if drugs were found, a discharge.

The claimant's job was spray painting cabinets and computers. He was an excellent worker. After he sustained a scratch on the job, he was required to take a drug test. He tested positive for morphine and marijuana. A year later, over a weekend, off the job, he attended a wedding reception, where he had a few lines of cocaine and smoked marijuana. The next day, when he reported to work, he was required to take an unannounced drug test. The test revealed traces of the drugs in his system and he was discharged. He was then denied unemployment benefits.

The claimant contended that the rule that resulted in his discharge was unreasonable because it had nothing to do with his work performance, which was excellent, but, rather, with his off-duty conduct.

HELD: Section 602A provides, in pertinent part, that "misconduct" means a violation of a "reasonable rule ... governing the individual's behavior in performance of his work."

The goal of a drug-free workplace and substance abuse policy is to create and maintain a work environment free from the adverse effects of using drugs. The fact that an individual is a good worker whose job performance is not yet affected by drugs does not render a drug-free workplace policy and disciplinary rules unreasonable.

Here, the employer's rule was reasonable. The claimant deliberately and willfully violated the rule. The claimant had been warned (and, therefore, harm was irrelevant). All the conditions for a discharge for misconduct under Section 602A were met.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	***Eastham v. Hous. Auth. of Jefferson County, 2014 IL App (5th) 130209***
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Use of Intoxicants**
CROSS-REFERENCE	**MC 270.05, Drugs; MC 490.05, Violation of Law**

Claimant was required to submit to a random drug test by his employer, the Housing Authority of Jefferson County. Claimant informed his supervisor that he believed he would fail the drug test because he had smoked marijuana during a recent vacation. His employment was terminated before the results of the drug test were available. The test subsequently came back negative. The employer policy provided that employees may not use or be under the influence of alcohol or any controlled substance "while in the course of employment." The Board of Review upheld the denial of benefits based on the conclusion that the drug and alcohol-free policy of Claimant's employer applied even while Claimant was not performing services. The circuit court reversed the Board, finding that (1) the phrase "while in the course of employment" includes only the times during which an employee is performing work duties; and (2) the policy is unreasonable to the extent it can be interpreted to regulate an employee's conduct outside of work.

Held: The appellate court affirmed the circuit court. Illinois courts have defined the phrase "in the course of employment" in the context of workers' compensation claims, holding that injuries occur in the course of employment if they take place (1) at a place where the employee is reasonably expected to fulfill her duties; and (2) while she is performing those duties. Here the trial court properly found that the policy had been misapplied since the policy encompassed only acts that occurred "at a place where the worker may reasonably be in the performance of his duties and while he is fulfilling those duties or is engaged in something incidental thereto."

A reasonable rule or policy is one which is connected to the employee's performance of his job, Section 602(A) of the Act. The Act expressly provides that violation of an employer's rule will only disqualify a discharged employee from receiving unemployment benefits if the rule is one governing the individual's behavior in performance of his work. However, courts have found that a reasonable rule or policy can govern behavior outside work as long as there is a sufficient nexus between that behavior and the workplace.

The appellate court distinguished the decision in *McAllister v. Board of Review of the Department of Employment Security*, 263 Ill. App. 3d 207, 635 N.E.2d 596, 200 Ill. Dec. 257 (1994). In that case Claimant was a CTA bus driver who tested positive for cocaine following an accident. The appellate court recognized in that case that Claimant was in a safety-sensitive position and thus there was a sufficient nexus between the off-duty use of cocaine by a bus driver and the safety of his passengers. In this case Claimant was not in a safety sensitive position. Furthermore, unlike the Claimant in this case, the drug test in McAllister was positive. Nothing in *McAllister* supports the notion that a policy is reasonable within the meaning of the Unemployment Insurance Act if it permits an employer to discharge an employee for off duty conduct without a positive drug test result.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	***McAllister v. Board of Review of the Dep't of Employment* Sec., 263 Ill. App. 3d 207**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connection With Work**
SUBTITLE	**Use of Intoxicants**
CROSS-REFERENCE	**MC 485.05, Violation of Company Rule**

Claimant was employed as a bus operator for the Chicago Transit Authority (CTA) from December 4, 1972, until April 15, 1991. On April 10, 1991, after allowing all passengers to disembark at the bus terminal claimant pulled the bus around to the other side of the terminal in order to use the bathroom. CTA policy requires a driver to secure the bus by placing the gear in neutral and applying the hand brake. Claimant failed to comply with this policy because he was in a hurry. When he came out of the bathroom, claimant saw the bus slowly moving forward until it struck a guard rail. At the end of the day, claimant reported the incident and also submitted to blood and urine tests. Medical tests indicated the presence of cocaine. Claimant stated that he had consumed cocaine after work six days earlier. The employee handbook prohibited the presence of any kind of controlled substance or narcotics in the system of an employee while at work. Following a hearing, the referee found that the presence of the illegal drug in the claimant's system while on duty, regardless of whether he would have been deemed under the influence of the substance, was sufficient to constitute a violation of an employer policy which harmed the employing unit. The Board found that claimant was discharged for misconduct connected with work. The circuit court reversed the Board stating that there was no showing of impairment and a lack of harm to the employer and no previous warning regarding narcotics.

HELD: Illinois law requires that the CTA establish and enforce a drug testing program consistent with Federal statutes and regulations. (70 ILCS 3605/47, 3615/2.24 (West 1992).) In addition, the CTA must maintain a drug-free workplace to be eligible for a grant or contract from a federal agency. 41 U.S.C. §§ 701, 702. The United States Supreme Court has stated that drug testing of persons in safety-sensitive positions is justified without individualized suspicion because an employee can cause great human loss before any signs of impairment become noticeable. The CTA has a rule forbidding narcotics in an employee's system. Additionally, the collective bargaining agreement between the CTA and the union representing bus operators gives the CTA the right to test any bus operator for drugs after an accident. The administrative rule and examples reflect the legislature's recognition that the presence of a controlled substance during working hours within the system of a commercial driver can constitute harm to the commercial carrier. In this case the Board found that the presence of the illegal drug in the claimant's system while on duty was a violation of the CTA's policy and constituted harm to the employing unit. The appellate court held that the circuit court exceeded its scope of review in making an independent determination that the CTA had not been harmed by the claimant's use of cocaine in this case.

Where an employer shows that it fired a former employee for failing a drug test, which test was part of a program to promote safety in the employer's workplace, the former employee is disqualified from receiving unemployment benefits. Such a result is particularly appropriate where passing such a test was an agreed condition of employment. Under such circumstances, the employer is not required to make any further showing, such as impairment or strange conduct on the job.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	***Craig v. Dep't of Emp. Sec*., 2022 IL App (1st) 210475**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Use of Drugs of Drugs Off the Job**
CROSS-REFERENCE	**MC 270.05, Drugs; MC 490.05, Violation of Law**

Claimant tripped on the sidewalk outside Terminal 5 at O'Hare International Airport and fell, injuring himself, while performing his duties as a lead branch serviceman with United Airlines. Because he was injured in the fall and requested medical attention, United's policies subjected the Claimant to a drug test which showed a positive result for cocaine. Employer terminated Claimant citing violation of United's "Working Together Guidelines" which "insist on" a drug-free workplace. Claimant filed for benefits. On his questionnaire Claimant stated that he was aware of employer's drug-free policy, a violation of which would result in his discharge. Claimant was denied and he appealed.

The Board stated that: Claimant tested positive for cocaine and admitted using it shortly before submitting to the test; the employer's policy was reasonable; the violation was within Claimant's ability to control; and his conduct harmed the employer's interest in safety and in maintaining a drug-free workplace.

HELD: The appellate court addressed Claimant's assertion that, while Claimant's conduct in consuming cocaine was illegal and a violation of employer's policy, the act was outside of the workplace. The court cited *Eastham v. Hous. Auth. of Jefferson County*, 2014 IL App (5th) 130209 and *McAllister v. Bd. of Review of the Dep't of Empl. Sec*., 263 Ill. App. 3d 207 for the proposition that behavior outside the workplace can represent misconduct if there is sufficient nexus between that behavior and the workplace. In *McAllister*, the court stated that there is a sufficient nexus existing between a safety sensitive job and drug use outside the workplace.

In this case, Claimant was aware of the employer's zero tolerance policy and was aware that the use of cocaine could result in his discharge. The appellate court found that Claimant engaged in illegal activity by using cocaine outside of his place of employment, which has a sufficient nexus between that behavior and the workplace, as he had a safety-sensitive job working on airplanes. As such, Claimant's conduct constituted misconduct under the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR-94-7167/9-21-94**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connection With Work**
SUBTITLE	**Off-Duty Behavior**
CROSS-REFERENCE	**MC 485.05, Violation of Company Rule**

The employer, a school district, had a rule (in Illinois' statutes) prohibiting it from retaining any worker convicted of public indecency. The claimant was a utility worker, whose work placed him in the presence of students ranging from kindergarten through 12th grade. He was discharged after being convicted of public indecency, for acts he committed while he was off-duty and off school premises.

HELD: "Misconduct" requires that an employer's rule or policy govern an individual's behavior in performance of his work. The term is not limited to actions that occur while a worker is on-duty or on the employer's premises. Off-duty actions that materially jeopardize the public's perception of the employer's services or a claimant's ability to properly and fully carry out his duties involve the performance of work. Here, the employer's rule governed the claimant's behavior in performance of his work. He was discharged for misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR-97-6027 / 7-30-97**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Use of Intoxicants Off the Job**
CROSS REFERENCE	**MC 270.05, Intoxicants; MC 485.45, Viol. Of Company Rule**

The claimant worked as a craps dealer on a riverboat casino. Pursuant to company policy (and in accordance with federal regulations), he was administered a random drug test, which he failed, due to his use of drugs while off duty.

HELD: ABR-85-3809, previously contained in this Digest, holding that, in a particular fact situation, off the job use of drugs did not constitute misconduct, is hereby ***overruled***. The Board of Review now holds that, under certain circumstances, even if drug use occurs off the job, it constitutes misconduct. This is certainly true where the employer is governed by federal regulations which require the removal of an individual who tests positive for drugs.

Discharge or Leaving MC 135
General MC 135.05

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	**83-BRD-10627/9-16-83**
AUTHORITY	**Section 601A and S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant had been granted a leave of absence of more than seven consecutive days. No work was available for him when his leave expired.

HELD: If an individual is on an approved leave of absence, the employment relationship is not severed. Where, as in this case, work is not available for the claimant when he returns at the expiration of the leave, a layoff occurs at that time. On the facts, neither a discharge nor a voluntary leaving took place, and there can be no disqualification. Therefore, the claimant is entitled to benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	**ABR-85-2581/12-24-85**
AUTHORITY	**Sect. 601A and Sect. 602A of the Act**
TITLE	**Discharge Or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**VL 50.05, Attributability; VL 135.05; VL 155.1**

The claimant was employed by a hospital as a Respiratory Therapy Technician. The claimant was regularly scheduled to work the day shift, but was also scheduled - as were other Therapists - to work the night shift. After 2 years of such employment, the claimant told his employer that he would not be able to work the night shift; but the employer demanded that he make a commitment to his work and agree to work at any time the employer might schedule him, or be discharged. The employer's Chief Therapist stated:

> I told (the claimant) it was unfair that other staff had to work another shift occasionally if he did not. I told him it was not very often that this would be required. He asked if I could guarantee that (it would not be often) and I said no...I told (the claimant) that everyone is expected to work a different shift if needed and that if he was not willing to accept that job responsibility he would have to be terminated...

The claimant, who was divorced and had custody of his children, ages 5 and 3, had regular day care arrangements for them. He testified that he refused to work an occasional night shift because he could not afford to pay a baby-sitter for nights, and because he wished to spend more time with his children.

Following his refusal to work a night shift, the claimant was taken off the employer's schedule.

HELD: An individual is discharged when the employer takes the action which results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when he takes the action which results in his unemployment, and he has a choice of remaining at work at the time that he ceases working.

In the instant case, the claimant could have remained employed, but he refused to comply with a condition of work made at the time of hire. In effect, the claimant quit rather than agree to this condition. This then was a case of a voluntary leaving, and not a discharge.

(See also, VL 155.1, Domestic Circumstances, Children, Care of.)

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	**ABR-92-416/8-21-89**
AUTHORITY	**Section 601 and 602 of the Act**
TITLE	**Discharge Or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**VL 135.05, Discharge or Leaving**

The claimant, a maintenance worker, was taking typing classes. Her employer was aware that, when she completed the classes, she would seek secretarial work. On October 24, the employer asked when the claimant's last class was and when she would begin looking for other work. The claimant responded that her last class was December 9, after which she would seek other work, and that she would give the employer appropriate notice. On December 7, the employer asked her when she was leaving. The claimant responded that she did not intend to leave until she obtained other work. On December 10, the employer hired a replacement for the claimant.

HELD: An individual is discharged when the employer takes the action that results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when she takes the action that results in her unemployment, and she has a choice of remaining at work at the time that she ceases working.

In this case, at no time did the claimant disclose a definite or ascertainable date upon which she intended to leave work or that she was unwilling to continue working for the employer during any interim. All she did was assure the employer - in response to its questions - that she would provide notice at the appropriate time (when she obtained a job). The employer initiated the claimant's separation from work by replacing her, at which time she no longer had the choice of remaining in employment. Therefore, this was a discharge, not a leaving.

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	***Randell D. Ivy v. Board of Review,* 88 L 50532**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**VL 135.05, Discharge or Leaving**

The claimant found a new job. He gave his employer 2 weeks' notice that he was leaving. The employer told him to leave immediately. The claimant filed a claim for benefits for the 2 weeks until his new job began.

HELD: An individual is discharged when the employer takes the action that results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when he takes the action that results in his unemployment, and he has a choice of remaining at work at the time that he ceases working.

In this case, the claimant did not intend to leave on the date he gave notice but was willing to work until the effective date of his resignation. He did not have the choice of remaining at work at the time that he ceased working.

This was a discharge.

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	***Jones v. IDES*/11-15-95**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Approved Leave of Absence**
CROSS-REFERENCE	**VL 135.05, Discharge or Leaving**

The claimant was granted a five-months leave of absence. She was not told that, by taking a leave, she was in any way jeopardizing her position or that her return was conditional upon the employer finding a permanent replacement. Nonetheless, when her leave ended, she was told that the employer had restructured itself, and, further, that it had decided to keep the temporary replacement who had been sitting in for her, because that person was working for less money. The claimant then filed a claim for benefits.

HELD: The leaving was involuntary because the employer, not the claimant, severed the relationship. Had the leave of absence been in any way disapproved or made conditional, there would have been a voluntary leaving, but this was not the case. Therefore, the disqualifying provisions of Section 601A do not apply.

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	**ABR-97-12111 / 5-18-97**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS REFERENCE	**VL 135.05, Discharge or Leaving**

On July 23, the claimant tendered his resignation, to become effective July 28. The employer told him to leave immediately.

HELD: Generally, if a claimant gives at least two weeks' notice, and is told to separate from work before the expiration of the notice period, without wages for what would have been the remaining weeks of his employment, the separation is a discharge.

However, where the claimant has given less than two weeks' notice, we are reluctant to hold that the claimant was discharged. In those instances, the claimant's voluntary leaving is merely accelerated.

This was a voluntary leaving.

ISSUE/DIGEST CODE	**Misconduct/MC135.05**
DOCKET/DATE	***Arroyo v. IDES*, 695 N.E. 2d 1350 (1998)**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS REFERENCE	**VL 135.05, Discharge or Leaving; PR 195.05, Notice**

On June 14, approximately eight months into her pregnancy, the claimant experienced complications and was admitted to the hospital, where she gave birth to a still-born child. The claimant was released from the hospital on June 18, with orders to refrain from work for six weeks. The employer learned of her circumstances, but, on July 23, when the claimant advised her employer she could resume work, the employer would not take her back, contending she had "terminated voluntarily" because she hadn't shown up for work for more than a month. The Board of Review considered this a Voluntary Leaving.

HELD: Whether an employee voluntarily discontinues her employment is a question of intent and is to be determined from the totality of the evidence presented. Here, there is no evidence to prove the claimant intended to leave her job. The employer discharged her.

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	**ABR-97-1665 / 4-14-97**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS REFERENCE	**VL 135.05, Discharge or Leaving**

The claimant was absent for several days due to a physical condition and her employer called her at home, requesting that, if she intended to return to work, she should bring in a doctor's statement, showing she had been released to work. Instead, the claimant said she was quitting, adding: "I will give you my two weeks' notice." The employer told her not to return to work at all.

HELD: Generally, if a claimant gives two weeks' notice, and is told to separate from work before the expiration of the notice period, the separation is a discharge. However, there are exceptions to that general rule, including where it appears the notice period is merely a formality and there is no real intent to continue working. Here, the claimant's conduct (her abrupt resignation and intent not to obtain a doctor's release which would have allowed her to work the next two weeks anyway) indicated the notice period was simply a formality. This was a voluntary leaving.

Constructive Discharge MC 135.15

ISSUE/DIGEST CODE	**Misconduct/MC 135.15**
DOCKET/DATE	**ABR-91-921/9-20-89**
AUTHORITY	**Section 601 and 602 of the Act**
TITLE	**Discharge Or Leaving**
SUBTITLE	**Constructive Discharge**
CROSS-REFERENCE	**VL 135.4, Discharge or Leaving Resignation Intended**

The claimant, an administrative assistant, worked from 9 to 5, then requested a change to part-time hours, noon to 5, because she wanted to work mornings as a trader at the Board of Trade. Her supervisor agreed to a 30-day trial period. After 30 days, on February 9, the supervisor told her that he really needed a full-time administrative assistant.

At that February 9 meeting, both the claimant and her supervisor became upset. The supervisor told her that she had until February 11 to make up her mind. After the claimant left for the day, the supervisor removed the claimant's work from her desk and cleaned off the desk-top, including removing her computer. On February 10, the claimant called in sick. When the claimant reported to work on February 11, she saw that her desk had been cleaned out. A secretary told her she was fired.

HELD: An individual is discharged when the employer takes the action that results in her unemployment and she does not have a choice of remaining employed. An individual leaves work when she has a choice of remaining at work, but takes the action that results in unemployment.

Here, the claimant's desire to try part-time hours was not the cause of her unemployment. The employer took the action that resulted in her unemployment. When the supervisor cleaned out the claimant's desk, the claimant no longer had any choice. This occurred on February 9, pre-dating the claimant calling in sick on February 10, as well as the February 11 ultimatum date, so whatever the claimant might have intended on those subsequent days was irrelevant.

This was a discharge, not an intended resignation.

ISSUE/DIGEST CODE	**Misconduct/MC 135.15**
DOCKET/DATE	**85-BRD-62-FE/6-25-85**
AUTHORITY	**Section 601A & 602A of Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Discharge**
CROSS-REFERENCE	**VL 495.05, Voluntary**

The claimant was employed by the United States government, as a Clerk-Typist, in West Germany. She was a "dependent spouse," working during her husband's tour of military duty in that country. When her husband's tour of duty ended, and he was transferred back to the United States, the claimant left her Clerk-Typist position, submitting a letter of resignation. Later,

she testified that her resignation had been a formality only: Army personnel rules directed that a dependent spouse was not permitted to remain in a foreign country upon her husband's transfer.

HELD: The claimant had no option to remain at work, due to the rules promulgated by her employer. She did not leave work voluntarily. This was a constructive discharge.

ISSUE/DIGEST CODE	**Misconduct/MC 135.15**
DOCKET/DATE	**ABR-85-3491/9-30-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Discharge**
CROSS-REFERENCE	**VL 235.4, Health or Physical Condition, Pregnancy**

The claimant was 6 months pregnant, when, according to her employer's standard policy, she was given a choice: She could be placed on "Maternity Leave Status," which meant she could no longer work, but would be eligible to be re-hired, if there was an opening, after her baby was born; or, she could continue working by signing a "Release of Liability" form, which stated that she would release all rights to recovery for injury to herself or the unborn child, regardless of the cause of such injury. The claimant refused to sign a "Release of Liability," was placed on "Maternity Leave Status," and was told she could re-apply for work after her baby was born.

HELD: If a company rule requires separation at a certain stage of pregnancy, the separation, if it occurs at that stage, is a discharge, not a voluntary leaving. Even though the worker may take some action which results in the separation, a separation which arises out of the employer's rule will constitute a constructive discharge. In the instant case, the claimant's refusal to sign a "release" constituted a constructive discharge cognizable under Section 602A of the Act. Because compelling circumstances caused the claimant to refuse to sign the form, her actions in refusing to sign did not exhibit a willful disregard of duties owed to the employer. The claimant was discharged for reasons other than misconduct connected with her work.

Interpretation of Remark or Action MC 135.2

ISSUE/DIGEST CODE	**Misconduct/MC 135.2**
DOCKET/DATE	**ABR-84-12229/10-4-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation of Remark or Action**
CROSS-REFERENCE	**VL 135.2, Discharge or Leaving, VL 160.05**

The claimant worked as a Jewelry Salesman, and enjoyed a familiar relationship with the store's owner, for whom he had worked for 25 years. From May, 1983, through September 2, 1983, the claimant had been absent from work due to illness. On September 3, he returned to work, unannounced, and was preparing to open the store, when the owner told him that he had hired a new employee. Upon hearing this, the claimant handed the owner his keys and left.

At a hearing, the employer testified that the new employee had not been hired as a replacement for the claimant. The claimant testified that he had assumed that he had been replaced by the new employee.

HELD: There are some situations in which it is difficult to determine whether a separation is a discharge or a voluntary leaving, as both the employer and worker have made some remark or have taken some action which has contributed to the initiation of a separation. Generally, if an employer makes a remark or takes some action which initiates the separation, then a discharge has occurred. However, if the employee is given a choice of remaining at work, it is a voluntary leaving. In either case, the reasonableness of the parties' actions must be considered.

Even though an employer's remark might generally give rise to a discharge, in the instant case, the claimant's belief that he had been discharged was not reasonable. Considering his many years of employment, and his familiar relationship with the owner, the claimant should have taken steps to ascertain his status. His failure to do so by departing abruptly constituted a voluntary leaving without good cause attributable to his employer.

ISSUE/DIGEST CODE	**Misconduct/MC 135.2**
DOCKET/DATE	**ABR-85-9144/7-14-86**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation of Remarks or Actions**
CROSS-REFERENCE	**MC 45.05, Attitude Toward Employer; VL 135.2**

The claimant, an Automobile Service Manager, did not receive the wage increase he had anticipated. Subsequently, during his lunch hour, he pored over job advertisements in a newspaper. He was observed doing this by a superior, who questioned the claimant's intentions. The claimant stated that, as a result of the lack of a wage increase, he felt compelled to seek other work. He informed his superior that, when he found other work, he would give the employer appropriate (2 or 3 week) notice. The claimant worked the rest of his shift that day, after which he was again questioned about his intentions. He repeated what he had said earlier, whereupon he was instructed to leave work immediately.

HELD: At some point in time, either the employer no longer has the option of continuing the worker in employment or the worker no longer has the option of remaining at work. The separation occurs at such point in time. If the employer has made a remark or committed an action which prevents the worker from remaining in employment, the separation is a discharge; if the worker has made a remark or committed an action which prevents the employer from retaining him in employment, the separation is a voluntary leaving.

In the instant case, the claimant's statements did not indicate that he would be leaving his job at any ascertainable time, nor did his actions indicate that he had ceased, or would imminently cease, performing his duties under the terms of hire. The employer had the option of continuing the claimant in employment but chose not to do so. This, then, was a discharge, not a voluntary leaving.

(This was a discharge not for misconduct -- See MC 45.2 & .3.)

Discharge Before Effective Date Of Resignation MC 135.25

ISSUE/DIGEST CODE	**Misconduct/MC 135.25**
DOCKET/DATE	**84-BRD-4168/3-28-84**
AUTHORITY	**Section 601A and S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Discharge Before Effective Date Of Resignation**
CROSS-REFERENCE	**None**

The claimant became dissatisfied with his job because of a reduction in wages and because he was required to perform lesser skilled work. He made an agreement with his employer that he would seek other employment, that the employer would look for a replacement, and that either would give the other one week's notice before the employment ended. The employer notified the claimant when he found a replacement and told the claimant not to return to work.

HELD: The event which would constitute a voluntary leaving by the claimant, the location of other employment, had not occurred. The employer's hiring of a replacement did occur and resulted in the separation of the claimant from the employment. He was, therefore, discharged but not for misconduct connected with the work. The claimant is not disqualified for benefits.

Involuntary Separation MC 135.3

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	**ABR12059/3-14-91**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Involuntary Separation (Deemed Voluntary Leaving)**
CROSS-REFERENCE	**MC 165.05, Employer Requirements; VL 135.15, Leaving**

The claimant was a bus driver. He was required to have a valid driver's license. His driver's license was revoked due to an off-duty accident. The employer could no longer retain his services.

HELD: When an occupational license, a tool of an individual's trade, is within his control to obtain and maintain, a work separation that occurs as a result of not obtaining or maintaining that license is a voluntary leaving (constructive quit), not a discharge. Here, the claimant constructively quit his job when he lost his license.

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	**ABR-86-2404/8-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Involuntary Separation**
CROSS-REFERENCE	**MC 139.05, Discrimination; MC 390.25, Fellow Employees**

In September 1985, the claimant became ill with tuberculosis and was placed on indefinite leave. Thirteen months later, he was released to return to work, without restrictions. (Copies of medical reports were submitted to the employer and, later, in evidence at the appeal hearing). However, co-workers were still afraid of contagion and refused to work with the claimant. This view was also held by persons in management, who were afraid that their own jobs might be on the line if the claimant was permitted to return to work. Although there were no legal, medical, or established business requirements dictating that the claimant undergo further medical tests, the employer required that he undergo such testing. The employer would not permit him to return to work until he did. The claimant refused to undergo what he considered unnecessary testing and was discharged.

HELD: A worker who brings about his unemployment, either because he no longer wishes to remain on his job or because he does not wish to comply with the conditions under which his employer is willing' to retain him, leaves work voluntarily, since it is his action or inaction which brings about his unemployment. On the other hand, a worker who is separated from his job because the employer does not want to retain him is said to have been laid off or discharged. There are also instances in which an employer cannot retain a worker in its employ because the worker fails to meet a legal requirement or because of other circumstances beyond the employer's control - although the employer does not have the option to retain the worker, the resulting separation is generally considered a discharge.

In this matter, the claimant did not terminate his employment. The termination was brought about as a consequence of the employer's failure to place him in employment when he reported to work with an unrestricted release by his doctor. The employer imposed an unreasonable and unnecessary condition upon the claimant's return to work. In effect, the employer told the claimant that it did not wish to retain his services. This was a discharge for no cause, and, therefore, a discharge for reasons other than misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	**54-BRD-2983/12-12-54**
AUTHORITY	**Section 602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Involuntary Separation**
CROSS-REFERENCE	**None**

After the claimant was hired as a candy wrapper and assigned to her workstation, she underwent a physical examination required by all new employees. During this examination, it was determined that the claimant was unable to meet the health standards required by the state statute, and she was discharged by the employer. The claimant had been treated for a similar condition 10 years previously and had been released as cured by her physician. When she accepted employment, she was unaware of the recurrence of her infectious blood condition.

HELD: Although it was the responsibility of the employer to discharge the claimant in view of her physical condition, there is no evidence to indicate that the claimant intended to conceal her condition from her employer. Under these circumstances, her separation from work was involuntary and not for misconduct connected with work. She is not disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	**ABR-85-756/6-25-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Involuntary Separation**
CROSS-REFERENCE	**MC 165.05, Employer Requirements; VL 160.05**

In October 1979, the claimant was hired as a Nurse's Assistant. Pursuant to a statute passed in 1980, Nurse's Assistants were required to be licensed by the State. The claimant's certificate that had been issued in 1968 was not recognized by the 1980 statute, and, moreover, the claimant had not had sufficient work experience prior to the passage of the statute to take advantage of that portion of the statute which allowed licensing based upon work experience. Subsequent to the passage of the 1980 statute, the claimant was notified that her employer could not continue to employ her because of her lack of the requisite license.

HELD: There are instances in which an employer cannot retain a worker in its employ because the worker has failed to meet a legal requirement for continued employment. Even though the employer does not have the option to retain the worker, the resulting separation is generally considered a discharge as opposed to a voluntary leaving, unless it is established that it was contemplated in the working agreement and was within the control of the affected worker to satisfy the legal condition for continued employment. In the instant case, the requirement for State certification was mandated at some time after the claimant's hire and there was no assurance that the claimant had within her control the ability to obtain the requisite certification. Therefore, the claimant's work separation was a discharge (not for misconduct) and not a voluntary leaving.

(The Board of Review compared the instant case to its previous decision, ABR-84-237, dated October 17, 1984: In that case, the claimant was hired with the understanding that, within a relatively brief time after hire, she would be required to attend a training course in order to become certified. The claimant chose not to attend the training course, and, thereby, precluded any opportunity to maintain the certification required to keep her job. The distinguishing feature of that case, as opposed to the instant case, was that the claimant was aware of, and accepted the responsibility for, obtaining the proper State certification, which was within her control to obtain.)

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	***Hawkins v. IDES*, 268 Ill.App.3d 927, 206 Ill. Dec. 423, 645 N.E.2d 428 (1994)**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Involuntary Separation (Constructive Quit)**
CROSS-REFERENCE	**MC 165.05; VL 50.05; VL 135.15**

The claimant was a bus driver. In March, 1990, he was informed that he had to obtain a commercial driver's license (CDL) by April 1, 1992. The employer made training and study materials available to him. He was advised that he would have three opportunities to pass. The claimant did not attend any training sessions and first took the CDL examination on March 23, 1992, and failed. By the time he passed, on April 28, 1992, the employer had already replaced him.

HELD: When an occupational license is within an individual's control to obtain, a work separation that occurs as a result of not obtaining that license is a voluntary leaving (constructive quit), not a discharge. Here, it was within the claimant's control to obtain his license. The claimant constructively quit by not making a reasonable effort to take the test in time to meet the licensing requirement. He left work without good cause attributable to his employer and benefits were denied.

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	***Ricky R. Dortch*, 18 L 50637 (2018)**
AUTHORITY	**Section 602A(2) of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Driver's License requirement**
CROSS REFERENCE	**MC 165.05, Employer Requirements; VL 135.15, Constructive Quit**

The Claimant was employed as a maintenance man at several buildings. As a condition of his employment, Claimant was required to maintain a valid driver's license. The Police gave Claimant a ticket for failure to stop at a stop sign. In lieu of bail, Claimant posted his driver's license. Claimant was legally permitted to drive on the ticket. Employer discharged Claimant, as it maintained that Claimant could not work until he regained possession of the physical driver's license. Following a hearing the Referee set aside the determination which denied benefits. The Board of Review set aside the Referee's decision, strictly construing Section 602A(2) to require Claimant to maintain the actual physical driver's license. A similar result would occur under a Section 601A constructive quit analysis.

HELD: In reversing the Board, the circuit court held that the Board's decision was contrary to law, to statute, to rule, and to the vehicle code. Illinois Supreme Court Rule 526 allows an individual to post his driver's license for a traffic offense, in lieu of bail. 92 Ill. Adm. Code 1040.1 defines "driver's license" as, among other things, a traffic ticket.

Leaving in Anticipation of Discharge MC 135.35

ISSUE/DIGEST CODE	**Misconduct/MC 135.35**
DOCKET/DATE	**ABR-85-7421/4-7-86**
AUTHORITY	**Sections 601A and 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Leaving in Anticipation of Discharge**
CROSS-REFERENCE	**VL 135.35, Discharge or Leaving; VL 138.05**

The claimant was employed by the Department of Transportation, which had undertaken an investigation to see whether the claimant had misused vehicles assigned to him and/or whether he had kept improper time records. The claimant volunteered to resign if the employer would not pursue its investigation, the outcome of which was as yet unknown (to the employer); no formal charges had been filed against the claimant. The employer did not object to the claimant's suggestion. The claimant resigned.

HELD: A worker who leaves work in anticipation of a discharge for misconduct cannot evade the attendant disqualification by leaving. In cases where a discharge is imminent, the separation is considered a discharge and the claim is adjudicated accordingly. In cases where the claimant suspects that he will be discharged, but is under no threat of imminent discharge, the separation is considered a voluntary leaving and the claim is adjudicated accordingly.

In the instant case, the claimant left work voluntarily. He did not show that the work had become unsuitable, so as to affect his well being, only that the employer was exercising its prerogative to conduct, in a reasonable fashion, an investigation into its business affairs. The claimant left work without good cause attributable to his employer and was subject to the disqualifying provisions of Section 601A.

ISSUE/DIGEST CODE	**Misconduct/MC 135.35**
DOCKET/DATE	**ABR-93-10137 / 4-20-94**
AUTHORITY	**Section 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Leaving in Anticipation of Discharge**
CROSS-REFERENCE	**VL 135.35, Discharge or Leaving**

The claimant's employer was served with a court order to withhold payments to the claimant, for child support. The employer wanted "nothing to do with it" and told the claimant to "take a walk" unless he intended to catch up with a lump sum payment to his wife by the end of the week. There was nothing the claimant could do, because he had no money and needed the job in order to continue to pay child support, so he left.

HELD: A discharge occurs when an employer gives an individual no genuine option to remain employed. Leaving work to avoid a definite and imminent discharge does not change a discharge to a voluntary leaving. In the instant case, the claimant did not have any option to continue working, inasmuch as he would be unable to comply with the employer's directive within the time provided. This was a discharge.

Suspension for Misconduct MC 135.45
No decisions

Discrimination MC 139
General MC 139.05

ISSUES DIGEST CODE	**Misconduct/MC 139.05**
DOCKET/DATE	**ABR-86-2404/8-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Discrimination**
SUBTITLE	**Illness, Fear of Contagion**
CROSS-REFERENCE	**MC 135.3 Discharge or Leaving; MC 390.25, Employees**

In September 1985, the claimant became ill with tuberculosis and was placed on indefinite leave. Thirteen months later, he was released to return to work, without restrictions. (Copies of medical reports were submitted to the employer and, later, in evidence at the appeal hearing). However, co-workers were still afraid of contagion and refused to work with the claimant. This view was also held by persons in management, who were afraid that their own jobs might be on the line if the claimant was permitted to return to work. The employer would not permit the claimant to return to work.

HELD: An employee has the obligation to so conduct himself as not to interfere with the proper operation of the employer's business. But when a discharge results because an individual's co-workers object to working with him because of their dislike for his race, religious beliefs, political beliefs, or other personal reasons - where no interference with the work has been demonstrated - such a discharge cannot be for misconduct. In this case, the discharge was not for misconduct.

Dishonesty MC 140

General MC 140.05

ISSUE/DIGEST CODE	**Misconduct/MC 140.05**
DOCKET/DATE	**83-BRD-5374/5-10-83**
AUTHORITY	**Section-602A**
TITLE	**Dishonesty**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The employer, a hospital, testified that the claimant was discharged for misappropriating property while at work. The hospital recently experienced numerous thefts, and it had marked currency placed in the pocket of a lab coat. The hospital's witness observed the coat hanging on the hook immediately before the room was unlocked so that the claimant could clean the area. When the claimant finished her activities, the employer's security officer checked the coat and found the currency missing. The claimant was searched, and the marked currency was found in her coin purse.

The claimant testified that, upon entering the room, she found the coat and the currency on the floor. She stated that she hung the coat back up on the hook and placed the currency in her pocket. She further indicated she intended to take the money to the security department but that she was confronted and accused of appropriating the funds before doing so.

HELD: The claimant was discharged for taking possession of the employer's marked currency in her work area and during the course of her employment. The claimant's explanation of the incident lacked credibility in light of her contention that she picked up the coat but put the money in her coin purse, even though the employer observed the coat hanging on a hook just prior to the claimant's entry. It is concluded that all necessary elements have been proved, and the claimant was discharged for misconduct connected with her work. She is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 140.05**
DOCKET/DATE	**83-BRD-14228/11-30-83**
AUTHORITY	**Section-602A**
TITLE	**Dishonesty**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked as a school bus driver. She had been suspended on four occasions for absences from work without notification to the employer. On the last occasion leading to her discharge, the claimant was late in picking up children on her bus route, and she attributed her tardiness to her college courses. The employer contacted the claimant's school to verify the claimant's reason and found that the claimant was not registered at the school. On March 28, 1983, the claimant was discharged.

The claimant admitted that at one time she had attended college classes but later discontinued such classes. She further stated that her tardiness was because she had been stopped by police for a traffic law violation.

HELD: The claimant was discharged for falsely stating that her attendance at college classes caused her tardiness in picking up children on her school bus route. The claimant's actions exhibited a wilful disregard of duties owed the employer, and she could reasonably have foreseen that her conduct would seriously jeopardize her job. Accordingly, the claimant was discharged for misconduct connected with her work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 140.05**
DOCKET/DATE ***Candace Medvid v. IDES*, 542 N.E. 2d 852 (1989)**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Falsifying the Reason for an Absence**
CROSS-REFERENCE **MC 15.2, Absence, Reasons**

The claimant worked at two jobs. The employer's rule requires that if the employee is not going to be at work, the employee is required to call in before the start of her working day. On October 25, she did not report to work or call to notify her first employer of her absence. On October 26, she called 3 hours after her shift began, explaining that she had overslept and would not be at work. On October 27 and 28, she called in sick. The employer discovered that the claimant, during those same days and hours when she was scheduled to work, was working for her other employer. On October 29, the claimant was fired.

HELD: Misconduct includes a deliberate disregard of a standard of behavior that an employer has a right to expect of its employee.

Deliberate falsification of a reason for an absence is a violation of a standard of behavior that an employer has a right to expect from an employee.

The claimant's dishonesty constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 140.05**
DOCKET/DATE **83-BRD-11823/10-24-83**
AUTHORITY **Section-602A**
TITLE **Dishonesty**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant backed the employer's van into the employer's dock causing damage. He did not report the accident to the employer but instead made his morning deliveries. When he returned, the employer noticed the damage to the van and questioned the claimant. The claimant denied knowledge of how or when the van was damaged.

The employer inspected the delivery dock and found paint chips which matched the paint of the damaged van. Upon further questioning, the claimant admitted to the employer that he had damaged the van earlier in the day when he backed into the delivery dock. The claimant was discharged for failing to report the damage to the van and for denying that he had knowledge of how the damage occurred.

HELD: The claimant's conduct was wilful and deliberate and constituted misconduct within the meaning of the Act. He is ineligible to receive benefits.

Aiding and Abetting MC 140.1

ISSUE/DIGEST CODE **Misconduct/MC 140.1**
DOCKET/DATE **ABR-85-5456/11-27-85**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Aiding and Abetting**
CROSS-REFERENCE **None**

The claimant and 2 co-workers worked on the employer's client's premises, where they shared a locker which had a broken lock and was therefore accessible to others. When the claimant and his co-workers opened the locker and determined that its contents - a sweatshirt and pair of shoes - did not belong to any of them, 1 co-worker took the sweatshirt, and the other co-worker took the shoes and they left the premises.

Later, the claimant was discharged, because, although he had not taken any items, he had failed to report the matter to the employer or the client.

HELD: A worker has a duty to report acts of dishonesty which might tend to injure the employer. A worker's willful failure to report such acts of dishonesty is a breach of duty constituting misconduct. In the instant case, the claimant was an eyewitness to a theft, had control over whether he reported the theft, and willfully failed to report it. He breached his duty toward his employer and his discharge was for misconduct.

Cash Shortage or Misappropriations MC 140.15
No Decisions
Falsehood MC 140.2
No Decisions

Falsification of Record MC 140.25

ISSUE/DIGEST CODE	**Misconduct/MC 140.25**
DOCKET/DATE	***Soni v. Dep't of Emp. Sec*., 2024 IL App (1st) 220137**
AUTHORITY	**Sections 602 of the Act**
TITLE	**Dishonesty**
SUBTITLE	**Falsification of Record**
CROSS-REFERENCE	**None**

This was a consolidation of three separate appeals. Claimants worked as compounders for the employer. Claimants were discharged by the employer for falsifying records. Claimants signed documents indicating they cleaned their assigned “bays”, but video surveillance confirmed that the cleaning did not take place as signed off on. Claimants were made aware of the policy prohibiting the falsification of records. Falsification of records was normal practice because of time constraints and the employer wanted quantity over quality. Management knew of the situation, and they also falsified documents. The falsification of documents became normal practice over the years. 33 employees and 7 supervisors were all terminated around the same time as them for the same reason, falsification of cleaning logs. The falsified logs were signed by the person performing the cleaning, a verifier who verified the cleaning, and the supervisor. Sometimes there was not enough time to perform all the required cleaning so claimants would sign the papers without cleaning. The supervisors were aware of the falsification. Claimants were instructed and pressured into falsifying the cleaning logs. The compounders informed their supervisors that they did not have time to complete all the cleaning. Claimants were worried they would be fired if they did not sign the cleaning logs. Claimants argued that the employer’s corporate culture encouraged employees to treat cleaning as the lowest priority and established a practice of falsifying documents to inaccurately show that cleaning took place. Each claimant was eventually denied benefits by the Board of Review. The circuit court reversed the Board’s decision for all three claimants. The Department then appealed all three decisions.

HELD: In affirming the circuit court decisions, the Appellate Court noted that the employer not only tolerated the falsification of cleaning logs but in fact encouraged it. Claimants could not be said to have engaged in willful misconduct because they followed the express directives of the employer’s management, notwithstanding a written policy to the contrary. The court noted that to affirm the Board’s decision could be seen as tacitly condoning the employer’s fraud and its violation of safety standards, which could then encourage other companies to adopt similar practices.

ISSUE/DIGEST CODE	**Misconduct/MC 140.25**
DOCKET/DATE	**84-BRD-4301/3-29-84**
AUTHORITY	**Section-602A**
TITLE	**Dishonesty**
SUBTITLE	**Falsification of Records**
CROSS-REFERENCE	**None**

The claimant was employed as an outside salesman. Weekly activity reports were used by the employer to measure the performance and production of its outside salesmen, and the claimant listed more contacts on a report than he had actually made. He was discharged for the falsification of his report.

HELD: In this case, the claimant was discharged as a result of knowingly submitting a false report of his performance and production to his employer. Such falsification was a substantial breach of duty owed the employer. Therefore, the claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE **83-BRD-8940/7-28-83**
AUTHORITY **Section-602A**
TITLE **Dishonesty**
SUBTITLE **Falsification Of Records**
CROSS-REFERENCE **None**

The claimant worked as a home health nurse's aide. In an interview with the Adjudicator, she stated: "I was discharged June 14, 1982. The reason given was falsifying time records. I reported working some hours that I didn't actually work. Sometimes the patients would say that I could leave early, but I would report that I worked the full shift. The employer wanted me to sign out the time that I actually stopped working. I falsely reported working 252 hours over several months when, in fact, I only worked 136 hours. I therefore owe the employer 117 hours at $3.35 per hour for a total of $391.95."

At the hearing before the Referee, the employer testified that the claimant reported hours for which she was reimbursed but that she did not actually work, a violation of a known company policy. The claimant had received a written warning for falsifying hours on December 24, 1981. The claimant was aware of the published company rule which provided: "Falsifying timecard (sheets) or work records will result in immediate dismissal."

HELD: Any worker who knowingly submits a false report of time at work has directly injured the employer's interest. The claimant's falsification of her work, whereby she was reimbursed for work she did not perform, is clearly against the employer's interest. Therefore, she was discharged for misconduct connected with the work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE **84-BRD-67-FSC/1-17-84**
AUTHORITY **Section-602A**
TITLE **Dishonesty**
SUBTITLE **Falsification Of Records**
CROSS-REFERENCE **None**

The claimant was responsible for contacting persons listed in a city directory to verify listing information. As a method of confirming the fact that all such people were contacted personally, the company placed false names on each worker's lists. The claimant submitted verifications for three false names, and she was discharged. She claimed that she obtained the information through a trailer park manager, but the employer pointed out that the claimant was instructed to make the verification personally with each listed individual.

HELD: The accuracy of the information was vital to the employer's business, and it is concluded that the claimant knowingly inserted false information in the employer's records. She was discharged for misconduct connected with the work and is disqualified from benefits.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE **84-BRD-2955/2-29-84**
AUTHORITY **Section-602A**
TITLE **Dishonesty**
SUBTITLE **Falsification Of Records**
CROSS-REFERENCE **None**

In his application for employment as a truck driver, the claimant admitted to two convictions for moving violations in a three year period. After he was hired, a report from the Secretary of State showed that he had three. The employer's rule would not allow anyone to be hired with three violations in this period of time, and he was discharged.

HELD: The employer's question in the application was reasonable, and it was a material factor in the selection of the claimant as an employee. The claimant supplied false information which tended to injure the interests of the employer in terms of insurance costs or the claimant's loss of his driver's license at some early date.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE **84-BRD-4270/3-29-84**
AUTHORITY **Section-602A**
TITLE **Dishonesty**
SUBTITLE **Falsification Of Records**
CROSS-REFERENCE **None**

The claimant, a termite inspector, was required to inspect homes for termite damage and submit a report of his investigation to his employer. The claimant was discharged when it was discovered that he had submitted inspection reports on homes that were not actually available for inspection because the occupants were not home. The claimant admitted that he had forged the occupants' signatures on the reports.

HELD: The claimant knowingly submitted false reports to his employer that purported to show inspections that were never made by the claimant. The claimant's actions were not mere inefficiency or good faith errors in judgment but were acts of intentional misrepresentation that related directly to the business of the employer. The claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE **ABR-85-4754/11-26-85**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Falsification of Record (Application for Employment)**
CROSS-REFERENCE **None**

In early March, 1985, the claimant applied for work as a Beef Processor. One of the questions on the employment application asked whether he had suffered any back injury in the last 5 years. Later, the claimant explained to the Adjudicator:

> Since I hadn't had an injury in five years, I said no. I had an injury six or seven years ago...I just pulled a muscle. I was told to do light duty for a couple weeks.

At any appeal hearing, the claimant testified that, upon reconsideration after his job interview, he made it a point to telephone the employer that same day to clarify what he had written. He told his employer that, while working for a previous employer, he had been to a doctor for his back, but that he did not consider it serious enough to constitute an "injury." He also re-affirmed his belief that the pulled muscle had occurred six or seven years earlier.

The record indicated that on March 9, 1980 (within the 5 year period), the claimant had sustained a sprained muscle in his back. It had required minimal medical treatment and had no residual effects.

The employer testified:

> Well, the purpose of the question on our medical history questionnaire is to identify people who have problems like that so that we can place them appropriately, hence if we have someone who had back trouble, we have places where we can assign those people where they won't be in danger of injuring themselves further.

The claimant had been employed for 3 weeks, when, on March 21, 1985, the employer, determining that there was a discrepancy between what the claimant had written and what the record indicated, discharged him for allegedly falsifying his application for employment.

HELD: In order for an alleged false statement or omission in a work application to constitute misconduct connected with work, it is necessary that:

> (1) The employer's requirements as to what information the prospective worker must reveal must be reasonable; and
>
> (2) The employer's accurate knowledge of the requested information is material in the selection of the worker for the job; and

(3) The false statement or omission must be willfully made by the worker; and

(4) The falsification of the work application must tend to injure the interests of the employer.

In the instant case, when the claimant applied for work, he was asked a question which would aid in determining whether he had a physical defect which would prevent him from executing the duties for which he was being considered. The question was reasonable, the requested information was material, and a falsified answer would have tended to injure the interests of the employer. However, the evidence failed to establish that the claimant willfully falsified his application for employment. He furnished the employer with information which he reasonably believed to be correct. Therefore, the claimant was not subject to a disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 140.25**
DOCKET/DATE	**ABR-85-5489/12-19-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Dishonesty**
SUBTITLE	**Falsification of Record (Misrepresenting Qualifications)**
CROSS-REFERENCE	**None**

For several years the claimant worked as Office Manager for an employer in the bronze business, and, through that job, came in contact with another employer in the metal coatings business. The claimant interviewed for a job with that employer, citing her experience with her current employer. The new employer offered her a job as a Customer Service Agent and the claimant accepted. After she had worked at her new job for 2 weeks, the employer discharged her.

The employer stated that the claimant had been hired on the basis of her representations as to her experience in the field. However, she was so inept at her work as to indicate to the employer that she had misrepresented her qualifications.

HELD: A discharge for dishonesty requires, at the minimum, that there be an act or omission indicating a lack of truthfulness on the part of the worker. It must be established that what is alleged to be dishonest is not merely a misunderstanding or an expectation.

In the instant case, the employer failed to establish that the claimant had committed a dishonest act. The only evidence offered by the employer on point was that the claimant represented that she had worked for several years in a similar business - which was true.

The fact that the claimant was not as proficient as the employer thought she should have been, based upon her experience, did not render her representations dishonest or constitute misconduct based upon dishonesty.

ISSUE/DIGEST CODE	**Misconduct/MC 140.25**
DOCKET/DATE	**ABR-86-878/4-18-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Dishonesty**
SUBTITLE	**Falsification of Application**
CROSS-REFERENCE	**MC 385.05, Relation of Offense to Discharge**

The claimant worked for 10 years as a Respiratory Therapist, until her employer discovered that she had lied, on her application for employment, about her formal qualifications: The claimant had completed only 16 of the 42 college credit hours required for her certification as a Respiratory Therapist.

When the employer learned of the claimant's falsified credentials, she was discharged, even though her work for the past 10 years had been satisfactory.

HELD: There are 4 major principles which determine whether falsification of an application for work constitutes misconduct. One of these is whether the employer's accurate knowledge of the requested information is material in the selection of the worker for the job. Another is whether the falsification of the work application will tend to injure the interest of the employer.

In many occupations, a falsehood in an application for employment would be remote after 10 years, and inconsequential in view of satisfactory performance in the interim. However, there are many professions to which remoteness cannot apply, either because continuing honesty is of paramount importance, or because the credentials set forth in the application are a continuing requirement for licensing or continue to be essential to the nature of the work performed.

In the instant case, the claimant was employed in a profession where the possession of certain medical knowledge and life saving skills was essential. A genuine certificate of formal training would have shown whether the claimant brought to her job such knowledge and skills, and was material to her selection for the job. In the absence of that formal training, it could not be shown that the claimant, even by working 10 years, had maintained certain skills (which she might never have possessed). The claimant, by falsifying her credentials, may have exposed patients to risk and subjected her employer to liability. Her discharge was for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 140.25**
DOCKET/DATE	***DeBois v. IDES*, 274 Ill. App. 3d 660 (1st. Dist. 1995)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Dishonesty**
SUBTITLE	**Falsification of Records**
CROSS-REFERENCE	**MC 485.05, Awareness of Rule, Harm; MC 485.1, Absence; MC 485.3, Dishonesty**

The claimant was employed as a computer attendant and was assigned to the employer's computer room. There was no on-site supervisor present at the computer room, but various on-site employees, including the claimant, were appointed as the "lead person," a position like a temporary supervisor. On several occasions the claimant was observed leaving the computer room more than an hour before the end of her shift without the approval of her supervisor. Sometimes she closed and locked the computer room when she left early. The claimant was responsible for completing and signing her own time sheets. On the days the claimant left early her time sheets indicated she had worked until the end of her shift. The claimant was suspended and then dismissed because she had falsified her time sheets, thereby violating the employer's code of conduct. However, the employer had a progressive discipline policy. It failed to follow the policy when it suspended and dismissed the claimant.

The Board of Review determined that the claimant was ineligible for benefits under Section 602A of the Act because she had wilfully violated the employer's work rules and code of conduct and had harmed the employer by closing the computer room early and by causing the employer to pay her and her co-workers for time they were not actually on duty. The Circuit Court reversed, reasoning that progressive discipline policies play an important role in the modern work place and therefore the employer's failure to follow its progressive discipline policy prevented it from opposing the claimant's claim for benefits.

HELD: The decision of the Circuit Court is reversed because it is contrary to the law. The statutory definition of misconduct provided in Section 602A of the Act does not excuse the misconduct of an employee when an employer violates a policy of progressive discipline. The legislature cannot have intended the result reached by the Circuit Court.

The decision of the Board of Review is affirmed because it is not against the manifest weight of the evidence. The record shows that it was proper for the Board to conclude the employer had a reasonable rule directing its employees to not falsify company time sheets. Further, it was proper for the Board to conclude the claimant had wilfully violated the rule because the record supports a finding the claimant was aware of the rule. Willful behavior is found when an employee is aware of a company rule but disregards it. Finally, it was proper for the Board to conclude the claimant's disregard of the rule caused the employer harm because by falsifying her time sheets she claimed more money than she was actually owed.

Property of Employer, Conversion of MC 140.3

ISSUE/DIGEST CODE **Misconduct/MC 140.3**
DOCKET/DATE **ABR-85-7264/4-23-86**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Property of Employer, Conversion of**
CROSS-REFERENCE **MC 190.1/.15, Evidence**

The claimant, a Warehouse Worker for a department store, was discharged after the employer determined that he had taken possession of the employer's property (a pair of blue jeans) for his personal use.

At an appeal hearing, the employer established the facts that: Security officers had found an open carton of blue jeans, with 1 pair missing, on the floor of a trailer where the claimant had been working. The claimant was then escorted to the security office, where he was asked to remove his coveralls so that a security officer could inspect the jeans he was wearing. The claimant refused. He insisted that the union steward be present. The claimant, accompanied by a security officer, went into the warehouse to find the steward. Before returning, the claimant requested to go to the rest room. There, inside a stall, he was heard to be ripping material. Upon his return to the security office, he removed his coveralls and displayed his jeans: identical in size, brand, pattern, and every respect - except for knife or razor-torn cuffs - to the jeans missing from the open carton. The employer further testified that the claimant carried a knife while at work, as a necessary tool.

The claimant testified that the jeans he was wearing had been purchased by his wife several days earlier, at another of the employer's stores. He offered into evidence a cash register receipt, claiming it represented the purchase of the jeans he was wearing. The date of the purchase and the number of the register upon which it had been rung up had been obliterated.

The Referee concluded that, because the employer did not offer testimony from a witness who had personally observed the claimant taking the jeans from the carton, it had not proven its case.

HELD: Evidence upon which a decision will be based must be competent, credible, and of such a nature that reasonable people would rely upon it. In the instant case, the employer offered competent and credible evidence as to every fact but one; the employer did not produce an eye-witness to the taking. Still, from the evidence, the fact that the claimant took the jeans could reasonably have been deduced. On that basis, the employer made its case.

In response, the claimant offered into evidence a sales receipt which established nothing. The claimant's contention that his wife had purchased the jeans was not supported by the evidence.

The employer met its burden of proof by presenting competent, credible evidence upon which reasonable people could rely. The employer's evidence was entitled to greater weight than the claimant's. The evidence established that the claimant had converted the employer's property for his personal use. Any worker who is discharged for wrongfully converting property of his employer is discharged for misconduct connected with the work. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 140.3**
DOCKET/DATE ***Hoffmann v. Lyon Metal Products,* 217 Ill. App. 3d 490 (2nd Dist. 1991)**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Conversion of Property of Employer**
CROSS-REFERENCE **MC 485.05, Deliberate and Willful Violation, Harm; MC 485.75, Removal of Property**

The claimant was employed as a material handler for 22 years with the employer. When the claimant left work on a Saturday he put one of the employer’s extension cords in a paper sack to borrow it over the weekend. The claimant was stopped as he left and was asked what was in the sack. The claimant took the extension cord out of the sack, and was told to put it back where it came from since the claimant did not have a written package pass for it. The claimant put the extension cord back as instructed and left the plant. When he returned to work on Monday, the claimant was told his intent was to steal the extension cord, and was discharged. The hearings referee determined the claimant had not been discharged for misconduct under Section 602A of the Act because there was no showing of a deliberate and willful violation in spite of a warning or explicit instruction of the employer’s rule that no package other than an employee’s lunch box or work clothes may be carried out of the employer’s plant without a properly signed package pass, and because the evidence showed the rule was not unambiguous and was ignored in practice. The Board reversed, noting that the claimant had concealed the extension cord in a bag, that he had left through a door where no guard was stationed although he normally left through a door that had a guard, that his wife was waiting for him in

the parking lot with their car motor running, and that earlier in the day he had requested a package pass for a co-worker but not for himself. The Board reasoned the claimant had been intentionally injurious to the employer's interests because the employer had an interest in knowing where its property is. The circuit court reversed the Board, finding the claimant eligible for unemployment benefits.

HELD: The circuit court is affirmed. The evidence does not show a deliberate and willful violation of the employer's package pass policy, or that the employer was harmed by the claimant's violation of the policy. The claimant consistently stated he was unaware a package pass was needed for borrowed items, and in the past had used a package pass for items he was keeping but not for items he was borrowing. These statements are consistent with the testimony of other witnesses. There was no evidence the claimant had been otherwise informed. One of the employer's supervisors testified the package pass the claimant requested for a co-worker was for an item the co-worker intended to keep. The claimant stated that a lot of people borrowed an awful lot at the plant, and the employer's vice-president acknowledged there had been a lot of circumventing of the rules regarding package passes and the employer was trying to stop it. The claimant testified he had taken borrowed items past the guard at the exit he normally used on prior occasions without being stopped. He had a reasonable explanation for his use of the alternative exit on the day of the incident, and since the incident occurred in February the fact the claimant's wife had kept the car motor running does not have great significance. In addition, the evidence does not show the employer was harmed by the claimant's violation of the package pass rule, since the claimant returned the extension cord. While other courts have held that the threat of future financial loss can cause harm to an employer, there is no evidence the employer had suffered or would suffer any loss of property or other harm due to the claimant's violation of the package pass rule. The employer's evidence as to the purpose of the policy and the need to know where its equipment is at all times is sufficient to establish that the policy is reasonable, but is not sufficient to establish that the employer was harmed by the claimant's violation of the policy.

ISSUE/DIGEST CODE	**Misconduct /MC 140.3**
DOCKET/DATE	***Ray v. Board of Review*, 244 Ill. App. 3d 233 (1st Dist. 1993)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Dishonesty**
SUBTITLE	**Conversion of Property of Employer**
CROSS-REFERENCE	**MC 485.05, Implicit Rule, Harm; MC 485.75, Removal of Property**

The claimant was employed in the maintenance department of the employer and was discharged after an undercover investigator observed him stealing the employer's property on eight different occasions. The claimant testified he had never stolen anything, and was unaware of any theft problems at work or of any memorandum or bulletin from the employer regarding theft. He also testified he had borrowed a car battery after his supervisor told him to take it and keep it until he bought a new battery, and had taken a gallon of floor cleaner after a supervisor told him he could. The hearings referee found that the claimant was ineligible for unemployment benefits under Section 602A of the Act because he had been discharged for committing eight separate acts of theft of the employer's property in violation of a reasonable rule or policy of the employer. The Board affirmed, but the circuit court reversed, finding that the employer failed to demonstrate it had a policy against lending, and that the evidence did not establish the employer had been harmed by the claimant's acts.

HELD: The circuit court is reversed. There is no mandate in Section 602A that misconduct be in violation of a written rule. While there was no direct evidence the employer had an express policy prohibiting employees from taking company property for permanent personal use without permission, any employer would have such a policy unless a contrary policy is clearly presented. Implicit in the employment relationship is the understanding that employees do not steal from employers. In addition, the claimant's conduct showed his taking of the employer's property was deliberate and that he knew of a policy against taking company property for personal use. Also, the claimant's actions harmed the employer because they clearly affected the employer's inventory and costs.

Note: This decision was cited in *Petrovic v. IDES* (2016 IL 118562) as a case decided under the "commonsense" doctrine, which reasoned that an employer's rule need not have been expressly stated but could be inferred based on "common sense." In *Petrovic*, the IL Supreme Court narrowed the so-called, "commonsense" rule. Under the premise that an employee should not be disqualified unless he/she engaged in conduct he/she knew was prohibited, the Court announced the following rule: "in the absence of evidence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a prima facie intentional tort." Said another way, unless the conduct was illegal or intentionally tortious, an employer must prove, by direct evidence, the existence of a rule or policy that was expressly conveyed to the claimant. However, the *Petrovic* court did not expressly overrule *Ray*. Even if there was no specific policy, under the holding of *Petrovic*, the employer did not need to prove the existence of a rule since stealing is an illegal act and would constitute misconduct under the *Petrovic* rationale.

Property of Other Than Employer, Conversion of MC 140.35

ISSUE/DIGEST CODE	**Misconduct/MC 140.35**
DOCKET/DATE	**83-BRD-10499/9-13-83**
AUTHORITY	**Section-602A**
TITLE	**Dishonesty**
SUBTITLE	**Conversion Of Property Of Other Than The Employer**
CROSS-REFERENCE	**MC 190.05, General under Evidence**

The claimant, a freight elevator operator, was accused by security personnel of wrongfully removing a water cooler owned by a tenant in the employer's building. He informed the guard that the tenant had given him the cooler and later provided written authorization, a copy of which was submitted in evidence. The employer did not inquire of the tenant whether permission had been given to the claimant for removal of the cooler and offered the claimant the option of submitting his resignation or being discharged. The claimant refused to resign.

HELD: The employer's evidence was based upon suspicion of dishonesty, while the preponderance of the evidence substantiated the claimant's allegation of ownership. In the absence of any evidence of misappropriation, it must be held that the claimant was discharged for reasons other than misconduct connected with the work and is not subject to any disqualification.

Purchase MC 140.4
No Decisions

Employer Requirements MC 165

General MC 165.05

ISSUE/DIGEST CODE	**Misconduct/MC 165.05**
DOCKET/DATE	**ABR12059/3-14-91**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Employer Requirements**
SUBTITLE	**Driver's License**
CROSS-REFERENCE	**MC 135.3, Discharge; VL 135.15, Voluntary Leaving**

The claimant was a bus driver. He was required to have a valid driver's license. His driver's license was revoked due to an off-duty accident. His employer could no longer retain his services.

HELD: When an occupational license, a tool of an individual's trade, is within his control to obtain and maintain, a work separation that occurs as a result of not obtaining or maintaining that license is a voluntary leaving (constructive quit), not a discharge.

Here, the claimant constructively quit his job when he lost his license

ISSUE/DIGEST CODE	**Misconduct/MC 165.05**
DOCKET/DATE	**ABR-85-756/6-25-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Employer Requirements**
SUBTITLE	**Obtaining a License**
CROSS-REFERENCE	**MC 135.3, Discharge or Leaving VL 160.05**

In October, 1979, the claimant was hired as a Nurse's Assistant. Pursuant to a statute passed in 1980, Nurse's Assistants were required to be licensed by the State. The claimant's certificate that had been issued in 1968 was not recognized by the 1980 statute, and, moreover, the claimant had not had sufficient work experience prior to the passage of the statute to take advantage of that portion of the statute which allowed licensing based upon work experience. Subsequent to the passage of the 1980 statute, the claimant was notified that her employer could not continue to employ her because of her lack of the requisite license.

HELD: There are instances in which an employer cannot retain a worker in its employ because the worker has failed to meet a legal requirement for continued employment. Even though the employer does not have the option to retain the worker, the resulting separation is generally considered a discharge as opposed to a voluntary leaving, unless it is established that it was contemplated in the working agreement and was within the control of the affected worker to satisfy the legal condition for continued employment. In the instant case, the requirement for State certification was mandated at some time after the claimant's hire and there was no assurance that the claimant had within her control the ability to obtain the requisite certification. Therefore, the claimant's work separation was a discharge (not for misconduct) and not a voluntary leaving.

(The Board of Review compared the instant case to its previous decision, ABR-84-237, dated October 17, 1984: In that case, the claimant was hired with the understanding that, within a relatively brief time after hire, she would be required to attend a training course in order to become certified. The claimant chose not to attend the training course, and, thereby, precluded any opportunity to maintain the certification required to keep her job. The distinguishing feature of that case, as opposed to the instant case, was that the claimant was aware of, and accepted the responsibility for, obtaining the proper State certification, which was within her control to obtain.)

ISSUE/DIGEST CODE	**Misconduct/MC 165.05**
DOCKET/DATE	***Hawkins v. IDES*, 268 Ill.App.3d 927, 206 Ill. Dec. 423, 645 N.E.2d 428 (1994)**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Employer Requirements**
SUBTITLE	**Driver's License**
CROSS-REFERENCE	**MC 135.3; VL 50.05; VL 135.15**

The claimant was a bus driver. In March, 1990, he was informed that he had to obtain a commercial driver's license (CDL) by April 1, 1992. The employer made training and study materials available to him. He was advised that he would have three opportunities to pass. The claimant did not attend any training sessions and first took the CDL examination on March 23, 1992, and failed. By the time he passed, on April 28, 1992, the employer had already replaced him.

HELD: When an occupational license is within an individual's control to obtain, a work separation that occurs as a result of not obtaining that license is a voluntary leaving (constructive quit), not a discharge. Here, it was within the claimant's control to obtain his license. The claimant constructively quit by not making a reasonable effort to take the test in time to meet the licensing requirement. He left work without good cause attributable to his employer and benefits were denied.

ISSUE/DIGEST CODE	**Misconduct/MC 165.05**
DOCKET/DATE	***Ricky R. Dortch*, 18 L 50637 (2018)**
AUTHORITY	**Section 602A(2) of the Act**
TITLE	**Employer Requirements**
SUBTITLE	**Driver's License Requirement**
CROSS REFERENCE	**MC 135.3 Discharge or Leaving; VL 135.15, Constructive Quit**

The Claimant was employed as a maintenance man at several buildings. As a condition of his employment, Claimant was required to maintain a valid driver's license. The Police gave Claimant a ticket for failure to stop at a stop sign. In lieu of bail, Claimant posted his driver's license. Claimant was legally permitted to drive on the ticket. Employer discharged Claimant, as it maintained that Claimant could not work until he regained possession of the physical driver's license. Following a hearing the Referee set aside the determination which denied benefits. The Board of Review set aside the Referee's decision, strictly construing Section 602A(2) to require Claimant to maintain the actual physical driver's license. A similar result would occur under a Section 601A constructive quit analysis.

HELD: In reversing the Board, the circuit court held that the Board's decision was contrary to law, to statute, to rule, and to the vehicle code. Illinois Supreme Court Rule 526 allows an individual to post his driver's license for a traffic offense, in lieu of bail. 92 Ill. Adm. Code 1040.1 defines "driver's license" as, among other things, a traffic ticket.

Evidence MC 190

General MC 190.05

ISSUE/DIGEST CODE **Misconduct/MC 190.05**
DOCKET/DATE **84-BRD-590/1-17-84**
AUTHORITY **Section-602A**
TITLE **Discharge Or Leaving**
SUBTITLE **General**
CROSS-REFERENCE **None**

The employer's witness alleged that the claimant had a poor attitude towards his work, that he was frequently away from his work station visiting with other employees, that his production was low, and that, overall, he demonstrated a wilful or deliberate failure to produce the required quantity of work. The witness further stated that the claimant had received warnings on three or four occasions.

The claimant rebutted the employer's witness by noting that he had been working at a new facility for three months and the witness had not observed his work at this location. He testified that his most recent supervisor had expressed satisfaction with his work and that, when he was separated from employment, he was told that he was being laid off because of lack of work.

HELD: The burden of proving that the separation is a discharge is upon the individual making the allegation. The employer's witness could offer no competent testimony concerning the claimant's work performance for the last three months. In view of the claimant's denial of the allegation, it must be concluded that the employer did not prove misconduct by a fair preponderance of the evidence. The claimant is not disqualified from receiving benefits.

ISSUE/DIGEST CODE **Misconduct/MC 190.05**
DOCKET/DATE **83-BRD-10499/9-13-83**
AUTHORITY **Section-602A**
TITLE **Evidence**
SUBTITLE **General**
CROSS-REFERENCE **MC 140.35, Conversion Of Property Of Other Than Employer under Dishonesty**

The claimant, a freight elevator operator, was accused by security personnel of wrongfully removing a water cooler owned by a tenant in the employer building. He informed the guard that the tenant had given him the cooler and later provided written authorization, a copy of which was submitted in evidence. The employer did not inquire of the tenant whether permission had been given to the claimant for removal of the cooler and offered the claimant the option of submitting his resignation or being discharged. The claimant refused to resign.

HELD: The employer's evidence was based upon suspicion of dishonesty, while the preponderance of the evidence substantiated the claimant's allegation of ownership. In the absence of any evidence of misappropriation, it must be held that the claimant was discharged for reasons other than misconduct connected with the work and is not subject to any disqualification.

Burden of Proof and Presumptions MC 190.1

ISSUE/DIGEST CODE **Misconduct/MC 190.1**
DOCKET/DATE **ABR-87-2086/6-30-87**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Burden of Proof and Presumptions**
CROSS-REFERENCE **MC 485.3, Violation of Company Rule, Dishonesty**

At the time of hire, the claimant signed a document, which read, in pertinent part:
...The undersigned hereby agrees and consents to submit to a lie detector test at any time...she might be requested to do so at the request of the employer.
The claimant worked in a store, in a department which had been experiencing theft problems. The claimant was transferred to a new department, and, shortly thereafter, the new department experienced missing funds. The claimant, together with other employees, was directed to take a lie detector test. The claimant refused to take the test. She was discharged.

At an appeal hearing, the claimant testified that she was not scheduled to work, nor did she work, on the day funds were discovered missing from her department. She denied misappropriating any funds.

The employer offered no evidence concerning any theft. But, the employer contended that, even if the claimant was not the person responsible for the missing funds, her refusal to submit to a lie detector test - in violation of the agreement at the time of hire - constituted misconduct.

HELD: A worker who is discharged because she has violated a known and reasonable rule is discharged for misconduct.

The fact that a worker knows of an employer's rule or has consented at the time of hire to abide by an employer's rule, does not undo any fundamental unreasonableness of that rule.

Polygraph tests shift the burden from the employer (to establish guilt) to the worker (to establish innocence). Polygraph results have not been shown to be reliable. Polygraph results are inadmissible in a court of law. Therefore, it cannot be concluded that a requirement to submit to a polygraph test is a reasonable one; and, accordingly, a worker who is discharged solely on the basis of refusing to take a polygraph test is discharged for reasons other than misconduct.

In this case, the employer did not possess any tangible, competent evidence bearing on the claimant's alleged involvement in any misappropriation of funds. She was discharged solely upon the basis of her refusal to submit to polygraph testing, which alone did not prove dishonesty or constitute misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 190.1**
DOCKET/DATE	***Meeks v. IDES*, 567 N.E. 2d 481 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof and Presumptions**
CROSS-REFERENCE	**MC 390.2, Fellow Employees; MC 485.15, Company Rule**

The claimant, who worked in an office setting, was discharged after a fight with a fellow employee. At an appeal hearing, the employer did not produce any written rule or offer any testimony that fighting on the job was impermissible. The claimant contended that the employer did not satisfy all the required elements for misconduct under Section 602A because it did not prove *by direct evidence* that it had a "reasonable rule or policy."

HELD: Section 602A provides, in pertinent part, that misconduct arises from a violation of a "reasonable rule or policy." Whether a rule or policy exists need not be proven by direct evidence but may be determined by "common sense business practices." With the exception of some business ventures engaged in professional sports, any employer would obviously have a policy against physical violence. Here, there was an implicit rule against fighting. The "reasonable rule or policy" requirement of Section 602A was met.

Note: This decision was cited in *Petrovic v. IDES* (2016 IL 118562) as a case decided under the "commonsense" doctrine, which reasoned that an employer's rule need not have been expressly stated but could be inferred based on "common sense." In *Petrovic*, the IL Supreme Court narrowed the so-called, "commonsense" rule. Under the premise that an employee should not be disqualified unless he/she engaged in conduct he/she knew was prohibited, the Court announced the following rule: "in the absence of evidence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a prima facie intentional tort." Said another way, unless the conduct was illegal or intentionally tortious, an employer must prove, by direct evidence, the existence of a rule or policy that was expressly conveyed to the claimant. However, the *Petrovic* court did not expressly overrule *Meeks*. Furthermore, under the holding of *Petrovic*, the employer did not need to prove the existence of a rule since the claimant's conduct would constitute an intentional tort.

ISSUE/DIGEST CODE	**Misconduct/MC 190.1**
DOCKET/DATE	**ABR-85-7938/4-18-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof (Refusal to Take Blood Alcohol Test)**
CROSS-REFERENCE	**MC 270.05, Intoxication**

On his last day of work, the claimant, a Truck Driver, was involved in 2 accidents. When he reported in at the end of his shift, he was confronted by the Transportation Supervisor, who testified that, because he smelled alcohol on the claimant's breath, he directed the claimant to take a blood test for alcohol.

The claimant refused to take the blood test. He contended, among other reasons, that the contract between his union and the employer did not require that he take the blood alcohol test. Also, he was fearful that any alcohol which he had consumed up to 18 hours earlier, off the job, might result in the test being "positive."

Upon his refusal to submit to testing, he was discharged.

HELD: The refusal to take a blood alcohol test does not constitute misconduct per se. However, reporting to work in an intoxicated condition may constitute misconduct.

In the instant case, the employer presented evidence to show that the claimant had been under the influence of alcohol while at work: he was observed to have alcohol on his breath and he had had accidents with the company vehicle.

The fact that the claimant did not take a blood alcohol test, for whatever reason(s), did not alter the facts as presented by the employer. The claimant did nothing to rebut those facts.

The employer established by a preponderance of the evidence that the claimant had reported to work in an intoxicated condition. The claimant's actions, irrespective of his refusal to submit to a blood alcohol test, constituted misconduct connected with his work.

Weight and Sufficiency MC 190.15

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	***Jackson v. Board of Review*, 105 Ill. 2d 501 (1985)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Interview with Claims adjudicator)**
CROSS-REFERENCE	**None**

Claimant was discharged for drinking intoxicating liquor on the job in violation of the employer's rule prohibiting that conduct. Claimant had been previously warned about drinking on the job. Following her discharge, claimant filed a grievance with her union where she neither admitted nor denied that conduct. Claimant filed for benefits and was denied by the Local Office. At claimant's hearing, two employer witnesses testified. Neither one had personal knowledge of any misconduct of the claimant, though one witness was the one who gave the claimant the previous warning. The employer's witness testified that on the day claimant was terminated, an assistant supervisor found her at 7:00 p.m. with a half can of beer and a half bottle of vodka. The Asst. Supervisor called a supervisor who told claimant he had no alternative but to terminate her employment because she had been warned about a week previously by another supervisor about drinking on the job. Claimant's immediate supervisor had given an informal report or memorandum to the witness. This document was not introduced into evidence, but it was referred to at length by the referee, who quoted from its contents in asking questions. The referee referred to specific entries in this memorandum regarding previous instances regarding being found on the job with alcohol nearby. At the hearing, claimant told the referee that "no one caught me drinking." She denied that on the day she was terminated she had a half can of beer and a half bottle of vodka. She also denied that she was drinking on the other occasions. She admitted that on one occasion she had had a beer with her lunch and was warned about having beer with her lunch but insisted that on the occasion when she was discharged, she had not been drinking. When the referee reminded her that the evidence was that on the day of her discharge, she had a half can of beer and an open bottle of vodka, she stated that was a lie. At the hearing neither the claimant nor the

employer objected to the hearsay evidence. Benefit Appeals affirmed the Local Office and the Board affirmed. The Circuit Court reversed, and the Appellate Court affirmed the Circuit Court.

HELD: In reversing the judgments of the Appellate Court and of the Circuit Court of Cook County, the Illinois Supreme Court affirmed the decision of the Board of Review denying benefits. The court stated, "It is well established that when hearsay evidence is admitted without an objection, it is to be considered and given its natural probative effect…The statements of both the claimant and the employer's representatives were before the referee. It was his prerogative to give those statements whatever weight he thought they should be given."

ISSUE/DIGEST CODE	**Misconduct 190.15**
DOCKET/DATE	***James L. Hafele & Associates v. IDES*, 308 Ill. App. 3d 983 (3d Dist. 1999)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**None**

The claimant was employed as a secretary with the employer, a law firm, and was discharged. A hearings referee found that the claimant was eligible for benefits. This finding was affirmed by the Board of Review and the Circuit Court. On appeal the employer argued that the employee was ineligible for benefits because she was discharged for cumulative acts of misconduct connected to her work, and that the employer should have been granted a continuance to present the testimony of a witness who was undergoing surgery at the time of the hearing.

HELD: The Board's findings are not against the manifest weight of the evidence and will not be overturned if there is any evidence in the record that supports the Board's decision. In this case, there is evidence in the record to support the Board's findings that the employee was not discharged for cumulative acts of misconduct but rather for a single act when she allegedly feigned illness so she could miss work, and that her illness was not feigned.

There is no absolute right to a continuance, and an administrative agency has broad discretion in determining whether to grant a continuance. There is no abuse of discretion if there is no showing that had the continuance been granted additional evidence would have been discovered which could have affected the outcome of the hearing. In this case, there was no abuse of discretion since the witness' testimony would only have been cumulative of other witnesses' testimony.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	***Thomas v. Ward*, 570 N.E. 2d 477 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**MC 15.1, Absence; PR 380.25, Review, Scope**

The claimant had received numerous warnings for unexcused absenteeism. He was last absent because he was seeking admission to a hospital because of a reaction to heroin. The employer discharged him for being absent without notice.

The claimant testified that he tried to contact his employer by telephone. The employer testified that there was no message on its answering machine.

HELD: Questions of fact may be resolved by assessing the parties' credibility.

Here, the question of fact was whether the claimant called in. All the employer had to offer as evidence was a statement that something did not exist. Still, based upon the parties' credibility, this was sufficient to deny benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**ABR-86-9483/9-29-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence, Weight and Sufficiency**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

The claimant was employed as a truck driver, until, during a routine physical check-up, a test of a urine specimen reportedly revealed the presence of marijuana in the claimant's system. At an appeal hearing, the employer testified that both the company and the claimant's union had approved a rule that a test result of over 30 nanograms of marijuana would subject a driver to discharge. The employer submitted into evidence a laboratory test result, indicating that the claimant had 50 nanograms of marijuana in his system. There was no testimony offered concerning who administered the test or how the test was administered.

The claimant denied using marijuana.

HELD: Hearsay is an out-of-court statement (including a document) which is offered to prove the truth of the matter asserted. The defects in hearsay evidence can be overcome, by laying a proper foundation, through testimony. But in this case, there was no chain of evidence which established, in the first place, that it was the claimant's specimen which was analyzed, and not someone else's. Further, because there was no testimony by or concerning the person(s) who administered the test or how it was administered, there was no basis for determining the reliability of the test results. Therefore, the hearsay defects (no cross-examination, unreliability) were not overcome.

ISSUE/DIGEST CODE	**Misconduct/MC-190.15**
DOCKET/DATE	**ABR-09-15206**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**MC 485.65, Violation of Company Rule -Motor Vehicle**

The claimant was discharged on July 15, 2009 for speeding while transporting a patient. The employer's dispatch supervisor testified that the employer's Global Positioning System (GPS) tracked the claimants' vehicle, but he was not aware of the date the vehicle was tracked. The GPS system purportedly showed that the claimant had driven at speeds of 82 and 83 mph on July 14, 2009. The employer's human resources person testified that she was not aware of how the GPS system was calibrated and whether it is accurate from day to day. The claimant denied that she had driven over the speed limit.

HELD: The Board of Review found that the claimant's testimony denying that she had exceeded the speed limit was more credible than that of the employer's witnesses where (1) none of whom had first hand knowledge of the claimant's alleged speeding, (2) the employer's dispatch supervisor was unaware of the exact date that the employer's GPS system had tracked the claimant, and (3) the human resources person was unaware of how the employer's GPS system was calibrated and whether it was accurate from day to day. Evidence upon which a decision is based must be competent, credible, and of such a nature that reasonable people would rely upon it. Here, the evidence submitted by the employer was not insufficient to prove that the claimant was discharged for misconduct connected with the work.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**ABR-85-7264/4-23-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Circumstantial Evidence**
CROSS-REFERENCE	**MC 140.3, Dishonesty, Conversion of Property**

The claimant, a Warehouse Worker for a department store, was discharged after the employer determined that he had taken possession of the employer's property (a pair of blue jeans) for his personal use.

At an appeal hearing, the employer established the facts that: Security officers had found an open carton of blue jeans, with 1 pair missing, on the floor of a trailer where the claimant had been working. The claimant was then escorted to the security office, where he was asked to remove his coveralls so that a security officer could inspect the jeans he was wearing. The claimant refused. He insisted that the union steward be present. The claimant, accompanied by a security officer, went into the warehouse to find the steward. Before returning, the claimant requested to go to the rest room. There, inside a stall, he was heard to be ripping material. Upon his return to the security office, he removed his coveralls and displayed his jeans: identical in size, brand, pattern, and every respect -- except for knife or razor-torn cuffs -- to the jeans missing from the open carton. The employer further testified that the claimant carried a knife while at work, as a necessary tool.

The claimant testified that the jeans he was wearing had been purchased by his wife several days earlier, at another of the employer's stores. He offered into evidence a cash register receipt, claiming it represented the purchase of the jeans he was wearing. The date of the purchase and the number of the register upon which it had been rung up had been obliterated.

The Referee concluded that, because the employer did not offer testimony from a witness who had personally observed the claimant taking the jeans from the carton, it had not proven its case.

HELD: Evidence upon which a decision will be based must be competent, credible, and of such a nature that reasonable people would rely upon it. In the instant case, the employer offered competent and credible evidence as to every fact but one; the employer did not produce an eye-witness to the taking. Still, from the evidence, the fact that the claimant took the jeans could reasonably have been deduced. On that basis, the employer made its case.

In response, the claimant offered into evidence a sales receipt which established nothing. The claimant's contention that his wife had purchased the jeans was not supported by the evidence.

The employer met its burden of proof by presenting competent, credible evidence upon which reasonable people could rely. The employer's evidence was entitled to greater weight than the claimant's. The evidence established that the claimant had converted the employer's property for his personal use. Any worker who is discharged for wrongfully converting property of his employer is discharged for misconduct connected with the work. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**ABR-88-071/2-23-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

The claimant’s supervisor testified that he saw two workers with an open container of alcohol. They went to a car, took out a package, and brought it to the claimant. The claimant went into the locker room and locked the door. The supervisor knocked on the door, but the claimant did not respond for ten minutes. When the claimant finally came out, his eyes were bloodshot and he had difficulty speaking and maintaining his balance.

The employer directed the claimant to undergo blood and urinalysis tests. The employer submitted into evidence a copy of a report from a laboratory showing that there was cocaine in the claimant’s system. There was no foundation laid for the findings of that report.

The claimant denied using alcohol or drugs.

HELD: A worker who is discharged for being in an impaired condition at work due to the use of controlled substances is discharged for misconduct.

Proof that the worker’s condition is due to the use of drugs does not necessarily depend upon a laboratory report, nor need a witness actually observe the worker at the precise moment he uses the drug. Circumstantial evidence may provide the necessary proof.

Here, the claimant’s supervisor’s testimony as to what he observed - before, during, and after the claimant was locked in the locker room - was competent evidence that the claimant was in an impaired condition due to the use of drugs, and was all that was necessary to deny benefits. (While the blood and urinalysis report was hearsay, it supported the supervisor’s conclusions.)

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-06072/8-22-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Referee's Findings as to Credibility)**
CROSS-REFERENCE	**PR 380.15, Rehearing or Review, Credibility of Witness**

The claimant was employed as a Housekeeper in a hospital, until his discharge for reportedly stealing food.
At the appeal hearing, the employer's first witness, a security officer, testified that in the course of her investigation of the causes of missing food, she hid in a Day Surgery dressing room, directly across from a nurses' station where the food in question was kept. She observed the claimant enter the nurses' station, stoop and crawl toward a refrigerator, and remove two cartons of juice. The security officer exclaimed, "I got you!" Whereupon the claimant replaced the cartons of juice and proceeded to walk away, ignoring a command that he stop. At that point, one of the claimant's co-workers approached the area, as did the claimant's supervisor.

The employer's second witness testified that the claimant did have the right to be in the Day Surgery section of the hospital. However, that witness testified that the claimant's co-worker had no business being there.

The claimant's supervisor filed a report concerning the incident. It reflected what the security officer had reported to the supervisor and did not mention the claimant's co-worker.

The claimant testified that he never took anything from the refrigerator. Both the claimant and his witness, the co-worker, testified that they had a right to be in the Day Surgery section, since they were on a break and were not preoccupied by other duties. They testified that they had entered the Day Surgery section together.

The Referee issued a decision in which it was concluded that the claimant had not attempted to steal food items.

HELD: Where the record is adequate, but the testimony of the parties is conflicting, the Referee - being in the best position to observe the demeanor of the witnesses and to assess their credibility - shall determine which testimony is more credible and what weight to accord it. In the instant case, neither the claimant's nor his co-worker's statements were any less consistent or on their face entitled to any less credence than the statements of the employer's witnesses. Therefore, it could not be concluded that the Referee's decision was contrary to the manifest weight of the evidence.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-05454/7-19-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Referee's Findings as to Credibility)**
CROSS-REFERENCE	**PR 380.15, Rehearing or Review, Credibility of Witness**

The claimant was employed as a Nurse's Aide, until her discharge for reportedly remarking to a patient: "Shut up, you old crab."

At the appeal hearing, the claimant, under oath, denied making any such remark to a patient. An eyewitness of the employer, also under oath, testified to having heard the claimant make the remark to a patient.

The Referee concluded that the claimant had made the remark to a patient and as a result the claimant was disqualified under Section 602A.

HELD: Where the record is adequate, but the testimony of the parties is conflicting, the Referee -- who has had an opportunity to observe the demeanor and mien of the witnesses -- shall determine which testimony is more credible and what weight to accord it. In the instant case, the Board of Review determined that the record was adequate and that the Referee had made appropriate findings as to credibility. Therefore, the Referee's decision was properly based upon the preponderance of credible evidence.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-05305/7-15-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Admissions, Effect upon Hearsay)**
CROSS-REFERENCE	**None**

On January 2, 1985, the claimant appeared and testified at a hearing, which the employer did not attend, to consider the issue of whether the claimant had been discharged for misconduct connected with her work. During the course of that hearing, the Referee read into the record statements made previously by the employer in the course of an interview with the Claims Adjudicator. Those statements indicated that the claimant had falsified her production reports before submitting them to the employer. Apart from reading those statements into the record, the Referee also heard the claimant's direct testimony. In a decision dated January 11, 1985, the Referee made the following finding of fact: "The claimant admitted she sometimes adjusted or estimated her daily duty charts." The Referee concluded that the claimant's actions constituted misconduct connected with her work.

In her memorandum in support of her appeal to the Board of Review, the claimant contented that "inadmissible hearsay evidence" formed the basis for the Referee's decision.

HELD: Agency Rule 2720.250 reads, in pertinent part:

> Technical rules of evidence do not apply to hearings before Referees. However, the decision of the Referee will be based on the preponderance of the credible, legally competent evidence in the record.

Therefore, even though an employer's statements to a Claims Adjudicator might constitute hearsay, they are admissible as evidence, so long as the Referee recognizes the inherent weakness of such evidence and accords its due weight in his decision.

In the instant case, although the Referee read into the record the employer's hearsay statements, nothing in the Referee's findings or conclusion supported the claimant's contention that the employer's hearsay statements formed the basis for the Referee's decision. Rather, it was the claimant's admission which corroborated the employer's statements and resulted in her disqualification for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-05276/7-12-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Credibility)**
CROSS-REFERENCE	**None**

The claimant, a 35-year-old working mother, was employed as an Ambulance Dispatcher on the third shift until her discharge, which, according to the employer's witness, resulted from the claimant sleeping on the job. The claimant explained to the Referee that she had not been sleeping, but instead had been lying on a couch because she had been ill with mononucleosis.

Prior to the appeal hearing, nowhere in the course of an interview with the Claims Adjudicator had the claimant denied sleeping on the job. Nor had she made mention of an illness. Instead, she had attributed her lack of sleep to having "to deal with the kids during the day." Neither prior to, during, nor after the incident in question had the claimant complained to her employer of any illness.

HELD: Inconsistent statements, especially material omissions, may impeach an individual's testimony. Because the claimant had made no mention of any illness to either her employer or the Claims Adjudicator, her credibility was questionable. Therefore, based upon credibility it was established that the claimant was sleeping on the job, not due to illness. Sleeping during working hours indicated a willful disregard of the employer's interests, because it interfered with the normal operation of the employer's business, dispatching ambulances. The claimant's actions constituted misconduct connected with her work.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-04800/6-26-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency/Polygraph, Admissions Incident Thereto**
CROSS-REFERENCE	**MC 380.05, Relation of Offense to Discharge**

The claimant was employed by a bank, as Assistant to the Chief Cashier. The claimant was asked by her employer, and consented, to take a polygraph test, in connection with a loss of $4,000. The claimant was absolved of any wrongdoing in connection with that loss. However, apart from the polygraph results themselves, the claimant admitted to her employer, and later to the Referee, that earlier in her course of employment she had misappropriated funds: She had kept for herself overpayments made by bank customers. Upon hearing this, the employer discharged the claimant for her earlier, dishonest acts.

HELD: Although the results of the polygraph test would not, of themselves, have been reliable enough to have been admissible against the claimant, no such bar would have applied to the claimant's unequivocal admission to her employer, absent coercion or duress. On the basis of competent evidence of acts of dishonesty inherently violative of the employment relationship, the claimant was discharged for misconduct within the meaning of section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**ABR-85-3858/9-30-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Credibility)**
CROSS-REFERENCE	**MC 270.05, Intoxication; PR 380.15, Review**

The claimant, a Driver, left his employer's garage at 4 p.m. on Christmas Eve, to pick up and deliver mail, and was expected to return no later than 6 p.m. Instead, at 8:15 p.m., the employer located the claimant in the vestibule of a closed post office along his route. The employer testified that although he found no "booze" on the claimant's person or in his truck, the claimant was in an obviously drunken condition.

The claimant testified that his truck had twice stalled, leaving him stranded at a post office until his employer could arrive with a tow truck. He denied that he had consumed any intoxicants. He stated that he believed the employer discharged him in retaliation for the claimant's having exposed certain violations of law by the employer: The claimant said that he had been instrumental in forcing the employer to pay unemployment insurance contributions, and to buy state licenses for trucks which the employer had been operating with dealers' stickers.

The Referee asked the employer no questions concerning the alleged violations and alleged retaliation. Subsequently, the Referee issued a decision which disqualified the claimant for benefits. The Referee's conclusions rested solely upon the employer's testimony, which the Referee had found to be more credible than that of the claimant.

In its review of the record, the Board of Review noted that the claimant made reference to the fact that, for 49 years, his speech had been impaired, and he walked with a limp. Those points were not developed in the record.

HELD: Where the record is adequate, and a Referee's findings as to credibility are supported by that record, the Referee's findings as to credibility will not be disturbed, since the Referee would have been in the best position to evaluate the demeanor and mien of the witnesses. However, from an inadequate record, a Referee's findings as to credibility, being unsupported, must be questioned.

In the instant case, the Referee's failure to ask relevant questions rendered the record, and therefore the Referee's resolution of the question of credibility, inadequate. The case was remanded, with instructions to pose the following relevant questions:

(1) Was the employer in violation of tax and licensing laws; and

(2) Did the claimant expose such violations to the authorities; and

(3) Was the claimant's act of exposing such violations a consideration in the employer's decision to discharge him; and

(4) Does the claimant suffer from physical disabilities which could cause him to speak and walk as if he were intoxicated?

The Referee was instructed to elicit testimony with respect to those questions, and, from that testimony and the evidence previously submitted, make findings and issue a decision based upon the more complete record.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-85-6855/2-26-86**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency (Hearsay vs. Admission)**
CROSS-REFERENCE MC **45.4, Attitude Toward Employer**

A woman came into the employer's furniture department, where the claimant worked as a Salesman, and asked for his assistance in connection with an insurance claim. The claimant was paid by commission and considered this to be a non-productive use of his time. Later, it was reported, by both the woman and a co-worker, that the claimant had remarked: "I've just spent one hour with this fucking bitch."

When confronted with this accusation in the employer's personnel office, the claimant told the personnel manager: "I do not recall saying that at all." Subsequently, the claimant told the Adjudicator: "I have no recollection of swearing at all."

At an appeal hearing, neither the woman nor the co-worker appeared. Claimant's counsel objected to all testimony concerning their statements as hearsay.

HELD: A Referee must base his decision upon competent evidence in the record. Admissions do not constitute hearsay, and can be the basis for a decision to disqualify. Admissions need not be explicit, but may arise from an individual's silence or equivocal responses.

In the instant case, irrespective of the non-appearing witnesses' statements, the claimant had 2 opportunities to deny categorically that he had remarked, "I've just spent an hour with this fucking bitch." Yet, he made no such denial. Had the claimant not made such a remark he would have recalled that he had not. To believe otherwise would be contrary to reason. By his equivocal responses, the claimant admitted to having made a remark which was impudent and discourteous. He breached his duty to his employer to behave properly toward the employer's patrons. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-85-4804/2-28-86**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS-REFERENCE **None**

In connection with the disappearance of merchandise from his employer's premises, the claimant, and several other employees, were directed to take a polygraph test. On principle, the claimant refused to take the test. The employer discharged him, although there was no evidence, independent of the polygraph refusal, to indicate that the claimant had stolen anything.

HELD: A rule requiring that a worker submit to a lie detector test is unreasonable since it places the initial burden of proof upon the worker to establish his innocence. Accordingly, a worker's refusal to submit to this unreasonable test does not constitute misconduct. The refusal to take a polygraph test, alone, unsupported by competent evidence, does not constitute misconduct connected with work.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE ***Northern Service v. Bd of Review*, No. 3-87-0450 (1988)**
AUTHORITY **Section 602A of the Act**

TITLE **Evidence**
SUBTITLE **Weight and Sufficiency (Hearsay)**
CROSS-REFERENCE **None**

The claimant worked in a service station which sold lottery tickets. For security reasons, the claimant was enclosed in a small glass-enclosed kiosk and tickets and money were passed between the claimant and a customer through a slot 2 inches high and 4 inches long.
The claimant's discharge was based upon the employer's belief that she had been rude to 5 customers. None of those customers testified at the appeal hearing. The only evidence of the claimant's behavior toward those customers was the testimony of an employer's witness relating their complaints.

The employer's testimony was that one of the complaints was made on the phone and came from a black woman who complained that she had been called a nigger son-of-a-bitch when she was purchasing lottery tickets. The caller further stated that the claimant had thrown lottery tickets and money at her through the slot of the cubicle where the claimant was stationed. Another incident testified to was of the same nature by a gentleman who claimed that a mistake had been made in his lottery tickets and when the error was called to the claimant's attention she refused to remedy the mistake and threw the tickets at him. The other 3 complaints also concerned rudeness and throwing tickets.

The claimant, through counsel, objected to this testimony as hearsay.

The employer did not quarrel as to whether or not such testimony was hearsay but argued that hearsay evidence was admissible in unemployment insurance hearings and had in the past been relied upon in the decision rendering process.

HELD: When hearsay evidence is admitted without an objection it is to be considered and given its natural probative effect.

In this case, the claimant, through counsel, made objections as to the hearsay testimony. Therefore, the hearsay evidence could not be considered in the decision rendering process.

But even if the claimant had not objected, hearsay, generally, has little probative value and is, generally, unreliable. In this case, the unreliability of the testimony was illustrated by the statements that on numerous occasions the claimant threw money and lottery tickets at customers. Because the claimant worked in a small glass-enclosed kiosk type structure where tickets and money were passed through a slot 2-by-4-inches, it was impossible for the claimant to throw or hurl any objects at anyone. There was no evidence of misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-98-99 / 5-6-98**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS REFERENCE **MC 385.05, Relation of Offense to Discharge**

On October 2, the claimant was fired immediately after he was found at work in possession of a plastic bag, the contents of which were unknown at the time; however, the employer suspected the bag contained an illegal substance. The results of a laboratory test became available a week after the claimant’s discharge: the bag contained heroin. The employer attached a copy of the test results to its protest, dated October 30. After an appeal hearing, a Referee concluded the claimant was discharged on mere suspicion (and not for misconduct) because the contents of the bag were not known at the time the employer discharged the claimant.

HELD: The relevant inquiries are to determine the stated reason for the discharge, and, whether the individual’s actions occurred prior to or after the discharge. Here, the employer stated it fired the claimant for being in possession of an illegal substance while at work, and the claimant was in possession of an illegal substance while at work. The fact that evidence validating the employer’s suspicions became available after the discharge is of no concern. Benefits were denied.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-98-3684 / 6-15-98**
AUTHORITY **Section 602A of the Act**

TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS REFERENCE **None**

The claimant tested positive for cocaine. He was in the process of being discharged when he participated in an exit interview with the employer's industrial nurse. During that interview he neither denied using illegal substances nor objected to his discharge on that basis. At an appeal hearing, at which the nurse testified, a copy of the laboratory report was presented. No foundation was laid for the report and it constituted hearsay. The issue was whether that deficiency in the employer's evidence meant there was no competent evidence of drug use.

HELD: Despite the deficiency of the laboratory report, the nurse could provide direct evidence of the claimant's reaction -- or lack of reaction – during the exit interview, which was tantamount to the claimant's admission of drug use. Benefits were denied based upon the claimant's admission.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-94-1878 / 7/1/98**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS REFERENCE **None**

In a case where a urine specimen tested positive for drugs, the claimant's attorney objected that a "chain of custody log" should not be considered as evidence because it was hearsay; no one whose name was entered in the log testified at the hearing. The log contained the signatures of everyone who came into contact with the specimen, the reason each person came into contact with the specimen, and further indicated the specimen had been properly sealed and marked. The entries were made as the events occurred. The log was submitted at the hearing by the director of the laboratory that did the testing.

HELD: There is an exception to the hearsay rule for business records. The record in question must have been made in the regular course of business (as it was here, the laboratory being in the business of performing tests) and it must have been the regular course of business to make the record at the time of the act, transaction, occurrence, or event, or within a reasonable time thereafter (and, here, the log entries were made as they occurred). The chain of custody log was a business record and could be considered as evidence. Benefits were denied.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-97-6477 / 9-5-97**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS REFERENCE **None**

The employer's drug-testing procedures provided for a "split sample," which was segregated and retained for testing, if desired. After initially testing positive for marijuana, the claimant chose not to exercise his option to have his split sample tested. At an appeal hearing, the employer presented a copy of the laboratory report indicating the presence of marijuana, but laid no foundation for the report. The issue was whether the deficiency in the employer's evidence (the laboratory report was hearsay) meant there was no evidence of drug use.

HELD: Despite the deficiency in the employer's evidence, the claimant's failure to exercise his option to have the split sample tested was tantamount to an admission against interest (an admission he smoked marijuana). Benefits were denied based upon the claimant's admission.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**ABR-98-5200 / 7-31-98**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS REFERENCE	**None**

The claimant was fired after testing positive for marijuana. She admitted having smoked marijuana, but not recently. She suggested that, because she was frequently in the company of marijuana users, the positive test result must have been from ingesting their second-hand smoke.

HELD: Once it was shown the claimant tested positive for marijuana, the burden was on the claimant to show either that the test was not reliable (which she did not contend) or provide an explanation that would make it more likely she had not smoked marijuana. The claimant's second-hand smoke theory was medically improbable, as she presented no medical evidence that second-hand marijuana smoke could result in her positive test result. Further, her past use of marijuana and her continued frequent association with marijuana users made it more likely than not she was smoking with them. It was shown by a preponderance of the evidence the claimant smoked marijuana. Benefits were denied.

ISSUE/DIGEST CODE	**MC 190.15 Evidence, Weight & Sufficiency**
DOCKET/DATE	***Village Discount Outlet v. Department of Employment Security*, 384 Ill.App.3d 522, 323 Ill.Dec. 469, 893 N.E.2d 943 (1st Dist., 2008)**
AUTHORITY	**56 Ill. Adm. Code 2720.250 and 2720.270**
TITLE	**Evidence**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 190.15 Evidence, General; PR 195.05, Fair Hearing & Due Process**

The employer operated drop-off facilities and thrift stores for various charities. It discharged the claimant for allegedly setting aside donations intended for the employer and taking them for himself or his relatives. At the hearing before the Referee, the employer's Regional Manager testified that he had seen a videotape showing the claimant setting aside a television and directing attendants to load it into a relative's car. The claimant denied taking any items. On appeal by the claimant, the Board of Review reversed the Referee's finding of misconduct on the basis that the Regional Manager's testimony was hearsay and there was not sufficient firsthand evidence to show that the claimant had actually committed the actions that had caused his discharge.

HELD: The appellate court held that the Regional Manager's testimony about his observations of the videotape was not hearsay. The court found, however, that the Board of Review was correct in not ruling that the alleged hearsay was inadmissible and properly gave such evidence its natural probative effect, which was minimal due to fact that the evidence was rife with evidentiary flaws, such as the employer's failure to lay a proper foundation for the videotape. Also affecting the weight of the evidence was that the videotape itself was never introduced into evidence and, thus, the witness's description of what he saw on the tape ran afoul of the "best evidence rule", which expresses a preference for the original of documentary evidence when the contents of the documentary evidence are sought to be proved.

The court also held that the employer's due process right to a fair hearing was not violated. The court noted that the Referee took an active role in developing the evidence and fleshing out the positions of the parties. Due process does not require the Referee to take such an active role at a hearing that all evidentiary deficiencies are remedied, even where a party is not represented by legal counsel. The employer was given prior notice of the requirements for admitting the videotape into evidence and elected, instead, to present only the testimony of a supervisor who had been shown the tape. According to the court, the employer "must now live with the consequences of that decision." Since the employer received a fair hearing, there was no necessity to remand the matter to allow the employer another opportunity to correct any evidentiary deficiencies in its case.

ISSUE/DIGEST CODE	**Misconduct/ MC 190.15**
DOCKET/DATE	***Ronald Baker v. Illinois Department of Employment Security*, 2014 IL App (1st) 123669, 7 N.E.3d 830 (1st Dist. 2014)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**MC 485.15, Violation of Company Rule, Assaulting Fellow Employee**

The claimant was employed as an electrician for a Park District. The claimant got into a dispute with a coworker. When the claimant was called into his supervisor's office to discuss the matter, the claimant allegedly directed remarks to each of the supervisors that he would "go Arizona" (weeks after an incident occurred in Arizona where a gunman killed several people and injured a congresswoman). Thereafter, the claimant was discharged for violating the Park District's code of conduct that provides, in part, that an employee is prohibited from making aggressive or hostile comments or threatening remarks to another person.

At the hearing, the claimant's former supervisor testified that the claimant made remarks about "going Arizona" and felt that the claimant's remarks were threats to do bodily harm. The claimant testified that he said that "ain't nobody trying to go Arizona" and that such statement was not a threat. In addition, the claimant presented an un-notarized statement from his foreman, which the foreman stated that he did not feel threatened by the claimant's remarks. The Referee entered the statement into the record but pointed out that it was hearsay and of little evidentiary value because the statement was not signed, dated or notarized. The Referee found that the claimant's former supervisor testimony was more credible and held that the claimant was discharged for misconduct. The Board affirmed the decision of the Referee.

The claimant filed a complaint for administrative review and attached another un-notarized statement from his foreman to the complaint. The circuit court granted the Department's motion to strike the un-notarized statement and affirmed the Board's decision. On appeal, the claimant asked that the matter be remanded for the testimony of the foreman who allegedly was not available at the time of the hearing.

HELD: The Appellate Court denied the claimant's request to remand to the Board for the taking of additional testimony from the foreman because there was already credible testimony by the claimant's supervisor. Additionally, the court reasoned that the claimant received the Department's pamphlet on preparing for a hearing, which provides information on free legal services and information on his right to request that the hearing referee to subpoena witnesses. The decision of the Board was affirmed.

Gross, Aggravated, or Other Special Misconduct Disqualifications MC 200
General MC 200.05
No Decisions

Insubordination MC 255

General MC 255.05

ISSUE/DIGEST CODE	**Misconduct/MC 255.05**
DOCKET/DATE	**85-BRD-04690/6-25-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Refusal to Sign Reprimand**
CROSS-REFERENCE	**None**

The claimant, an Inspector, was asked to sign a counseling notice concerning her alleged mislabeling of boxes. The claimant asked what the consequences would be if she signed. She was told that her signature would constitute an admission of wrongdoing. The claimant refused to sign the counseling notice because she disagreed with it. As a result of her refusal to sign, she was discharged.

HELD: The claimant reasonably understood that by signing the warning notice she would be admitting to wrongdoing of which she did not feel culpable. Under those circumstances, her refusal to sign the statement was not an act of insubordination, but a refusal to incriminate herself, which by itself should not constitute misconduct. This case would be distinguished from one where a claimant's signature would serve merely to acknowledge earlier receipt of a warning, unaccompanied by an admission.

(Compare 85-BRD-04661/6-20-85, where the claimant, a Sales Representative, was asked to sign an official written notice, for the purpose of acknowledging previous verbal reprimands. The claimant refused to sign, or even read the document, instead remarking: "This is a bunch of crap."

HELD: In this second case, the claimant did not have a compelling reason for refusing to sign. The claimant could have kept his job by merely acknowledging receipt of a document prepared solely for the purpose of the employer maintaining accurate

records. The claimant's refusal to sign, or even read the document, manifested an indifference to whether he remained employed, and was, in effect, a challenge to the employer to discharge him).

Note: The distinction between 85 BRD 04690/6-25-85 and 85-BRD-04661/6-20-85 is important in that a refusal to sign a reprimand in which the signing is an admission of conduct the claimant denies might not be misconduct whereas a refusal to sign a reprimand where the claimant is merely acknowledging the receipt of the reprimand could be misconduct. Furthermore, in the case where the claimant refuses to sign a reprimand where it merely an acknowledgment of receipt of the reprimand, it would only be misconduct under the general definition of misconduct if the employer had a rule defining misconduct (see *Petrovic v. IDES* (2016 IL 118562)) or if the conduct fell under Section 602A(5) of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 255.05**
DOCKET/DATE	***Wise v. Department of Employment Security*., 2015 IL App (5th) 130306, 24N.E.3d 20, 388 Ill.Dec.112 (5th Dist., 2015)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS-REFERENCE	**MC 45.35, Attitude Toward Employer; MC 5.05 Definition (Potential Harm)**

The claimant, a cook and buffet station attendant, was working at the barbecue station when her supervisor checked the temperatures of the food and discovered that the temperatures of two items—the coleslaw and tuna salad—were too high. The supervisor instructed the claimant to get more ice and water to put under the pans to cool them to a safe temperature. The claimant refused because she was "tired of doing everybody's jobs around here." The claimant left the work station and told another employee to get the ice. The employer's rules prohibited insubordination and the claimant was discharged. The claimant was found ineligible by the adjudicator and the claimant appealed. Following a hearing, the referee affirmed, finding that (1) the claimant told her supervisor that she was not going to get the ice and then left her work area and told another employee to get the ice; (2) there was no compelling reason for the claimant to refuse to follow her supervisor's instruction; (3) the claimant was aware that employer had a rule against insubordination; (4) the rule was reasonable; and (5) the claimant's refusal to get the ice was an act that harmed her employer. The claimant appealed, and the Board affirmed. The claimant appealed, and the circuit court reversed the Board, finding there was no evidence that the claimant's refusal to comply with her supervisor's direction harmed her employer. The court focused on cases which hold that merely being argumentative is generally insufficient to amount to misconduct. The employer and the Department appealed.

HELD: The appellate court reversed the decision of the circuit court. The appellate court stated that the claimant was discharged for violating her employer's rule against insubordination. The claimant admitted that she knew the employer had a rule against insubordination, and there was no real dispute that the rule was reasonable. In addition, there was no dispute that the claimant was not warned previously about insubordination. The only question was whether her conduct harmed her employer. The court rejected the claimant's argument that potential harm is not sufficient to disqualify her. In discussing actual versus potential harm the court stated that if actual harm were required for a finding of misconduct, "an employee who steals cash from an office safe would not be guilty of misconduct so long as the police eventually return the cash to the employer," citing *Farris v. Department of Employment Security*, 380 Ill.Dec. 118, 8 N.E.3d 49 (4th Dist., 2014). The court noted, however, that the harm requirement is not met where the potential for harm is remote or speculative, citing *Czajka v. Department of Employment Security*, 387 Ill.App.3d 168, 180, 327 Ill.Dec. 108, 901 N.E.2d 436 (1st Dist., 2008). The court stated that the realistic potential for serious harm from the claimant's refusal is readily apparent. If the food had remained at temperatures significantly above the safe range, customers could have eaten it and become ill. This possibility was not remote or speculative. Although the claimant asked another employee to get the ice and water for her, she did not take any steps to make sure that the task was actually performed. The court also dismissed the claimant's argument that she was merely being argumentative as the claimant directly refused to comply with an instruction of her supervisor.

Disobedience MC 255.1

ISSUE/DIGEST CODE	**Misconduct/MC 255.1**
DOCKET/DATE	**83-BRD-11470/10-11-83**
AUTHORITY	**Section-602A**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS-REFERENCE	**None**

The claimant's supervisor instructed the claimant to photocopy a list of employees who were authorized to work on weekends so that it could be sent to the security department. The claimant refused to perform this task and was discharged. The claimant had been warned earlier that week for refusing to perform other photocopying.

The claimant did not believe that her job duties included photocopying, and she did not wish to take time away from her regular work because she had fallen behind.

The employer presented a "position description" which stated that the "Nature and Scope" of the claimant's duties included, "making photo copies and other general clerical duties."

HELD: The claimant refused to comply with the reasonable instructions of her supervisor. She had been warned once concerning a similar incident, and the work asked of her was within the scope of the duties of her position, as indicated by her job description. Her refusal to comply with her supervisor's instructions was insubordination, and her discharge was for misconduct connected with her work, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 255.1**
DOCKET/DATE	**84-BRD-1608/2-2-84**
AUTHORITY	**Section-602A**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS-REFERENCE	**None**

The claimant was suspended from her night shift job for poor work performance. She was suspended for three days or until further notice; and, since it was her third suspension, it could have led to her discharge. She was told to leave the plant, but she stayed in the work area and talked to other employees. She testified that she was trying to raise cab fare because she did not wish to drive home at 5:00 a.m. The employer testified that she was offered cab fare, according to company policy, but that she made no response and then had to be removed from the premises by a security guard when she refused to leave.

HELD: The claimant was suspended pending investigation of her work which could have subsequently led to her discharge. She was discharged, after the suspension, however, for refusing to leave the plant on instructions from her foreman. She could reasonably have anticipated that her conduct would lead to a discharge. The claimant was discharged for misconduct connected with her work, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 255.1**
DOCKET/DATE	**84-BRD-2731/2-28-84**
AUTHORITY	**Section-602A**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS-REFERENCE	**None**

In a performance appraisal interview, the claimant was told that she was not producing her best effort and that greater cooperation was expected on her part. The claimant then became argumentative and began yelling. When she was asked to sign the interview form, she refused to do so and said that she did not intend to improve her performance. She was discharged.

HELD: The claimant's refusal both to cooperate with the employer during her performance interview and to improve her performance amounted to a refusal to perform her work as directed. The claimant then became unemployed because of her violation of a reasonable rule of conduct, which the employer had a right to control, and this amounted to misconduct connected with her work. She is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 255.1**
DOCKET/DATE	***Raymond A. Walthall v. IDOL*, 497 N.E. 2d 782 (1986)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS-REFERENCE	**MC 485.05 Violation of Company Rule, Awareness of Rule**

The employer, a department store, had a rule that workers were to eat only in designated areas, such as the cafeteria or lounge, and away from work areas where eating would be both counterproductive and a health hazard. The claimant, a warehouseman, had never been warned about violating this rule.

He was on his 15-minute morning break. He moved away from his immediate work area and into a corner, where he peeled some hard-boiled eggs and began to eat them. His supervisor saw him doing this, informed him that he was violating the employer's rule, and directed him to eat in one of the designated areas. The claimant, however, continued to eat, quickly consuming the rest of his eggs.

HELD: A deliberate violation of an employer's known and reasonable rule constitutes misconduct.

In this case, initially, the claimant might not have been aware of the employer's rule. Therefore, at the time he began eating, there was no demonstration that his violation of the rule was willful.

However, after he received a warning from his supervisor, he was certainly aware of the rule and knew that his supervisor expected his immediate compliance. At this point, he chose to disobey the supervisor's order. This disobedience was a deliberate violation of the employer's known, and reasonable rule and constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 255.1**
DOCKET/DATE	***Persaud v. IDES*, 2019 IL App (1st) 180964**
AUTHORITY	**Section 602A(5) of the Act**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS REFERENCE	**MC 5.05 Definition of Misconduct**

The claimant was a patient service representative for a healthcare company. She was terminated for violations of the employer's personal conduct rules, specifically deliberately refusing to obey the orders or instructions of a manager. She was asked six times within a day to speak with her supervisor about a disciplinary action report and performance improvement plan that were going to address her behavior and performance, but she refused. She was warned that if she continued to refuse to speak to her supervisor she would be terminated. She again refused and was terminated. The claimant filed for benefits.

An adjudicator Determination allowed benefits and the employer appealed. At a hearing the claimant argued that her actions did not constitute misconduct because she thought refusing the request and instead seeking to postpone the interview until after she returned from medical leave was, in essence, requesting a reasonable accommodation. Following the hearing, the Referee affirmed the adjudicator's determination allowing benefits, holding that the claimant's actions were "in good faith" and did not constitute misconduct. The employer appealed and the Board of Review set aside the decision, holding that the claimant's actions constituted misconduct under section 602A(5) of the Act. The claimant appealed and the circuit court affirmed the Board's decision. The claimant appealed to the Appellate Court.

HELD: The Appellate Court affirmed. The Court stated that Section 602A(5) contains no requirement that a refusal to obey an employer's reasonable and lawful instruction be willful or deliberate, nor does the law require proof that the employer was harmed or the conduct was repeated, or that the conduct have violated a reasonable work-related rule. The Appellate Court further noted that while the general definition of misconduct requires these things, "the statute continues to provide that 'notwithstanding' that previous definition, certain actions are deemed to be misconduct *per se*." The Court found that the

claimant disobeyed the employer's instruction. The instruction in this case was not unlawful and it was reasonable as it related directly to the claimant's work as the employer wanted to discuss a work improvement plan for the claimant. The only exceptions to a finding of "misconduct" under this specific definition are (1) if the reasonable and lawful instruction could not be followed by the employee due to lack of ability, skills, or training or (2) if the instruction would require an unsafe act. Neither of these factors was present. As such, the conduct of the claimant constituted misconduct under section 602A(5) of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 255.1**
DOCKET/DATE	**ABR-20-17660/10-27-20**
AUTHORITY	**Section 602A(5) of the Act**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS REFERENCE	**None**

The claimant was employed as a sterilization technician. On her last day of work, her supervisor gave her a direct order to deliver recycled sterilized masks to other departments in the hospital. The claimant refused, and told her supervisor that the employer "might as well write her up." She continued to refuse this order two more times, because she felt unsafe entering other departments due to the COVID-19 pandemic. The employer had provided her with masks and other personal protective equipment, and discharged her for her refusal to perform this task.

HELD: The Board found that certain jobs require employees to assume risks inherent in those jobs, such as health care positions that may require contact with patients who have contracted contagious diseases. In this case, it affirmed the denial of benefits to the claimant under Section 602A(5) of the Act. Section 602A(5) provides, in part, that an individual who refuses to obey the employer's reasonable and lawful instruction may be disqualified for benefits for misconduct connected with work, unless the instruction would result in an unsafe act. Here, the Board held that the employer's order to the claimant was reasonable and lawful and would not be unsafe for her to perform because it gave her personal protective equipment to use while performing her duties. The claimant was insubordinate, and her actions were within her ability to control or avoid.

ISSUE/DIGEST CODE	**Misconduct/MC 255.15**
DOCKET/DATE	***Sheff v. Board of Review*, 470 N.E. 2d 1044 (1984)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Dispute with Superior**
CROSS-REFERENCE	**None**

The claimant, who had worked at a variety of jobs for a grocery, last worked as a Carry-out Boy, 32 hours per week, reduced from 40. In addition to the reduction in hours, the claimant was displeased with the duties his work entailed. He requested a conference with the Store Manager. At that conference, the Store Manager stated that the claimant's unhappiness was nothing new, that the claimant had been displeased with his different jobs in the past as well. The Store Manager suggested that the claimant had demonstrated an unwillingness to accept responsibility on those jobs. The claimant then became upset and angry. Although he did not use profanity or call the Store Manager any names, he raised his voice to twice his normal speaking voice. The Store Manager felt that he was not getting the proper respect, and discharged the claimant.

HELD: In order to constitute misconduct, an act must exhibit a willful disregard of the employer's rules. Being merely argumentative is not sufficient for misconduct.

In the instant case, it was in the privacy of the Manager's office that the claimant raised his voice. There was no abusive language or vilification of the Manager. There were no verbal or physical threats. The claimant was being merely argumentative, and, as such, his acts did not rise to the level of justification for a discharge due to misconduct so as to deprive him of his statutory right to unemployment compensation.

ISSUE/DIGEST CODE	**Misconduct/MC 255.15**
DOCKET/DATE	**ABR-85-5978/1-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Dispute with Superior**

CROSS-REFERENCE **None**

The claimant, who was a Union Steward, was given permission by his foreman to leave his work station a few minutes early, extending his break so that he might discuss a union grievance with the employer's Vice President and Director of Human Resources in the Vice President's office. The Vice President did discuss the grievance with the claimant, until a bell rang to indicate the end of the break, at which time the Vice President suggested that he and the claimant continue to discuss the grievance later. He instructed the claimant to return to his work, which involved an urgent job.

However, the claimant did not respond to that directive, but continued talking about the grievance; the Vice President again ordered him to return immediately to his work. The claimant still did not comply, but continued talking. The Vice President then told the claimant he would have just 30 seconds to leave the office and return to his work. The claimant persisted in talking, until, upon the passing of 30 seconds, the Vice President told the claimant he was discharged.

HELD: In order to constitute misconduct, an act (of alleged insubordination) must exhibit willful disregard of the employer's rules or orders.

In *Sheff v. Board of Review*, 470 N.E. 2d 1044 (1984), it was held that a claimant who had merely raised his voice in the privacy of a superior's office, and did not use abusive or threatening language, was merely being argumentative, and, as such, his acts did not rise to the level of justification for a discharge due to misconduct.

In the instant case, however, there was an additional element. The claimant had been directed to return to his work. He had been given an ample opportunity to return to his work, without forfeiting his right as a Union Steward to discuss the grievance at another, more opportune time. The claimant's intentional failure to respond with reasonable promptness to the Vice President's repeated order to return to his work was an insubordinate defiance of the employer's authority, and constituted misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 255.15**
DOCKET/DATE	***Oleszczuk v. Dept. Of Employment Security,* 782 N.E.2d 808, 336 Ill. App. 3d 46 (1st Dist. (2002)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Dispute with Superior**
CROSS-REFERENCE	**None**

The claimant was employed as a customer service representative. The employer sent her to a two day training session in California. When she returned, her supervisor questioned her about what she had learned and, in particular, whether she could teach her how to do “shipping”. The supervisor testified that the claimant responded that the computers were down in California and that she was unable to teach her anything. The supervisor then called the trainer in California who verified that the claimant had been taught “shipping”. At this point, the claimant became upset and yelled at the supervisor that she had notes from the training. The claimant admitted that she became upset but denied that she yelled at her supervisor. The claimant was discharged for claiming that she hadn’t been taught “shipping” and for yelling at her supervisor.

The Board of Review adopted the findings of the referee that (1) the employer testified the claimant denied learning specific tasks and yelled at her supervisor, (2) the claimant did not provide testimony and evidence warranting reversal of the local office determination that the claimant was disqualified for benefits under Section 602A of the Act, and (3) the claimant therefore deliberately and willfully disregarded the interests of the employer and was properly discharged for misconduct under Section 602A of the Act.

HELD: The Appellate Court held that disqualification for benefits under Section 602A of the Act is proper if: (1) the employer has a reasonable work rule; (2) which the employee deliberately and willfully violates; and (3) the violation either harmed the employer or other employees, or was repeated by the employee despite a warning or instruction to cease the conduct. The court found the referee had made no findings (1) that the claimant had lied to the supervisor, (2) as to what reasonable rule of the employer was violated when the claimant yelled at her supervisor, or (3) how the employer was harmed by that conduct or whether it was repeated conduct after a warning. The referee also made no findings as to the language used by the claimant during the yelling incident. The court concluded the claimant should not have been disqualified for benefits under Section 602A of the Act.

In the absence of evidence of a reasonable work rule, or an explanation of what rule might be inferred from the evidence, there can be no finding that a reasonable work rule has been deliberately and willfully violated. A single flurry of temper between a worker and a supervisor may be enough to warrant discharge in an at-will relationship, but it is not enough to deny unemployment benefits. Arguing with a supervisor without using abusive language or threats is not sufficient to establish discharge for misconduct under the Act.

Dispute with Superior MC 255.15

Exceeding Authority MC 255.2

Negation of Authority MC 255.25

ISSUE/DIGEST CODE	**Misconduct/MC 255.25**
DOCKET/DATE	**ABR-85-2758/2-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Negation of Authority**
CROSS-REFERENCE	**MC 45.2, Attitude Toward Employer**

The claimant alleged that she had been the "victim of sexual bondage and terrorization as a condition of her continued employment" - that she had been required to perform sexual acts with both the employer's president and vice-president, and that, ceasing such conduct, she suffered job consequences including demotion. In October, 1984, her attorney delivered to the employer's president and vice-president a letter, concluding with this language:

> We recognize that public disclosure of the facts concerning...this conduct could be embarrassing to you, and therefore are taking this opportunity to advise that we have been instructed by (the claimant) to file suit...if the matter has not been resolved to (the claimant's) satisfaction... If you would like to discuss the matter, we would be pleased to hear from you or your attorneys...

The employer responded by discharging the claimant, and, when the claimant filed her claim for unemployment benefits, the employer protested, contending that she had been discharged for misconduct connected with her work: The employer had considered the claimant's attorney's letter to have been equivalent to blackmail or extortion. The claimant's rebuttal was that since her problems at work concerned the employer's president and vice-president - the highest levels of authority - it would have served no purpose to have made her complaints through ordinary channels.

HELD: If a worker's discontent is unreasonable, and to the point where it adversely affects her work, or, the manner in which she tries to alleviate an unsatisfactory working condition is unreasonable, a resultant discharge may be for misconduct connected with her work.

In the instant case, the evidence did not show that the discontent underlying the claimant's complaint had been unreasonable. Nor, under the circumstances, was the method by which she chose to proceed unreasonable.

Duties owed the employer do not require that an individual forego a judicial avenue of redress or a disclosure of such intentions to the employer. The claimant, in her communications to her employer, did not initiate anything more than a disclosure to the employer of her intentions to utilize the judicial system afforded the general public for redressing a grievance. Putting the employer on notice was not patently extortionate. Neither the claimant's anticipated actions, nor the disclosure of her intentions to the employer, exhibited a willful disregard of duties owed the employer. The claimant was discharged for reasons other than misconduct connected with her work.

Refusal to Increase Production MC 255.301
No Decisions

Refusal to Transfer MC 255.302
No Decisions

Refusal to Work MC 255.303

ISSUE/DIGEST CODE	**Misconduct/MC 255.303**
DOCKET/DATE	***Hobbie v. Unemp. Appeals Comm'n*, 107 S.Ct. 1046 (1987)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Insubordination, Refusal to Work**
CROSS-REFERENCE	**MC 5.05, Misconduct, Conscientious Objection**

The claimant was employed as Assistant Manager of a retail jewelry store. In April, 1984, she informed her immediate supervisor that she was to be baptized into the Seventh-Day Adventist Church and that, for religious reasons, she would no longer be able to work on her Sabbath, from sundown on Friday to sundown on Saturday. Her supervisor agreed to substitute for her whenever she was scheduled to work on a Friday evening or Saturday; in return, the claimant agreed to work other evenings and Sundays.

In June, 1984, the general manager of the jewelry store learned of this arrangement and advised the claimant that she could either work her scheduled shifts or resign. When the claimant refused to do either, she was discharged. When she filed for unemployment benefits, she was disqualified on the basis that she had been discharged for misconduct connected with her work. This denial of benefits was affirmed by the Florida Unemployment Appeals Commission and the Florida Fifth District Court of Appeal. The United States Supreme Court agreed to hear the case directly from the Court of Appeal.

HELD: The Supreme Court ruled that the denial of benefits to the claimant violated the Free Exercise Clause of the First Amendment, as applied to Florida through the Fourteenth Amendment. The Court quoted the following passage:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, *or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs*, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

Thomas v. Review Board of Indiana Employment Security Div., 450 U.S. 707 (1981). (Emphasis in original).

The Florida Appeals Commission had argued that the claimant caused the conflict between work and religious belief, by being the "agent of change," and, as a result, neither the employer nor the state imposed a burden upon free exercise:

> [I]t is ... unfair for an employee to adopt religious beliefs that conflict with existing employment and expect to continue the employment without compromising those beliefs.

The Court rejected that argument, declining to single out the religious convert for different, less favorable treatment than that given an individual whose adherence to his or her faith preceded employment. The Court concluded that the timing of the claimant's conversion was immaterial to a determination that her free exercise of her rights had been burdened: the salient inquiry under the Free Exercise Clause was the burden involved, period. The claimant was forced to choose between fidelity to religious belief and continued employment; the forfeiture of unemployment benefits for choosing the former over the latter brought unlawful coercion to bear on the claimant's choice.

Insubordination is defined, generally, as a worker's refusal to comply with an employer's reasonable directive. Because, in this case, the employer's directive was unreasonable, in light of the First Amendment, the claimant's refusal to work under the conditions set forth by the employer did not constitute misconduct.

Refusal to Work Overtime MC 255.304

ISSUE/DIGEST CODE	**Misconduct/MC 255.304**
DOCKET/DATE	**85-BRD-05029/7-8-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Refusal to Work Overtime**
CROSS-REFERENCE	**None**

The claimant was employed as a Security Technician. One week prior to her discharge, the claimant was advised by her supervisor to anticipate an overtime work schedule. On the date of her discharge, the claimant refused her supervisor's request that she work overtime, because she wanted to return a video-tape she had rented. She would have had to return it by that night's deadline, or pay a $10 fine.

HELD: An employer reserves the right to determine its employees' schedules, including overtime work, so long as such scheduling is contemplated in the working agreement. The reasonableness of the employer's request, including notice, must be balanced against any compelling reasons an employee might have for refusing to work overtime. In the instant case, the evidence did not show that the claimant's attendance for reasonably requested overtime work had been precluded by compelling circumstances. The claimant was discharged for misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 255.304**
DOCKET/DATE	***Crowley v. IDES*, 546 NE 2d 1042 (1989)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Refusal to Work Overtime**
CROSS-REFERENCE	**MC 485.05. Violation of Company Rule**

The claimant was a bus driver for a mass transit company. The employer received passengers' complaints about him.

The employer's policy was to discuss such complaints as soon as drivers got off work, so that the discussions would not interfere with bus driving schedules. The drivers' union did not object to this policy. Also, the discussions generally lasted no more than 2 to 3 minutes.

One day, when the claimant got off work, a supervisor asked him to discuss the passengers' complaints about him. The claimant refused to discuss the complaints, unless he was paid for his time. He was suspended for 5 days for refusing to discuss the complaints. In ensuing weeks, he continued to refuse to discuss the complaints, despite the employer's and union's urging. He told a supervisor: "If you wish to discuss complaints with me, either I want to be paid or I'll see you when I am on the clock." Finally, the employer fired him for refusing to discuss the complaints the employer's way.

The claimant argued to the court that, under the Fair Labor Standards Act, applicable to mass transit companies, he was entitled to be paid for any time demanded of him by his employer, when that time was outside normal working hours and attendance was involuntary.

HELD: A worker's refusal to comply with an employer's request to work overtime does not constitute misconduct if the overtime work would be illegal.

Here, the requirement that the claimant work overtime was illegal.

The claimant's refusal to work overtime did not constitute misconduct.

Ridicule of Authority MC 255.35

ISSUE/DIGEST CODE	**Misconduct/MC 255.35**
DOCKET/DATE	**ABR-85-6431/2-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Ridicule of Authority**
CROSS-REFERENCE	**MC 45.1, Attitude Toward Employer**

The claimant, a Salesperson, had been criticized by her supervisor. The claimant felt that the criticism had been unwarranted, and that, in general, the supervisor was not supportive of her work. Later, in the employees' lunchroom, the claimant repeated a rumor to her co-workers: that the supervisor had been fired from previous jobs due to her inability to work with people. The claimant herself was discharged when management learned she had made this remark.

HELD: Making disparaging remarks about a superior may constitute misconduct. The determinative factor is whether the worker has merely shown a lack of good judgment or an intentional disregard of the employer's interests. An intentional

disregard of the employer's interests will not have been shown unless the worker has failed to heed warnings concerning making such remarks or the remarks made violated the employer's reasonable rules or policies. Nonetheless, realistically, in most normal working situations, a considerable amount of give and take is exchanged between co-workers, and, although some of it may be in poor taste, such exchanges confined to private conversations between workers would infrequently result in damage to the employer's interests.

In the instant case, the claimant's comment, made in an employees' lunchroom setting, was not dissimilar from the types of remarks employees often make privately among themselves. While the claimant might have exercised better judgment, her statement about her supervisor could not reasonably have been construed to have constituted an intentional disregard of her employer's interests amounting to misconduct within the meaning of Section 602A.

Vulgar or Profane Language MC 255.4

Wage Dispute MC 255.45
No case file present

Intoxication and Use of Intoxicants MC 270
General MC 270.05

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR99133/1-30-90**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Possession and Sale of Drugs Off the Job**
CROSS-REFERENCE	**MC 85.05, Connect w/Work; MC 490.05, Violation of Law**

The claimant worked for the Department of Corrections as a youth supervisor. He was arrested, then convicted, for possession of a controlled substance with intent to deliver. Neither the drug incident nor arrest took place during working hours or on the employer's premises. Still, after he was convicted, the employer fired him.

HELD: To constitute "misconduct," an act must violate a policy that governs the individual's performance of work. Ordinarily, a distinction would be made between an individual's personal affairs and his obligations to his employer. However, a worker's obligations to his employer are broader in some occupations than in others, such as where the worker is a public servant and the public's trust and confidence are involved. Here, the claimant owed a duty to the public through his employer and he breached that duty. This was a discharge for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR88071/2-23-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**First-hand Observations and Drug Test Results**
CROSS-REFERENCE	**MC 190.15, Evidence, weight and Sufficiency**

The claimant's supervisor testified that he saw two workers with an open container of alcohol. They went to a car, took out a package, and brought it to the claimant. The claimant went into the locker room and locked the door. The supervisor knocked on the door, but the claimant did not respond for ten minutes. When the claimant finally came out, his eyes were bloodshot and he had difficulty speaking and maintaining his balance.

The employer directed the claimant to undergo blood and urinalysis tests. The employer submitted into evidence a copy of a report from a laboratory showing that there was cocaine in the claimant's system. There was no foundation laid for the findings of that report.

The claimant denied using alcohol or drugs.

HELD: A worker who is discharged for being in an impaired condition at work due to the use of controlled substances is discharged for misconduct.

Proof that the worker's condition is due to the use of drugs does not necessarily depend upon a laboratory report, nor need a witness actually observe the worker at the precise moment he uses the drug. Circumstantial evidence may provide the necessary proof.

Here, the claimant's supervisor's testimony as to what he observed - before, during, and after the claimant was locked in the locker room - was competent evidence that the claimant was in an impaired condition due to the use of drugs, and was all that was necessary to deny benefits. (While the blood and urinalysis report was hearsay, it supported the supervisor's conclusions.)

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	***Eastham v. Hous. Auth. of Jefferson County, 2014 IL App (5th) 130209***
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Use of Drugs Off the Job**
CROSS-REFERENCE	**MC 85.05, Connect w/Work; MC 490.05, Violation of Law**

Claimant was required to submit to a random drug test by his employer, the Housing Authority of Jefferson County. Claimant informed his supervisor that he believed he would fail the drug test because he had smoked marijuana during a recent vacation. His employment was terminated before the results of the drug test were available. The test subsequently came back negative. The employer policy provided that employees may not use or be under the influence of alcohol or any controlled substance "while in the course of employment." The Board of Review upheld the denial of benefits based on the conclusion that the drug and alcohol-free policy of Claimant's employer applied even while Claimant was not performing services. The circuit court reversed the Board, finding that (1) the phrase "while in the course of employment" includes only the times during which an employee is performing work duties; and (2) the policy is unreasonable to the extent it can be interpreted to regulate an employee's conduct outside of work.

HELD: The appellate court affirmed the circuit court. Illinois courts have defined the phrase "in the course of employment" in the context of workers' compensation claims, holding that injuries occur in the course of employment if they take place (1) at a place where the employee is reasonably expected to fulfill her duties; and (2) while she is performing those duties. Here the trial court properly found that the policy had been misapplied since the policy encompassed only acts that occurred "at a place where the worker may reasonably be in the performance of his duties and while he is fulfilling those duties or is engaged in something incidental thereto."

A reasonable rule or policy is one which is connected to the employee's performance of his job, Section 602(A) of the Act. The Act expressly provides that violation of an employer's rule will only disqualify a discharged employee from receiving unemployment benefits if the rule is one governing the individual's behavior in performance of his work. However, courts have found that a reasonable rule or policy can govern behavior outside work as long as there is a sufficient nexus between that behavior and the workplace.

The appellate court distinguished the decision in *McAllister v. Board of Review of the Department of Employment Security*, 263 Ill. App. 3d 207, 635 N.E.2d 596, 200 Ill. Dec. 257 (1994). In that case Claimant was a CTA bus driver who tested positive for cocaine following an accident. The appellate court recognized in that case that Claimant was in a safety-sensitive position and thus there was a sufficient nexus between the off-duty use of cocaine by a bus driver and the safety of his passengers. In this case Claimant was not in a safety sensitive position. Furthermore, unlike the Claimant in this case, the drug test in McAllister was positive. Nothing in *McAllister* supports the notion that a policy is reasonable within the meaning of the Unemployment Insurance Act if it permits an employer to discharge an employee for off duty conduct without a positive drug test result.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	***Craig v. Dep't of Emp. Sec.*, 2022 IL App (1st) 210475**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Use of Drugs Off the Job**
CROSS-REFERENCE	**MC 85.05, Connect w/Work; MC 490.05, Violation of Law**

Claimant tripped on the sidewalk outside Terminal 5 at O'Hare International Airport and fell, injuring himself, while performing his duties as a lead branch serviceman with United Airlines. Because he was injured in the fall and requested medical attention,

United's policies subjected the Claimant to a drug test which showed a positive result for cocaine. Employer terminated Claimant citing violation of United's "Working Together Guidelines" which "insist on" a drug-free workplace. Claimant filed for benefits. On his questionnaire Claimant stated that he was aware of employer's drug-free policy, a violation of which would result in his discharge. Claimant was denied and he appealed.

The Board stated that: Claimant tested positive for cocaine and admitted using it shortly before submitting to the test; the employer's policy was reasonable; the violation was within Claimant's ability to control; and his conduct harmed the employer's interest in safety and in maintaining a drug-free workplace.

HELD: The appellate court addressed Claimant's assertion that, while Claimant's conduct in consuming cocaine was illegal and a violation of employer's policy, the act was outside of the workplace. The court cited *Eastham v. Hous. Auth. of Jefferson County*, 2014 IL App (5th) 130209 and *McAllister v. Bd. of Review of the Dep't of Empl. Sec.*, 263 Ill. App. 3d 207 for the proposition that behavior outside the workplace can represent misconduct if there is sufficient nexus between that behavior and the workplace. In *McAllister*, the court stated that there is a sufficient nexus existing between a safety sensitive job and drug use outside the workplace.

In this case, Claimant was aware of the employer's zero tolerance policy and was aware that the use of cocaine could result in his discharge. The appellate court found that Claimant engaged in illegal activity by using cocaine outside of his place of employment, which has a sufficient nexus between that behavior and the workplace, as he had a safety-sensitive job working on airplanes. As such, Claimant's conduct constituted misconduct under the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	***Employment Division v. Smith*, 110 S. Ct. 1595 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Religious Practice that Violates Criminal Law**
CROSS-REFERENCE	**MC 5.05, Misconduct; MC 490.05, Violation of Law**

The claimants were discharged from their jobs at a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug. Generally, the use of peyote violated Oregon's controlled substance law. However, the claimants ingested the drug for sacramental purposes in connection with their Native American Church.

The question presented to the United States Supreme Court was whether the claimants could be disqualified for unemployment benefits for misconduct, or whether such a disqualification would violate the First Amendment's Free Exercise Clause.

HELD: Unemployment insurance benefits cannot be denied when the denial is specifically directed at religious beliefs (see, e.g., MC 5.05, *Hobbie*; RW 90.05, *Frazee*). However, benefits can be denied when there is a neutral, across-the-board, criminal prohibition on a particular form of conduct. Here, based upon Oregon's drug law, unemployment benefits could be denied.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	***Overstreet v. IDES*, 168 ILL APP 3d 24 (1987)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Prior to Reporting for Work**
CROSS-REFERENCE	**MC 485.45. Violation of Company Rule**

The claimant was a Bus Driver. She took sick leave from January 30, 1985 to March 15, 1985. Because she had been on sick leave for more than 7 days, she was required by her employer's policy to submit to a medical examination upon returning to work. The examination included blood and urine tests which, when analyzed, indicated the presence of cocaine. Upon receipt of this information, the employer removed the claimant from service and required her to undergo a second test, the result of which also indicated the presence of cocaine. On March 20, the claimant was discharged from her job and referred to a rehabilitation program. The program was to run for a minimum of 30 days. The claimant, during the course of the program, filed for unemployment insurance benefits.

The claimant admitted that the test results were accurate. But she argued that she had not used the narcotics at work. Upon review, she added that, since the time of the occurrence, she had successfully completed the program and had refrained from the use of narcotics.

HELD: Reporting to work under the influence of narcotics, where it is shown that being under the influence might impact upon the ability to perform one's work, constitutes misconduct, irrespective of whether the actual use of the narcotic is at or prior to reporting to work. In this case, the claimant repeatedly used narcotics, and it was reasonable to conclude that she was under the influence of such narcotics after she had reported back to work. The claimant was a bus driver, and her use of cocaine prior to reporting for work as a bus driver constituted a deliberate violation of her employer's policy and indicated a disregard of the standards of behavior which the employer had the right to expect. What she did subsequent to the work separation (successfully completing a rehabilitation program) was irrelevant. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-87-3581/8-14-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Rehabilitation Program**
CROSS-REFERENCE	**MC 15.2, Absence; MC 385.05, Relation of Offense**

The claimant had been absent and tardy on a number of occasions, resulting in 2 suspensions and a final warning. In February, she acknowledged that her use of drugs might be the cause of her problems. Her employer referred her to a drug rehabilitation program; the employer, under its employees' health insurance package, was to pay for hospitalization. The claimant entered the rehabilitation program on February 6, and remained in the program until March 2, after which she continued to participate in support groups.

On February 26 - while the claimant was participating in the rehabilitation program - the employer discharged her for her prior absenteeism.

HELD: Absenteeism without justification constitutes misconduct. In this case, the claimant's previous absences were the result of drug usage; at the time and under the circumstances those absences occurred, they might have constituted misconduct. But, at the time of the work separation, the claimant, having sought medical attention to cure her condition, was participating in a drug rehabilitation program, to which she had been referred by the employer. The employer, having referred the claimant to its rehabilitation program - so that she might recuperate or make amends, in lieu of discharge - cannot 3 weeks later insist that the claimant's absences constituted misconduct for which she was discharged. The relation between the previous absences due to drug usage and the discharge was tenuous. The claimant was discharged for reasons other than misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-86-9483/9-29-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Test Results, Alone, as Evidence**
CROSS-REFERENCE	**MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed as a truck driver, until, during a routine physical check-up, a test of a urine specimen reportedly revealed the presence of marijuana in the claimant’s system.

At an appeal hearing, the employer testified that both the company and the claimant’s union had approved a rule that a test result of over 30 nanograms of marijuana would subject a driver to discharge. The employer submitted into evidence a laboratory test result, indicating that the claimant had 50 nanograms of marijuana in his system. There was no testimony offered concerning who administered the test or how the test was administered.

The claimant denied using marijuana.

HELD: Hearsay is an out-of-court statement (including a document) which is offered to prove the truth of the matter asserted. The defects in hearsay evidence can be overcome, by laying a proper foundation, through testimony. But in this case, there was no chain of evidence which established, in the first place, that it was the claimant’s specimen which was analyzed, and not someone else’s. Further, because there was no testimony by or concerning the person(s) who administered the test or how it

was administered, there was no basis for determining the reliability of the test results. Therefore, the hearsay defects (no cross-examination, unreliability) were not overcome.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-19-1830292/1-11-19**
AUTHORITY	**Sections 602A, 602A(7) of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Violation of Company Rule**
CROSS REFERENCE	**485.45 Violation of Company Rule, Intoxication**

Claimant was employed as a custodian for an employer that had a contract to clean schools. On Claimant's day off, the employer called Claimant to come in to work. Claimant told the employer that she had been drinking. The employer told Claimant to come to work anyway because she was needed. The employer had a no "under the influence" policy. The principal of the school, at which Claimant worked, reported to the employer that Claimant appeared to be "inebriated". At the hearing, Claimant admitted to being under the influence of alcohol. Following the hearing the Referee set aside the Local Office determination and allowed benefits under Section 602A(7) of the Act.

HELD: The Board of Review affirmed the Referee and allowed benefits under both Section 602A and 602A(7). Under Section 602A(7), an individual is disqualified from benefits if he or she reports to work under the influence of alcohol, in violation of the employer's policies, unless the individual is compelled to report to work by the employer outside of scheduled and on-call working hours and informs the employer that he or she is under the influence of alcohol. As the Claimant was not scheduled for work, informed her supervisor that she'd been drinking, and was told to come to work anyway, the Claimant was not disqualified under Section 602A(7). Similarly, because the Claimant did not "deliberately" and "willfully" violate the employer's reasonable rule regarding coming to work under the influence because she was explicitly told to come to work despite her admission that she'd been drinking, she did not meet the general definition of misconduct under section 602A of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	***Covarrubias v. Bd. of Review, 2023 IL App (1st) 220553-U***
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Violation of Company Rule**
CROSS-REFERENCE	**MC 485.45**

Claimant was a Chicago police office. While on furlough, claimant attended a family party where he became intoxicated and left the party. The police were called after claimant began arguing with a woman on the street. Claimant was taken to the station and various allegations were made against him. Claimant was suspended for violating the employer's policy prohibiting intoxication on and off duty. Claimant filed for benefits and, due to remands, there were three hearings. Claimant admitted being intoxicated to the point where he blacked out. Claimant was aware of the policy prohibiting being intoxicated on or off duty, though he alleged the policy was selectively enforced. The Board of Review denied benefits. The circuit court reversed the Board and the city appealed.

HELD: The appellate court addressed several issues.

Reasonable work rule:

A reasonable rule or policy can govern behavior outside work when a sufficient nexus exists between the behavior and the workplace to make the rule or policy work-related. Rules regulating alcohol consumption when an employee is not working have been deemed reasonable when affecting the employee's appearance or conduct on the job. A police officer's work duties are broad because "[t]he nature of a police [officer's] job is that [they] be fit and armed at all times, whether on or off duty, and subject to respond to any call to enforce the laws and preserve the peace." Given the broad nature of his duties, a sufficient nexus exists between an officer's conduct and work.

Willful and deliberate violation:

The court dismissed the selective enforcement argument as the court had previously ruled that selective enforcement does not excuse violating employment rules. Furthermore, the court stated that the claimant admitted he was so drunk he blacked out

and could not remember events over the next several hours, including his interactions with police officers or his conduct at the police station. The Board could infer from this testimony that the claimant acted willingly in consuming alcohol to the point of blacking out.

Harmed the police department:

The court affirmed that the harm caused by an employee's rule violation can be potential. The court stated that the public depends on the police department to maintain safety in the community. Claimant's conduct harmed the police department by undermining the public's trust and jeopardizing the public's safety. Law enforcement officers are held to a high standard of conduct, and the claimant's conduct discredited the department.

Here the evidence in the record, primarily the claimant's testimony, supported the Board's decision that he had willfully violated a reasonable rule and harmed the police department.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	***Profice v. Board of Review*, 481 N.E. 2d 1229 (1985)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Use of Marijuana During Working Hours**
CROSS-REFERENCE	**MC 485.45, Violation of company Rule, Intoxicants**

The claimant worked for the CTA as a Bus Servicer. Although she was not a bus driver, her duties included the driving of buses from location to location in the employer's yard, and fueling those buses.

Her foreman was looking for another worker, and was walking towards the women's locker-room, when he observed the claimant exiting the door to that room. Still looking for the other worker, he knocked on the door. When the worker opened the door, he smelled the aroma of marijuana smoke. He reported this to a supervisor.

At an appeal hearing, the supervisor testified that he, too, smelled the odor of marijuana smoke in the women's locker-room. On the locker-room bench, he found half a marijuana cigarette and drug paraphernalia. The claimant and her co-worker were called into the supervisor's office. Marijuana was found in the co-worker's purse. The supervisor testified that both had "glassy eyes." Subsequently, the claimant tested positive for THC, the primary chemical element of marijuana.

Although the claimant admitted that she had smoked marijuana, she stated that she did so off-duty and denied doing it on the job. She also contended that, because she was a Bus Servicer, not a driver, she could not have harmed her employer or anyone else, even if she had been under the influence of marijuana while at work.

HELD: A discharge for using intoxicating narcotics on the job, or for reporting to work in an impaired condition due to the use of narcotics, is a discharge for misconduct.

In this case, the evidence established that the claimant was in a room with a worker who kept marijuana in her purse, the strong odor of marijuana was present in the room, a marijuana cigarette and related paraphernalia were found in the room, the claimant manifested signs of having smoked marijuana recently, and she tested positive for THC. Despite the claimant's denial, the Board of Review's decision that the claimant used marijuana (and was under its influence) during working hours was supported by the manifest weight of the evidence. Further, the claimant did drive buses and did use flammable liquids while under the influence of marijuana. This did pose a danger to the CTA, co-workers, and others. This was a discharge for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**83-BRD-8871/7-27-83**
AUTHORITY	**Section-602A**

TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **General**
CROSS-REFERENCE **None**

While on the employer's premises, the claimant purchased an illegal drug from a co-worker and was discharged for doing so.

HELD: Possession of an illegal drug while at work is misconduct connected with the work. He is ineligible to receive benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **83-BRD-15637/12-28-83**
AUTHORITY **Section-602A**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant and two other employees were discharged after they were found in a washroom with a half-empty bottle of alcohol and two cups which contained alcohol. The employer said that he did not smell alcohol on the claimant's breath, nor did he see the claimant in possession of any alcohol. The employer also said that one of the other employees had a cup in his hand and the third employee was near a cup that had been crushed. The bottle of alcohol was found in an empty locker with an unused empty cup. The claimant denied that he had been drinking alcohol, or that he had supplied the bottle, and requested either a breath analysis or lie detector test.

HELD: The claimant was found in a common area and had no control over the actions of other employees. He denied taking any part in the offense and offered to prove his innocence by submitting to a test. Under these circumstances, the claimant was discharged for reasons other than misconduct connected with his work and is eligible to receive benefits.

I**SSUE/DIGEST CODE** **Misconduct/MC 270.05**
DOCKET/DATE **84-BRD-4256/3-29-84**
AUTHORITY **Section-602A**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was employed as a stockman with a steel supply company. After knocking over a pile of steel beams while in the process of stacking them, the claimant admitted to his supervisor that he had a few drinks before reporting to work. He had received prior warnings and a suspension for similar behavior.

HELD: Reporting to work under the influence of alcohol adversely affected the employer's interests. The claimant was discharged for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **84-BRD-4286/3-29-84**
AUTHORITY **Section-602A**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **General**
CROSS-REFERENCE **None**

When the claimant reported to work, his supervisor thought he detected the odor of alcohol on his breath. The claimant agreed to take a blood test, and the results showed extreme intoxication bordering on a comatose level. He was discharged.

HELD: Reporting to work intoxicated constitutes a willful disregard of the employer's best interests. The claimant was discharged for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **84-BRD-4288/3-29-84**
AUTHORITY **Section-602A**
TITLE **Intoxication and Use of Intoxicants**

SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant's superior observed the claimant and a co-worker passing and smoking a cigarette in the company break room. The superior noted the greenish color of the cigarette filter and the odor and concluded that the men were smoking marijuana. Both men had been warned that the possession or use of illegal drugs on company premises would be grounds for immediate discharge under company rules. The co-worker admitted he was smoking marijuana. Both workers were discharged.

HELD: The claimant willfully violated a known company rule forbidding the use of a controlled substance on the employer's premises. He was discharged for misconduct connected with his work and he is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **ABR-85-131-FE/10-2-85**
AUTHORITY **Section 602A of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **Failure to Undergo Alcoholism Rehabilitation**
CROSS-REFERENCE: **None**

The claimant was employed as a Mail Carrier for 14 years, until her discharge for curtailing (failing to deliver) mail in March, 1984. The claimant had recently returned from a vacation, was confronted by what she determined to be a heavy workload and fell behind in her deliveries. Instead of reporting the problem to her employer, the claimant stashed mail in a relay box, where it remained, undelivered, until another carrier reported it to the employer.

At an appeal hearing, the claimant admitted her actions. However, she also argued that, at the time she did not deliver the mail, she was affected by alcoholism, a disease which prevented her from realizing her obligations as an employee; had she not been suffering from alcoholism, the incident of not delivering the mail would not have occurred.

Additional testimony indicated that, years before, at the employer's urging, the claimant was to have participated in an alcohol rehabilitation program. The claimant began attending meetings in January, 1983, but, shortly thereafter, by her own choice, dropped out of the program.

HELD: Generally, when competent medical evidence establishes that an individual suffers from a disease, an individual's discharge, as a result of the effects of that disease, will not constitute a discharge for misconduct. The Unemployment Insurance Act does recognize alcoholism to be a disease.

At the same time, it is expected that an individual who suffers from a disease will seek treatment. There can be no basis for relieving an individual of responsibility for the consequences of an untreated condition.

In the instant case, the claimant may have been suffering from alcoholism. But, she chose to drop out of an alcohol rehabilitation program. She was not participating in any treatment program at the time of the incident in question. Therefore, there was no basis for relieving her of responsibility for her actions, despite the effects of alcoholism. The claimant's actions constituted misconduct within the meaning of Section 602A of the Act.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **ABR-85-3858/9-30-85**
AUTHORITY **Section 602A of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **Physical Disabilities Manifesting Appearance of**
CROSS-REFERENCE **MC 190.15, Evidence; PR 380.15, Review**

The claimant, a Driver, left his employer's garage at 4 p.m. on Christmas Eve, to pick up and deliver mail, and was expected to return no later than 6 p.m. Instead, at 8:15 p.m., the employer located the claimant in the vestibule of a closed post office along his route. The employer testified that although he found no "booze" on the claimant's person or in his truck, the claimant was in an obviously drunken condition.

The claimant testified that his truck had twice stalled, leaving him stranded at a post office until his employer could arrive with a tow truck. He denied that he had consumed any intoxicants. He stated that he believed the employer discharged him in

retaliation for the claimant's having exposed certain violations of law by the employer: The claimant said that he had been instrumental in forcing the employer to pay unemployment insurance contributions, and to buy state licenses for trucks which the employer had been operating with dealers' stickers.

The Referee asked the employer no questions concerning the alleged violations and alleged retaliation. Subsequently, the Referee issued a decision which disqualified the claimant for benefits. The Referee's conclusions rested solely upon the employer's testimony, which the Referee had found to be more credible than that of the claimant.

In its review of the record, the Board of Review noted that the claimant made reference to the fact that, for 49 years, his speech had been impaired, and he walked with a limp. Those points were not developed in the record.

HELD: Where the record is adequate, and a Referee's findings as to credibility are supported by that record, the Referee's findings as to credibility will not be disturbed, since the Referee would have been in the best position to evaluate the demeanor and mien of the witnesses. However, from an inadequate record, a Referee's findings as to credibility, being unsupported, must be questioned.

In the instant case, the Referee's failure to ask relevant questions rendered the record, and therefore the Referee's resolution of the question of credibility, inadequate. The case was remanded, with instructions to pose the following relevant questions:

(1) Was the employer in violation of tax and licensing laws; and

(2) Did the claimant expose such violations to the authorities; and

(3) Was the claimant's act of exposing such violations a consideration in the employer's decision to discharge him; and

(4) Does the claimant suffer from physical disabilities which could cause him to speak and walk as if he were intoxicated?

The Referee was instructed to elicit testimony with respect to those questions, and, from that testimony and the evidence previously submitted, make findings and issue a decision based upon the more complete record.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-85-7938/4-18-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Burden of Proof (Refusal to Take Blood Alcohol Test)**
CROSS-REFERENCE	**MC 190.1, Burden of Proof**

On his last day of work, the claimant, a Truck Driver, was involved in 2 accidents. When he reported in at the end of his shift, he was confronted by the Transportation Supervisor, who testified that, because he smelled alcohol on the claimant's breath, he directed the claimant to take a blood test for alcohol.

The claimant refused to take the blood test. He contended, among other reasons, that the contract between his union and the employer did not require that he take the blood alcohol test. Also, he was fearful that any alcohol which he had consumed up to 18 hours earlier, off the job, might result in the test being "positive."

Upon his refusal to submit to testing, he was discharged.

HELD: The refusal to take a blood alcohol test does not constitute misconduct per se. However, reporting to work in an intoxicated condition may constitute misconduct.

In the instant case, the employer presented evidence to show that the claimant had been under the influence of alcohol while at work: he was observed to have alcohol on his breath and he had had 2 accidents with the company vehicle.

The fact that the claimant did not take a blood alcohol test, for whatever reason(s), did not alter the facts as presented by the employer. The claimant did nothing to rebut those facts.

The employer established by a preponderance of the evidence that the claimant had reported to work in an intoxicated condition. The claimant's actions, irrespective of his refusal to submit to a blood alcohol test, constituted misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-85-71-FSC/12-11-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Illness Resulting From**
CROSS-REFERENCE	**MC 15.2, Absence, Reasons**

The claimant reported for work early Saturday morning as scheduled, but, shortly after appearing, had to leave due to illness. He was sick because he had been drinking Tequila since 8 p.m. Friday. The claimant was told that his services were no longer needed.

HELD: An employer has a right to expect its workers to report to work in a condition to do the work assigned to them. At the same time, if a worker gives notice that he cannot work because he has suffered a disabling illness - beyond his control, then a resultant discharge cannot be for misconduct.

In the instant case, the claimant may very well have been too ill to work. However, his illness, being the direct result of his deliberate and heavy consumption of alcohol during the hours shortly before he was scheduled to work, was avoidable. Therefore, the claimant's absence from work was due to intoxication, not illness, which showed a disregard of duties he owed his employer. He was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-85-9186/5-12-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Alcoholism as a Mitigating Factor, Limits**
CROSS-REFERENCE	**MC 485.45, Violation of Company Rule**

The claimant had received warnings concerning bringing alcoholic beverages into the employer's plant, being under the influence of intoxicants at work, and the consumption of alcohol in general, resulting in his participation in employer programs for alcoholism.

On his final day of work, he was attempting to enter the employer's plant with an open soft drink can. Pursuant to the employer's rule, which required employees to submit to an examination of articles they were attempting to bring into the plant, the security guard at the gate asked the claimant to permit her to examine the contents of the can. Instead of turning over the can, the claimant threw it into a parking lot. The can was later retrieved and examined by the employer's personnel and the claimant was discharged.

The claimant contended that he suffered from the disease of alcoholism, and, because his discharge resulted from the effects of the disease, it could not have been a discharge for misconduct.

HELD: Generally, an individual who is discharged for violating a known and reasonable company rule is discharged for misconduct. In such cases, the individual is discharged because he has violated a standard of conduct which an employer has the right to expect from its workers, and not because of the lack of suitable work

In the instant case, the employer had promulgated a reasonable rule requiring employees to submit to an examination of articles they were attempting to bring into the plant. The claimant was aware of the rule. The claimant was discharged because he refused to permit the security guard to examine the contents of the article he was attempting to bring into the plant. Whether or not the can the claimant attempted to bring into the plant contained alcohol, the claimant violated the employer's rule.
Whether or not the claimant was an alcoholic, there was no showing that his alcoholism compelled him to refuse to permit the security guard to examine the soft drink can. There was no showing that his alcoholism compelled him to toss the soft drink can into a parking lot. There being no compelling reason for the claimant to violate the employer's rule, his violation of the rule constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-89-2827/9-12-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Alcohol Rehabilitation**
CROSS-REFERENCE	**MC 85.05, Connection with Work**

In 1986, the claimant was hospitalized for alcoholism. As a condition of her continued employment, she was required to obtain follow-up treatment, and she agreed that, for a period of 1 year, she would attend alcoholism counselling sessions.

For 1 year, the claimant attended the counselling sessions. She continued to attend counselling sessions well into a second year. She herself paid for these sessions. Toward the end of the second year, she began missing meetings with her counselor. This was partly because of her schedule: counseling plus work, including overtime, ran from 1 p.m. until 2 a.m. Also, she did not have sufficient funds to continue to pay for the sessions.

From the time the claimant began her counselling sessions, she committed no work infractions - except that the employer desired that she continue participating in the rehabilitation program. In January, 1989, because she failed to keep up her attendance in the program; she was discharged.

HELD: Section 602A of the Act requires that misconduct be connected with work. Generally, if a worker has a substance abuse problem, causing difficulties on the job or absences from work, a requirement that she enroll in a rehabilitation program (in lieu of being discharged outright) is connected with the work and is reasonable. Generally, the worker's failure to enroll in or continue to attend such a program will constitute misconduct. However, in the instant case, the relationship between continuing rehabilitation and work was tenuous. The original incident occurred in 1986. The claimant fulfilled her obligation to attend counselling for 1 year. For that year, and until her discharge in 1989, she committed no infractions that caused difficulties on the job or absences from work. The counselling sessions that continued after 1 year, being off-duty, personally financed, and not warranted by behavior at work, were not connected with work; therefore, missing them could not constitute misconduct. The claimant was allowed benefits without disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-89-6042/8-28-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Unannounced Drug Test (after prior violation)**
CROSS-REFERENCE	**MC 485.45, Violation of Company Rule**

The claimant was absent from work for 21 days; he had been hospitalized as part of an employer-sponsored drug and alcohol rehabilitation program. Following his return to work, he agreed that, as a condition of his continued employment, he would abstain from drug and alcohol use; to verify this, he was to submit to unannounced drug screens, for a period of 1 year. One week after his return to work, the claimant tested negative for drugs. Two weeks after his return to work, he tested positive for marijuana and cocaine; as a result, he was fired. The question presented was whether the employer's drug policy - including unannounced drug testing - was reasonable.

HELD: Section 602A defines "misconduct," in pertinent part, as a violation of a "reasonable rule or policy." When a worker's use of drugs or alcohol impairs his work or causes him to be absent from work, it is reasonable for an employer to require, as a condition of continued employment (in lieu of outright discharge), that the worker submit to drug rehabilitation - including unannounced drug tests. In this case, the scope of the employer's measures was reasonable and not unduly intrusive. The claimant was discharged for misconduct and was ineligible for benefits under Section 602A.

ISSUE/DIGEST CODE	**Misconduct / MC 270.05**
DOCKET/DATE	***Robinson v. IDES* (1994)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Connection with Work**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MC 485.45, Company Rule**

The employer had a drug-free workplace policy, which included drug tests for work-related injuries, and, if drugs were found, subsequent unannounced tests, then, if drugs were found, a discharge.

The claimant's job was spray painting cabinets and computers. He was an excellent worker. After he sustained a scratch on the job, he was required to take a drug test. He tested positive for morphine and marijuana. A year later, over a weekend, off the job, he attended a wedding reception, where he had a few lines of cocaine and smoked marijuana. The next day, when he reported to work, he was required to take an unannounced drug test. The test revealed traces of the drugs in his system and he was discharged. He was then denied unemployment benefits.

The claimant contended that the rule that resulted in his discharge was unreasonable because it had nothing to do with his work performance, which was excellent, but, rather, with his off-duty conduct.

HELD: Section 602A provides, in pertinent part, that "misconduct" means a violation of a "reasonable rule ... governing the individual's behavior in performance of his work." The goal of a drug-free workplace and substance abuse policy is to create and maintain a work environment free from the adverse effects of using drugs. The fact that an individual is a good worker whose job performance is not yet affected by drugs does not render a drug-free workplace policy and disciplinary rules unreasonable. Here, the employer's rule was reasonable. The claimant deliberately and willfully violated the rule. The claimant had been warned (and, therefore, harm was irrelevant). All the conditions for a discharge for misconduct under Section 602A were met.

ISSUE/DIGEST CODE	**Misconduct / MC 270.05**
DOCKET/DATE	***McAlister v. IDES* (1994)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Harm**
CROSS-REFERENCE	**None**

Illinois law required that the Chicago Transit Authority (CTA) establish and enforce a drug testing program consistent with Federal statutes and regulations. In addition, the CTA had to maintain a drug-free workplace policy to be eligible for a grant or contract from a Federal agency. The CTA's rule was that "an employee may not have a controlled substance ... in his system from the time [he] reports for work until the conclusion of [his] work day." The collective bargaining agreement between the CTA and the union representing bus operators gave the CTA the right to test bus operators for drugs. The claimant, a CTA bus driver, tested positive for cocaine and the CTA discharged him.

The claimant contended that he could not be denied unemployment benefits because Section 602A requires that harm be established. The claimant had tested positive for residual traces of cocaine, which he said he had consumed six days earlier, while off the job. According to the claimant, this did not impair his job performance and, therefore, did not harm the CTA.

HELD: In pertinent part, 56 Ill. Adm. Code 2840.25 defines "harm" to include "damage or injury that could be reasonably foreseen to occur but for the individual being prevented from ... continuing to work." The rule also provides an example:

> Federal law provides that a commercial carrier may not permit its vehicle to be operated by an individual if there is, within the individual's system, the presence of unlawful, controlled substances ... The presence of such a substance during working hours within the system of a commercial driver ... constitutes harm to the carrier. To continue to employ the individual as a driver would result in the carrier's violating federal law.

The example extends to an individual such as the claimant. The United States Supreme Court has stated that drug testing of persons in safety-sensitive positions is justified. The CTA was subject to Illinois and Federal laws regarding a drug-free

workplace, requiring that the bus operator not be permitted to drive. Further, denying unemployment benefits is particularly appropriate where, as in the instant case, passing a drug test was an agreed condition of employment.

Here, the employer did not have to show impairment or strange conduct or await injury on the job to establish harm.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-97-6027 / 7-30-97**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Use of Intoxicants Off the Job**
CROSS REFERENCE	**MC 85.05, Connection with Work; MC 485.45, Viol. Rule**

The claimant worked as a craps dealer on a riverboat casino. Pursuant to company policy (and in accordance with federal regulations), he was administered a random drug test, which he failed, due to his use of drugs while off duty.

HELD: ABR-85-3809, previously contained in this Digest, holding that, in a particular fact situation, off the job use of drugs did not constitute misconduct, is hereby ***overruled***. The Board of Review now holds that, under certain circumstances, even if drug use occurs off the job, it constitutes misconduct. This is certainly true where the employer is governed by federal regulations which require the removal of an individual who tests positive for drugs.

Manner of Performing Work MC 300
General MC 300.05

ISSUE/DIGEST CODE	**Misconduct/MC 300.05**
DOCKET/DATE	**84-BRD-4096/3-28-84**
AUTHORITY	**Section-602A**
TITLE	**Manner Of Work Performing Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was a biomedical support technician for a period of three years. On the date of his discharge, he was responsible for bacteria level tests for persons given kidney dialysis, and he failed to run the tests on two successive days. He admitted that the tests were one of his primary responsibilities, but he forgot the tests the first day because of other duties, and he transferred the job to a co-worker the second day and neglected to determine if the work was done. The claimant had infrequently performed the tests before.

HELD: The claimant knew or should have known that if the tests were not completed the health and safety of the employer's dialysis patients could be placed in danger, thus requiring a high degree of care on his part. The claimant's negligence recurred on successive days and led to his discharge for misconduct connected with his work. He is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 300.05**
DOCKET/DATE	**83-BRD-10893/9-26-83**
AUTHORITY	**Section-602A**
TITLE	**Manner Of Work Performing Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant, a nurse's aide, restrained an uncontrollable and abusive patient by putting her in a utility room near a nurse's station. She used minimal force and did not injure the patient in doing so. Contrary to the employer's rules, the claimant did not call for assistance. However, at the time of the occurrence, no assistance was available.

HELD: Although the claimant was in technical violation of the employer's rules, she reacted to an emergency situation and to the best of her ability. It is concluded that the employer was not injured by the claimant's conduct and that she was discharged for reasons other than misconduct connected with her work and is not subject to any disqualification.

Accident MC 300.1

ISSUE/DIGEST CODE	**Misconduct/MC 300.1**
DOCKET/DATE	**83-BRD-5456/5-11-83**
AUTHORITY	**Section-602A**
TITLE	**Manner Of Work Performing Work**
SUBTITLE	**Accident**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a school bus driver. While driving her school bus, the claimant switched on a blower fan which did not work. She then looked down to see if the switch was turned on and struck a telephone pole and damaged the vehicle. Three days prior to this accident, the claimant had been verbally warned for careless and inattentive driving. The claimant was immediately suspended following her last accident and subsequently discharged.
The claimant admitted fault in looking away at the bus panel board while driving, but she correctly testified that this was her first accident.

HELD: In view of recent warnings from the employer concerning the claimant's inattentive driving habits, her conduct in diverting her attention to a panel in her vehicle while driving constituted negligence to such a degree as to exhibit a wilful disregard of duties owed the employer. The claimant was discharged for misconduct connected with work and is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 300.1**
DOCKET/DATE	***Barry Pesce v. Board of Review, 161 Ill.App.3d 898*** **(1987)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Manner Of Work Performing Work**
SUBTITLE	**Accident**
CROSS-REFERENCE	**MC 5.05, Misconduct, Definition**

The claimant was employed as a driver in a medicar used to transport patients to and from hospitals and nursing homes. During the 3-1/2 months he was employed he was involved in 4 accidents with the employer's vehicle. Each of these accidents occurred while the claimant was backing up and resulted in the claimant's vehicle striking a stationary object. There were no patients in the medicar at the time of these accidents and none of the accidents caused severe damage.

The employer had a rule that 2 accidents with the employer's vehicle would result in discharge; but, because the employer did not know how many of the accidents might have been the claimant's fault, the employer did not discharge him until after his 4th accident.

The Board of Review stated that the claimant was discharged due to his inability to back up the employer's vehicle. The Board then went on to equate the claimant's inability to back up the vehicle with gross indifference to the interests of the employer, because, if the claimant had continued on that course, there was the potential of the claimant injuring or aggravating an existing injury of one of the patients who relied on him for transportation. The Board concluded that this was misconduct.

The claimant contended that, even if he may have been properly and justifiably discharged, his actions did not constitute misconduct. The circuit court reversed the Board and the Department appealed.

HELD: The appellate court affirmed the circuit court's reversal of the Board and allowed benefits. The court stated that every justifiable discharge does not disqualify the discharged employee from receiving unemployment benefits. An employee's conduct may be such that the employer may properly discharge him. Such conduct might not, however, constitute "misconduct connected with the work."

Damage to Equipment or Materials MC 300.15

Judgment MC 300.2

ISSUE/DIGEST CODE	**Misconduct/MC 300.2**
DOCKET/DATE	**83-BRD-5703/5-20-83**
AUTHORITY	**Section-602A**

TITLE **Manner of Work Performing Work**
SUBTITLE **Judgment**
CROSS-REFERENCE **None**

The claimant worked in maintenance for nine months and was discharged for removing two broken locks from doors to common hallways in an apartment building.

The claimant had been told by his supervisor that, when any locks to common hallways were broken, he should remove the lock, take it to the main office, and bring it to a local lock company for repair or replacement.

Approximately one week before he was discharged, the claimant was informed that two locks on doors in building number seven were inoperable. One of the locks had a key jammed in it, and the other was broken and could not be opened, thereby denying tenants access to their apartments. The claimant's supervisor was on vacation, and the man taking his place was unavailable. The claimant removed the two locks and brought them to the main office. The resident manager became angry at the claimant because she wanted to know which tenant had broken off his key in one of the locks. When the claimant's supervisor returned from his vacation, the claimant was discharged upon the recommendation of the resident manager.

HELD: The claimant performed his duties in accordance with what he believed to be standard operating procedure. He did not act with any intentional disregard for the interests of the employer, and he could not reasonably be expected to know that his conduct would jeopardize his employment. The claimant was discharged for reasons other than misconduct connected with his work and is not subject to any disqualifications.

Quality of Work MC 300.25

ISSUE/DIGEST CODE **Misconduct/MC 300.25**
DOCKET/DATE **84-BRD-1589/1-31-84**
AUTHORITY **Section-602A**
TITLE **Manner Of Work Performing Work**
SUBTITLE **Quality Of work**
CROSS-REFERENCE **None**

The claimant was an operator-cashier who had received oral and written warnings and a suspension because her cash drawer did not balance. When she had another shortage, she was discharged. The claimant followed established procedures and was performing the job to the best of her ability. The employer contended that the shortage occurred because of the claimant's carelessness.

HELD: Where a worker has been discharged for the poor quality of her work performance, the primary concern is whether she was capable of doing better. Care must be exercised to distinguish between those cases where she knowingly failed to perform to the best of her ability, and those cases where the work assignments were beyond her capability.

In this case, the claimant did not meet the employer's expectations, and this was due to incompetency, which is not misconduct under the Act. The claimant was not disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 300.25**
DOCKET/DATE **83-BRD-12490/11-4-83**
AUTHORITY **Section-602A**
TITLE **Manner of Work Performing Work**
SUBTITLE **Quality of Work**
CROSS-REFERENCE **None**

The claimant was last employed as a salesman and men's clothing department manager.

The claimant's duties consisted of keeping a daily record of department inventory; supervising full and part time employees; taking an accurate count of the suits, coats, and slacks; transfers in and out of the department; and recording the mark-ups and mark-downs of department merchandise. When the semi-annual inventory was taken, the employer found that the counting of suits, sport coats and slacks had been incorrectly recorded, and, as a consequence, the claimant was relieved of the responsibility of the daily count.

Subsequently, the men's clothing buyer informed the store manager that the claimant had failed to record numerous pairs of slacks in the correct department number, and on, the following day, the claimant made the same mistake. He was then discharged.

The claimant had received proper training in his work, and he was advised of his responsibilities.

HELD: The claimant was discharged for his failure to perform his work to the employer's satisfaction. Although the employer may well have been justified in discharging the claimant, the claimant's errors were not the result of his wilful refusal to follow instructions. Therefore, the claimant was discharged for reasons other than misconduct connected with his work and was not subject to any disqualification.

ISSUE/DIGEST CODE	**Misconduct/MC 300.25**
DOCKET/DATE	**83-BRD-11801/10-24-83**
AUTHORITY	**Section-602A**
TITLE	**Manner of Work Performing Work**
SUBTITLE	**Quality of Work**
CROSS-REFERENCE	**None**

The claimant worked part-time as a pharmacy technician for almost a year, and he was discharged because he mislabeled medical bottles, which could have been potentially hazardous to the patients of the hospital. He was responsible for reading the medication profiles, as clarified by the pharmacist, and filling the containers with proper medication for each patient. He had received a technician training manual and had participated in a work enhancement program. Before his discharge, the claimant had received two prior warnings for mislabeling.

HELD: The claimant was trained to perform a certain job which required diligence and accuracy at the risk of dispensing potentially hazardous drugs to patients. Nevertheless, the claimant repeatedly mislabeled medical bottles which could have resulted in serious problems for the patients and the employer. The claimant had been warned previously regarding the need to be more careful and to perform properly.

This is not a case of inefficiency or the failure to perform to the employer's expectation as the result of inability or incapacity, inadvertencies, or ordinary negligence. The claimant's conduct was evidence of carelessness and negligence to a gross degree and in disregard of the duties and obligations the claimant owed to the employer. The claimant was discharged for misconduct connected with the work, and he is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 300.25**
DOCKET/DATE	***Messer & Stilp, Ltd. v. Department of Employment Security,* 392 Ill.App.3d 849, 331 Ill.Dec. 467, 910 N.E.2d 1223 (1st Dist., 2009); Petition for Leave to Appeal Denied at 233 Ill.2d 562, 335 Ill.Dec. 635, 919 N.E.2d 354 (Table) (9/30/09)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Manner of Performing Work**
SUBTITLE	**Quality of Work**
CROSS-REFERENCE	**None**

The claimant, a lawyer, was discharged by the employer for allegedly failing to follow the firm's rules concerning the handling of cases and for repeated problems in conducting lease negotiations. The claimant testified that she worked to the best of her ability. On appeal, the Board of Review reversed the Referee and awarded benefits, concluding that the claimant's failure was not deliberate and willful and did not constitute misconduct as defined by Section 602(A) of the Act. The circuit court affirmed.

HELD: On appeal to the appellate court, the employer asserted that the claimant should be held to a higher standard in determining whether her behavior constituted misconduct because, as an attorney, she was bound by numerous rules and ethical requirements that do not govern the employment practices of nonprofessional workers and, thus, her behavior should be deemed misconduct if it resulted from carelessness and negligence rather than deliberation and willfulness. The court rejected the employer's argument on the basis that there was nothing in the plain language of Section 602(A) to indicate that the legislature intended to differentiate between different professions or occupations in applying the definition of misconduct contained in that provision. The statute unequivocally applies equally to all workers without regard to the nature or type of employment or

the designation or position of the individual. The court concluded that the evidence did not establish that the claimant deliberately and willfully failed to meet the employer's requirements and, therefore, her behavior did not constitute misconduct.

Quantity of Work MC 300.3

ISSUE/DIGEST CODE	**Misconduct/MC 300.3**
DOCKET/DATE	**84-BRD-42873-29-84**
AUTHORITY	**Section-602A**
TITLE	**Manner Of Work Performing Work**
SUBTITLE	**Quantity of Work**
CROSS-REFERENCE	**None**

The claimant objected to the employer's wage scale. He was discharged after eight months when he continued to limit his production to a level he considered commensurate with the wages he was being paid.

HELD: The failure to produce the required quantity of work was due solely to the claimant's dissatisfaction with the wage scale, and it was not due either to his physical or mental inability to do the work, or because the employer failed to give him sufficient time to meet the standards. Accordingly, the claimant was discharged for misconduct connected with his work, and he is disqualified for benefits.

Neglect of Duty MC 310

General MC 310.05
No case files present.

Duties not Discharged MC 310.1

ISSUE/DIGEST CODE	**Misconduct/MC 310.1**
DOCKET/DATE	***Loveland Management Corp v. IDES*, 520 NE 2d 1070 (1988)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Neglect of Duty**
SUBTITLE	**Duties Not Discharged**
CROSS-REFERENCE	**None**

The claimant was hired to be the maintenance man for a complex of 91 apartments and 30 townhouses. The employer's witness, the president of the complex's management corporation, testified that the claimant's neglect of duties led her to discharge him.

The employer's witness testified that she instructed the claimant to have a sewer main rodded out. This was not done, and 3 apartments were flooded by sewage. Further, 3 days after the flooding, the claimant had still not cleaned out the flooded apartments.

The employer's witness also testified that the village fire inspector had listed 17 safety violations at the complex, including: lint collecting behind clothes dryers, garbage near a furnace, and an inoperative fire alarm system.

Finally, on the claimant's last day of work, the witness observed that garbage had piled up in the chutes, the lobby of the building was dirty, and the lawn had not been cut. When the claimant, wearing only shorts and sandals, met her at the management office, she immediately discharged him.

The claimant testified that he had had little experience as a maintenance man and that the employer knew this when he was hired. He stated that, in addition to his regular maintenance duties, he was required to paint townhouses. With respect to the garbage situation, he stated that the residents were in the habit of throwing their garbage on the floor of the garbage room, but that he always cleared it up at the end of the day. As to the lawn, he agreed that it might have been high in some places, but that was due to the fact that the complex was large and that it would have been nearly impossible to cut all the grass at one time even if he did not have the number of duties he had. Also, the claimant pointed out that at one point he had been prepared to quit but the employer persuaded him to continue. Finally, after he was discharged, the employer hired 2 people to perform the duties he had been assigned.

HELD: An employer may be justified in discharging an individual due to that individual's inability to perform his work; but, a misconduct disqualification requires a showing more than inability to perform the work.

In this case, the claimant was the sole maintenance man for a complex of 91 apartments and 30 townhouses. While his weak job performance may have justified his discharge, he was discharged due to his inability to perform his work to the employer's satisfaction and not because of willfulness or gross negligence.

Benefits were allowed without disqualification.

ISSUE/DIGEST CODE	**Misconduct/MC 310.1**
DOCKET/DATE	**83-BRD-l1414/10-7-83**
AUTHORITY	**Section-602A**
TITLE	**Neglect Of Duty**
SUBTITLE	**Duties Not Discharged**
CROSS-REFERENCE	**None**

The claimant was a licensed practical nurse. The employer cited three separate instances in which the claimant had dispensed improper care to the patients. The last infraction, which led to her discharge, was her failure to record the medication and the diet that she had given a particular patient. The claimant stated that she did not record the information because she was called away when a doctor came to her floor. The claimant admitted to these infractions. She had received prior warnings.

HELD: Despite prior warnings, the claimant did not increase her attention to her work and was, therefore, derelict in her duty. The claimant was discharged for misconduct connected with her work, and she is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 310. 1**
DOCKET/DATE	**83-BRD-14886/12-13-83**
AUTHORITY	**Section-602A**
TITLE	**Neglect Of Duty**
SUBTITLE	**Duties Not Discharged**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a security guard. While he was on duty, he received a telephone call from the security guard who was to relieve him saying that he would be five minutes late. When the relief guard did not report, the claimant left his assigned post without authorization and without explaining the situation to the employer. He was discharged.

HELD: Leaving a security guard post without authorization or reporting the fact that the relief had not appeared is misconduct connected with work. Therefore, the claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/ MC 310.1**
DOCKET/DATE	***Williams v. Dep't of Employment Sec.*, 2016 IL App (1st) 142376, 52 N.E.3d 414, 402 Ill.Dec. 493 (1st Dist., 2016)**
AUTHORITY	**Section 602A of Act**
TITLE	**Neglect of Duty**
SUBTITLE	**Duties not discharged**
CROSS-REFERENCE	**MC 485.55 Violation of Company Rule, Manner of Performing Work; PR 405.2 Right of Review, Persons Entitled; PR 195.05 Fair Hearing & Due Process, General; PR 380.1 Rehearing or Review, Reweighing the Evidence**

The claimant, a private security guard at a college campus, was terminated after video footage showed her and another security guard congregating at a picnic table for approximately 35 minutes. The unauthorized break occurred at a time that the claimant was supposed to be actively patrolling the campus. During that period, the claimant reported she was "patrolling the campus." The claims adjudicator held the claimant ineligible and the claimant appealed. The referee affirmed the determination, the

claimant appealed again, and the Board of Review affirmed. The claimant appealed, and the circuit court reversed. The Department appealed. In the appellate court, the claimant argued that the Department had no standing to appeal and so the appeal must be dismissed. The claimant also alleged bias by the referee, arguing that, because the Department will defend an appeal after a Board decision denying benefits, the appellate court should presume that the Board is biased against claimants during the initial proceedings.

HELD: Regarding the claimant's argument that the Department had no standing, the appellate court found that it had standing, referring to the same argument made in *Petrovic v. Dep't of Employment Sec.*, 2016 IL 118562, and stated that "an administrative agency with additional managerial functions beyond those of a tribunal is not subject to the normal rule that an administrative agency has no standing to appeal a decision reversing its own decision."

Regarding the claim that the referee was biased, the court held that the claimant must overcome a presumption of honesty and integrity in those serving as adjudicators by showing in the record that the administrative proceeding was either tainted by dishonesty or contained an unacceptable risk of bias. The court stated that it would not infer bias during administrative proceedings merely from the fact that the Board may defend its decision at a later time. The court found that the claimant's arguments lacked merit.

As to the merits of the case, the court held that the circuit court improperly engaged in reweighing the evidence, particularly the credibility of witness testimony. The court stated, "as a reviewing court, we may not judge the credibility of the witnesses, resolve conflicts in testimony, or reweigh the evidence." The appellate court concluded that the circuit court erred in reversing the Board's decision which found the claimant ineligible for benefits, finding that the Board did not err in finding that the claimant violated the employer's rule requiring employees to request permission to take breaks and she falsely reported that she was "patrolling the campus." In so doing, the claimant's conduct caused potential harm in jeopardizing the employer's contractual relations with its client and her conduct constituted misconduct under the Act.

Personal Comfort and Convenience MC 310.15

ISSUE/DIGEST CODE	**Misconduct/MC 310. 15**
DOCKET/DATE	**83-BRD-5908/5-26-83**
AUTHORITY	**Section-602A**
TITLE	**Neglect Of Duty**
SUBTITLE	**Personal Comfort And Convenience**
CROSS-REFERENCE	**None**

The claimant worked as a process control technician on the night shift. A security guard testified that he discovered the claimant asleep on a mail table at 4:45 a.m. and that the claimant did not respond when spoken to. The guard reported the incident.

The claimant's supervisor testified that the claimant was scheduled for a lunch break from 5:00 to 5:40 a.m. and, when confronted, the claimant had told him that he could not remember when he had taken lunch but that he had used that time to sleep. The claimant had not signed out for lunch as required, and his contention that he was sleeping on his own time could not be verified. The claimant subsequently told the supervisor that he had switched lunch periods with a co-worker who took lunch at 4:00 a.m., but, when the supervisor telephoned the co-worker for verification, she told him that she could not recall making such an arrangement.

The claimant testified that he had not signed out because he and his co-workers kept records in a haphazard manner, filling them out when they remembered.

HELD: The claimant knew or should have known that sleeping on the job during working hours might lead to his dismissal. He was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/ MC 310.15**
DOCKET/DATE	***Universal Security Corp. v. IDES*, 2015 IL App (1st) 133886, 28 N.E.3d 876, 390 Ill.Dec. 223 (1st Dist., 2015)**
AUTHORITY	**Section 602A of Act**
TITLE	**Neglect of Duty**
SUBTITLE	**Personal Comfort And Convenience**
CROSS-REFERENCE	**None**

The claimant worked as an unarmed night security guard at O'Hare Airport. With less than three months on the job, a supervisor caught the claimant, while on duty, sitting at his station in an upright position, asleep. The claimant admitted temporarily "dozing off" as he was tired from working two jobs. Employer rules mandated discharge for sleeping on the job, and he was fired. The claimant filed for benefits. The claims adjudicator found the claimant ineligible, holding that the claimant willfully and deliberately violated the employer's reasonable policy prohibiting sleeping on the job. The referee reversed, stating that the claimant had not fallen asleep willfully and deliberately. The Board of Review affirmed the referee, stating that "falling asleep on the job is willful only if an individual purposely takes a nap." The employer appealed. The circuit court affirmed, and the employer appealed.

HELD: In affirming the Board of Review**,** the Appellate Court reviewed two previous sleeping on the job cases, *Washington v. Board of Review,* 211 Ill.App.3d 663, 156 Ill. Dec. 90, 570 N.E.2d 566 (1991), in which the employee received benefits, and *Odie v. Department of Employment Security,* 377 Ill.App.3d 710, 317 Ill. Dec. 190, 881 N.E.2d 358 (2007), in which the employee was denied benefits. The court noted that the material facts differed in the two cases and found that the record more closely resembled *Washington*. The court stated that nothing in the case indicated that the claimant previously had fallen asleep on duty, that he realized at the time that he was falling asleep, or that he made no efforts to stay awake. And, he was asleep only for a short interval (about one-tenth of the time of the plaintiff in *Washington* and less than half of the time of the plaintiff in *Odie)* in an upright sitting position out in public view. Nor did the claimant have a history of work infractions or, when awakened, try to minimize the situation or go back to sleep, as in *Odie*.

ISSUE/DIGEST CODE	**Misconduct/MC 310.15**
DOCKET/DATE	**ABR-83-14494/11-21-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Neglect Of Duty**
SUBTITLE	**Making Sexual Advances During Working Hours**
CROSS-REFERENCE	**MC 390.25. Fellow Employees; MC 485.05, Company Rule**

After the claimant, a meat cutter, made a statement of a sexual nature to a female co-worker, he was warned by his employer that any repetition of the event would lead to his discharge. Subsequently, the employer made an arrangement through which it employed high school girls in a learning program. When it became known to the employer that from time to time the claimant made statements of a sexual nature to some of these employees, he was discharged.

Some of the female workers believed that the claimant's discharge was too harsh a penalty.

HELD: The work place is a place where work is performed. It is not a place where one makes sexual arrangements. A worker who does so does so at his peril. Whatever interferes with the normal operation of the employer's business damages the best interest of the employer.

Even if the conduct is not patently offensive, amounting only to excessive conversation, if it is established that the worker persisted in such conduct despite warnings or reprimands, his discharge will be for misconduct.
In the instant case, it was immaterial that some of the female workers considered the claimant's discharge too harsh a penalty. The claimant had been warned. His persistence in making comments of a sexual nature that had nothing to do with his work constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 310.15**
DOCKET/DATE	***Washington v. Board of Review,* 570 N.E. 2d 566 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Manner of Performing Work**
SUBTITLE	**Personal Comfort and Convenience (Sleeping)**
CROSS-REFERENCE	**MC 495.7, Violation of Company Rule**

The claimant, a secretary, was assigned to take minutes of a committee meeting. At the start of the meeting, she took an aspirin because she was suffering from a headache. During the meeting, she rested an elbow on the table and leaned her head against her hand. She dozed off and awoke 30 minutes later. She was discharged for sleeping on the job.

HELD: Misconduct requires "willful" behavior. Falling asleep on the job is willful only if an individual purposely takes a nap, or, knowing that she might fall asleep, fails to follow the employer's procedures (fails to inform the employer).

Here, nothing in the facts indicated that the claimant purposely took a nap or expected to fall asleep. She accidentally fell asleep. Accidents are not willful. There was no misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 310.15**
DOCKET/DATE	**ABR-85-7221/3-13-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Neglect Of Duty**
SUBTITLE	**Personal Convenience (Taking Personal Telephone Calls)**
CROSS-REFERENCE	**MC 485.7, Violation of Company Rule**

The employer's rules provided that workers should make and/or accept personal telephone calls only during breaks or lunch hour, or in the case of emergencies. The claimant, an Apprentice Photo Re-toucher, had been warned to discontinue his practice of accepting personal telephone calls at his work station during business hours. Nonetheless, the claimant continued to receive personal telephone calls, until, finally, the employer discharged him for that reason. The claimant contended that the only reason he continued to accept personal phone calls was that the switchboard operator had put the calls through to him, and, therefore, he could not be held responsible for accepting the calls.

HELD: Excessive, non-work related (telephone) conversations which waste the employer's time and interfere with the normal operation of the employer's business may constitute misconduct. If the worker knows, or should know, that he should desist, then his actions will constitute misconduct. In the instant case, the claimant had been put on notice, both by the employer's stated rule and by specific warnings. The claimant's contention that he did not have the ability to desist was without merit: He could have told his family, relatives, friends and acquaintances to call him at designated times, other than working hours. His actions constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 310.15**
DOCKET/DATE	***Odie v. Department of Employment Security*, 377 Ill.App.3d 710, 317 Ill.Dec. 190, 881 N.E.2d 358 (1st Dist., 2007)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Personal Comfort and Convenience**
CROSS-REFERENCE	**MC 485.7 Violation of Company Rule**

The claimant, a certified nurse's assistance, was assigned to monitor approximately 25 residents in the employer's dayroom and to provide assistance as necessary, which required her to be awake and alert. Without informing anyone, the claimant, suffering from a toothache, took extra-strength Tylenol, which she believed to cause drowsiness, and fell asleep for 10 to 20 minutes. When awakened by a visitor and informed that a resident was shouting for help, the claimant told the visitor that the resident does that all the time and went back to sleep. The claimant knew that her job was in jeopardy due to previous infractions of the employer's policies, although she had never received a warning for sleeping on the job. The claimant knew that sleeping on the job was a cause for termination.

HELD: The court found that the claimant's violation of the employer's reasonable policy was deliberate and willful. The claimant was aware that her job was in jeopardy due to prior infractions of the employer's rules. Nevertheless, without informing anyone, she took a drug which she knew caused drowsiness and subsequently fell asleep. When awakened by a visitor who told her that a resident was shouting for help, her response was one of indifference rather than alarm and embarrassment, even though it was her responsibility to ensure the well-being of the nursing home's residents. Such circumstances demonstrate that the claimant's acts cannot be excused as being unintentional, thereby distinguishing the instant case from the court's prior rulings in *Washington v. Board of Review*, 570 N.E.2d 556 (1st Dist., 1991) and *Wrobel v. IDES*, 801 N.E.2d 29 (1st Dist., 2003).

Temporary Cessation of Work MC 310.2

ISSUE/DIGEST CODE	**Misconduct/MC 310.2**
DOCKET/DATE"	**84-BRD-2843/2-29-84**
AUTHORITY	**1.Section-602A**

TITLE **Neglect Of Duty**
SUBTITLE **Temporary Cessation Of Work**
CROSS-REFERENCE **None**

The claimant was discharged for leaving his work location. The claimant had been warned on at least three previous occasions not to leave his work station to visit another department. The claimant said that there were parts that he needed from that department in order to perform his job, but he never gave this information to his supervisor, and the employer denied it. On his last day at work, he was discharged when he committed the same act.

HELD: The claimant had been repeatedly warned not to leave his work station to visit another department, and there was no compelling reason for the cessation of work or for failing to obtain prior authorization. When he persisted in deliberately disregarding the warnings, his resulting discharge was for misconduct connected with the work, and the claimant is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 310.2**
DOCKET/DATE **ABR-85-5412/12-27-85**
AUTHORITY **Section 602A of the Act**
TITLE **Neglect Of Duty**
SUBTITLE **Temporary Cessation of Work**
CROSS-REFERENCE **None**

The claimant had been scheduled to work the 11 p.m. to 7 a.m. shift. She was discharged after she left work, without permission, at 3:30 a.m. The claimant's foreman had come to work drunk and was mistreating the claimant by bumping against her and hitting her on the "rear end." Also, because the claimant's last name rhymed with "salami," the foreman kept referring to his "Polish sausage." The claimant sought assistance from other foremen on the premises. The other foremen refused to try to do anything about her foreman's conduct, refused to report the matter to superiors, and refused to provide the claimant with those superiors' telephone numbers. On account of her foreman's continuing conduct, the claimant left work. Her attempts to discuss the matter with the employer later that day were rebuffed; she had already been discharged for leaving work early.

HELD: When a worker has been discharged for ceasing work without authorization, or for leaving work early without authorization, the following factors should be considered:

1 - The worker's reason(s) for ceasing to work;

2 - The worker's reason(s) for failing to obtain authorization;

3 - The length of time the worker failed to work;

4 - The seriousness of the work cessation in terms of damage to the employer's interests.

Generally, if the worker's reason for ceasing work and her reason for failing to obtain prior authorization are both so compelling as to constitute good cause, her actions will not constitute misconduct, unless she has unnecessarily prolonged the work cessation, resulting in damaging consequences for the employer.
In the instant case, the claimant left early because she was being mistreated by a drunken foreman; this constituted good cause. Her reasonable attempts to remedy the situation were unsuccessful; she had no alternative but to leave without authorization. The evidence established that the claimant did not unnecessarily prolong the cessation of work. The evidence did not indicate that the employer suffered any harm.

The claimant was not subject to a disqualification under Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 310.2**
DOCKET/DATE **ABR-85-6603/1-29-86**
AUTHORITY **Section 602A of the Act**
TITLE **Neglect Of Duty**
SUBTITLE **Temporary Cessation of Work**
CROSS-REFERENCE **MC 485.1, Violation of Company Rule**

The claimant, a Parking Enforcement Officer, had received warnings and a suspension for neglect of duty. On the morning of her discharge, she was warned about "going out of service" (shutting off radio contact) without giving headquarters her location and a reason. One hour after returning from lunch, and 10 minutes before a scheduled break, the claimant shut off radio contact with headquarters, without giving her location or a reason. She was discharged.

The claimant stated that an "emergency" had prevented her from complying with the employer's directive. The emergency was that she wished to go to the bathroom.

HELD: When a worker has been discharged because she ceased work without authorization, or because she left work early without authorization, the following factors should be considered:

1 - The worker's reason(s) for ceasing to work;

2 - The worker's reason(s) for failing to obtain authorization;

3 - The length of time the worker failed to work;

4 - The seriousness of the work cessation in terms of damage to the employer's interest.

In the instant case, the claimant did not have good cause for failing to notify the employer before "going out of service." Her preferred justification was contrary to the weight of human experience: Except for illness or physical dysfunction, neither of which the claimant cited to have existed, the need to go to the toilet does not come without warning. Such warning would have been sufficient for the claimant to have notified headquarters.

If a worker does not have good cause, either for ceasing work or failing to obtain authorization, then a determination of misconduct depends upon how substantially the worker has violated the standard of behavior expected of her. Generally, brief cessations of work do not constitute misconduct. However, if a worker has been warned about such behavior, or is aware that the cessation of work may be detrimental to the employer's interests, then the worker's actions will constitute misconduct.

In light of the warnings the claimant had received, her failure to keep her employer informed, even for a short period of time, constituted misconduct.

Personal Appearance MC 363
General MC 363.05

ISSUE/DIGEST CODE	**Misconduct/MC 363.05**
DOCKET/DATE	**ABR-86772/6-1-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Personal Appearance**
SUBTITLE	**Rule about Long Hair**
CROSS-REFERENCE	**None**

Although the employer did not set any objective standard by which to measure hair length, it did have a rule that employees should be "neat." The claimant testified that from time to time he would get his hair cut. He thought that his hair was the "proper" length. The employer discharged the claimant, feeling that his hair was still longer than it should have been.

HELD: Employers have the right to prescribe certain standards for their employees. Such standards may be prescribed because the employer wishes to maintain an appearance of neatness or cleanliness.

But misconduct means the violation of a known and reasonable rule. Here, the employer's rule did not prescribe any measurable standard. Consequently, it could not be concluded that the claimant was aware of it or that it was reasonable. Benefits were allowed.

ISSUE/DIGEST CODE	**Misconduct/MC 363.05**
DOCKET/DATE	**ABR-85-3359/10-2-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Personal Appearance**

SUBTITLE **Impact on Safety**
CROSS-REFERENCE **MC 485.2, Violation of Company Rule; MC 485.8**

The claimant was employed as a Carpenter in a nuclear power plant. His job would require him to work in potentially radioactive areas, where the wearing of a securely fitted mask, to protect against contamination, was mandatory. So that the claimant's mask would fit properly, he was requested to cut off his beard. When the claimant refused to cut off his beard, he was discharged.

HELD: Employers have the right to prescribe certain standards of dress for their employees. Such standards may be prescribed because the employer wishes to maintain a certain "atmosphere," or appearance of neatness or cleanliness, or to protect employees' safety. A rule requiring the wearing of certain items deemed necessary for safety is generally reasonable, unless outweighed by special considerations, and a worker who is discharged for a willful violation of such a rule is generally discharged for misconduct connected with his work. In the instant case, the employer's need for safety measures outweighed the claimant's interest in maintaining his beard. The claimant's refusal to comply with his employer's reasonable safety regulation constituted misconduct connected with his work within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 363.05**
DOCKET/DATE **ABR-85-4088/10-3-85**
AUTHORITY **Section 602A of the Act**
TITLE **Personal Appearance**
SUBTITLE **Hygiene**
CROSS-REFERENCE **None**

The claimant worked for an insurance company. The evidence established that, after co-workers had complained about her body odor, the claimant was counseled by the employer about personal hygiene methods. Thereafter, although the claimant decided not to use feminine hygiene products recommended by the company nurse, she did bathe daily and use deodorant. The claimant's hygiene methods were not effective in eliminating the odor, which was the reason for her discharge.

HELD: Although it is the employer's right to set standards for its employees' neatness and cleanliness, unless the employer can establish that an employee has willfully failed to comply with those standards and such non-compliance may be detrimental to others' health, safety, or morals, or to the employer's business, a resulting discharge will not be for misconduct. In the instant case, those elements were not established. The claimant made a reasonable effort to control the problem of disturbing her coworkers with her body odor. She did not willfully disregard the employer's interests and her discharge was not for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 363.05**
DOCKET/DATE **ABR-86-259/4-8-86**
AUTHORITY **Section 602A of the Act**
TITLE **Personal Appearance**
SUBTITLE **Uniform**
CROSS-REFERENCE **MC 485.2, Violation of Company Rule**

The claimant worked as a Porter in a bowling alley. While working on the day shift, he wore, per requirements, a red casual shirt. Before he began working on the night shift, he was informed that he would be required to wear a white shirt, red vest, and black bow tie. One night, the claimant reported to work not wearing the required attire. Although directed to do so by his manager, the claimant replied that he did not wish to "look like a clown." The claimant was fired.

HELD: Employers reserve the right to prescribe certain standards of dress and appearance for their employees. Such rules may be for the purpose of establishing a certain "atmosphere" in the establishment or for making employees easily identifiable and accessible, and are generally reasonable. A willful violation of such a reasonable rule may tend to injure the employer's interests, and therefore constitutes misconduct.

In the instant case, the claimant willfully violated his employer's reasonable rule. His actions constituted misconduct.

Relation of Offense to Discharge MC 385
General MC 385.05

ISSUE/DIGEST CODE **Misconduct/385.05**
DOCKET/DATE **85-BRD-04800/6-26-85**
AUTHORITY **Section 602A of the Act**
TITLE **Relation of Offense to Discharge**
SUBTITLE **Condonation/Employer's Awareness of Act**
CROSS-REFERENCE **MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed by a bank, as Assistant to the Chief Cashier. The employer was concerned about a recent loss of $4,000, and interrogated the claimant, as well as others, about that specific loss. During the course of her interrogation, the claimant admitted not to an act involving that $4,000, but to an earlier, distinct misappropriation of funds: Some time earlier, the claimant had kept for herself overpayments made by bank customers. The employer had had no knowledge of the claimant's earlier actions, until she herself had disclosed them during the course of the interrogation. The employer then discharged the claimant for her earlier, dishonest acts.

HELD: Inasmuch as the employer was not aware of the claimant's acts of dishonesty until the claimant admitted them, it cannot be said that the employer had condoned them. Notwithstanding the claimant's subsequent record, her admitted acts of dishonesty were inherently violative of the employment relationship and constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/385.05**
DOCKET/DATE **ABR-86-878/4-18-86**
AUTHORITY **Section 602A of the Act**
TITLE **Relation of Offense to Discharge**
SUBTITLE **Falsification of Application**
CROSS-REFERENCE **MC 140.25, Dishonesty, Falsification of Application**

The claimant worked for 10 years as a Respiratory Therapist, until her employer discovered that she had lied, on her application for employment, about her formal qualifications: The claimant had completed only 16 of the 42 college credit hours required for her certification as a Respiratory Therapist.

When the employer learned of the claimant's falsified credentials, she was discharged, even though her work for the past 10 years had been satisfactory.

HELD: There are 4 major principles which determine whether falsification of an application for work constitutes misconduct. One of these is whether the employer's accurate knowledge of the requested information is material in the selection of the worker for the job. Another is whether the falsification of the work application will tend to injure the interest of the employer.

In many occupations, a falsehood in an application for employment would be remote after 10 years, and inconsequential in view of satisfactory performance in the interim. However, there are many professions to which remoteness cannot apply, either because continuing honesty is of paramount importance, or because the credentials set forth in the application are a continuing requirement for licensing or continue to be essential to the nature of the work performed.

In the instant case, the claimant was employed in a profession where the possession of certain medical knowledge and life saving skills was essential. A genuine certificate of formal training would have shown whether the claimant brought to her job such knowledge and skills, and was material to her selection for the job. In the absence of that formal training, it could not be shown that the claimant, even by working 10 years, had maintained certain skills (which she might never have possessed). The claimant, by falsifying her credentials, may have exposed patients to risk and subjected her employer to liability. Her discharge was for misconduct.

ISSUE/DIGEST CODE **Misconduct/385.05**
DOCKET/DATE **ABR-87-3581/8-14-87**
AUTHORITY **Section 602A of the Act**
TITLE **Relation of Offense to Discharge**
SUBTITLE **General**
CROSS-REFERENCE **MC 15.2, Absence; MC 270.05, Use of Intoxicants**

The claimant had been absent and tardy on a number of occasions, resulting in 2 suspensions and a final warning. In February, she acknowledged that her use of drugs might be the cause of her problems. Her employer referred her to a drug rehabilitation

program; the employer, under its employees' health insurance package, was to pay for hospitalization. The claimant entered the rehabilitation program on February 6, and remained in the program until March 2, after which she continued to participate in support groups.

On February 26 - while the claimant was participating in the rehabilitation program - the employer discharged her for her prior absenteeism.

HELD: Absenteeism without justification constitutes misconduct. In this case, the claimant's previous absences were the result of drug usage; at the time and under the circumstances those absences occurred, they might have constituted misconduct. But, at the time of the work separation, the claimant, having sought medical attention to cure her condition, was participating in a drug rehabilitation program, to which she had been referred by the employer. The employer, having referred the claimant to its rehabilitation program - so that she might recuperate or make amends, in lieu of discharge - cannot 3 weeks later insist that the claimant's absences constituted misconduct for which she was discharged. The relation between the previous absences due to drug usage and the discharge was tenuous. The claimant was discharged for reasons other than misconduct.

ISSUE/DIGEST CODE	**Misconduct/385.05**
DOCKET/DATE	**83-BRD-13682/11-22-83**
AUTHORITY	**Section-602A**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant had been warned about her tardiness to work. On March 10, 1983, she was again late, and the claimant was discharged for that tardiness on April 12, 1983. The employer was unable to explain the reason it took so long to discharge the claimant after her last tardiness on March 10, 1983.

HELD: The claimant continued to work for the employer at least four weeks after her last tardiness. There is no evidence that the delay in discharging the claimant was due to the employer's need to conduct an investigation or for any other compelling business reason. Therefore, the employer condoned claimant's last tardiness, and her discharge was for reasons other than misconduct connected with her work, and she is not subject to any disqualification.

ISSUE/DIGEST CODE	**Misconduct/385.05**
DOCKET/DATE	**85-BRD-05894/8-14-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 195.05, Fair Hearing and Due Proces**

The claimant worked in Sales for 2 1/2 years. On November 29, 1984, immediately after being questioned about "register shortages," the claimant was discharged. He was told that he being was discharged due to having falsified his application for employment.

At the appeal hearing, the claimant admitted that 2 1/2 years prior to his discharge he had omitted to mention on his application the name of a previous employer. Although the employer was represented at the hearing, the employer's witness offered no direct testimony concerning the reason for the claimant's discharge, nor did the Referee ask the employer's witness to testify as to the reason for the claimant's discharge.

The Referee issued a decision which disqualified the claimant for misconduct, on the basis of the claimant having falsified his employment application.

HELD: It is axiomatic that for an act to constitute misconduct connected with work within the meaning of the statute the claimant must have been discharged for that act.

In the instant case, based upon the evidence of record, it was unclear whether the employer had discharged the claimant immediately upon discovering that he had falsified his employment application, or had discharged the claimant after a substantial passage of time, thereby condoning such falsification and discharging the claimant for other reasons. Because the Referee did not attempt to elicit from the employer's witness information sufficient for the Board of Review to decide for what

act or acts the claimant was discharged, the Board of Review was compelled to remand the case with instructions to the Referee: to elicit unequivocal testimony from the employer's witness as to the reason for the claimant's discharge; to elicit from the employer's witness testimony sufficient to establish the date upon which the employer discovered that the claimant had falsified his application for work, accompanied by an explanation from the employer's witness as to the reason for a delay, if any, between the employer's discovery of the claimant's alleged offense and his discharge for that offense; and, at the conclusion of the new hearing, to issue a new decision based upon all of the evidence.

ISSUE/DIGEST CODE	**Misconduct/385.05**
DOCKET/DATE	***Neville v. Board of Review*, 494 N.E. 2d 512 (1986)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant reported to work with bloodshot eyes and alcohol on his breath. The next day, he received one week's notice that he would be discharged for recurring drinking that affected his work.

The claimant contended that, because he was permitted to work another week, his discharge could not have been for misconduct.

HELD: An undue delay between alleged misconduct and discharge raises a presumption that the discharge is due to a cause other than the alleged act. Notice of discharge, as opposed to immediate discharge, does not, by itself, raise the presumption.

In this case, neither the timing of the notice (1 day after the act) nor the timing of the actual work separation (1 week after) constituted an undue delay. Therefore, the fact that the claimant was not dismissed immediately did not change the reason for discharge. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 385.05**
DOCKET/DATE	**ABR-98-99 / 5-6-98**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**General**
CROSS REFERENCE	**MC190.15, Evidence, Weight and Sufficiency**

On October 2, the claimant was fired immediately after he was found at work in possession of a plastic bag, the contents of which were unknown at the time; however, the employer suspected the bag contained an illegal substance. The results of a laboratory test became available a week after the claimant’s discharge: the bag contained heroin. The employer attached a copy of the test results to its protest, dated October 30. After an appeal hearing, a Referee concluded the claimant was discharged on mere suspicion (and not for misconduct) because the contents of the bag were not known at the time the employer discharged the claimant.

HELD: The relevant inquiries are to determine the stated reason for the discharge, and, whether the individual’s actions occurred prior to or after the discharge. Here, the employer stated it fired the claimant for being in possession of an illegal substance while at work, and, the claimant was in possession of an illegal substance while at work. The fact that evidence validating the employer’s suspicions became available after the discharge is of no concern. Benefits were denied.

Relations with Fellow Employees MC 390
General MC 390.05

ISSUE/DIGEST CODE	**Misconduct/MC 390.05**
DOCKET/DATE	***Ken's Beverage, Inc. v. Wood, 2021 IL App (3d) 190115***
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations with Fellow Employees**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 190.05, Evidence**

Claimant worked for the employer for seven years where her last position was a dispatch supervisor. During the claimant's employment she accumulated 12 documented warnings, six of them for unprofessional behavior. Claimant's final written warning, issued on July 5, 2017, was for a violation of the employer's sexual harassment policy. The warning included a reprimand and stated that, "any further incidents of misconduct [or] harassment will result in [Wood's] immediate termination." Claimant was discharged on March 1, 2018 for engaging in hostile and disruptive work behavior against three dispatchers and her supervisors. The local office denied the claimant benefits and she appealed. At her hearing the human resources director and the claimant's direct supervisor testified. The HR director testified that the employer had to move several personnel due to claimant's behavior. The claimant's supervisor testified that there were complaints about the claimant's behavior and in February, 2018, the supervisor observed a dispatcher crying in her car following a hostile interaction with the claimant. The supervisor testified that, when he was discussing her behavior with her, claimant said "that's bulls***." The Referee denied benefits and the claimant appealed. The Board of Review reversed the ruling, stating that the final incident of sexual harassment was an isolated incident, and commented that the employer failed to present eye-witness testimony about actual incidents. The employer appealed and the circuit court affirmed the Board's decision. The employer appealed.

HELD: The appellate court reversed the decision of the circuit court, holding that the Board of Review erred in making a distinction between the sexual harassment abusive language and the claimant's other abusive language towards other employees. The court stated that, "The issue is whether Wood's comments or choice of words caused harm to other employees by affecting their "well-being" or their "morale." citing *Alternative Staffing, Inc.*, 2012 IL App (1st) 113332. The court went on to state that the Board focused on the triggering event and ignored prior incidents, again citing *Alternative Staffing*. Under *Alternative Staffing*, the evidence of prior documented warnings was sufficient to satisfy the employer's burden of proof. The court went on to rebut the Board's argument that the hearsay statements were admitted in error as no objection was made to the hearsay, citing UI Rule 2720.250 which states that unobjected to hearsay statements may be considered and given their natural probative value.

In a clarifying concurring opinion, Justice Woldridge stated that the claimant's attorney did object to the hearsay evidence. However, the admissibility of the employer's hearsay testimony was moot. Justice Woldridge wrote that the Referee did not rely on hearsay statements in reaching his decision and stated so. Nevertheless, there was sufficient non-hearsay evidence of the claimant's misconduct introduced at the hearing. The final warning informed claimant that any further misconduct by her would result in her termination. Her supervisor testified that he repeatedly e-mailed claimant warnings about her failure to follow his directives, but claimant ignored his directions on several occasions. At least one of these 10 instances occurred after the final warning. Her supervisor testified that, when he met with claimant in February 2018 to discuss her misconduct, claimant dismissed the claims against her as "bullshit." That statement constituted misconduct by claimant in defiance of the final warning. In addition, the HR Director testified that she was present during a meeting in the Fall of 2017 when claimant's supervisors warned her about her misconduct and claimant "started yelling."

ISSUE/DIGEST CODE **Misconduct/MC 390.05**
DOCKET/DATE **83-BRD-14568/12-7-83**
AUTHORITY **1.Section-602A**
TITLE **Relations with Fellow Employees**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was employed as a waitress. She testified that she had a difference of opinion with the employer's controller while at work. Because she became angry, she loudly called the controller a "dummy" and an "idiot" in front of patrons. She was discharged the following day.

HELD: The claimant was discharged for arguing with another employee at work in the presence of the employer's patrons. Such behavior violated a reasonable mode of conduct which the employer had a right to control. The claimant knew, or reasonably could have known, that such behavior would result in her discharge, which was for misconduct connected with her work. She is disqualified for benefits.

Abusive or Profane Language MC 390.1

ISSUE/DIGEST CODE	**Misconduct/MC 390.1**
DOCKET/DATE	**ABR-85-4867/10-31-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations With Fellow Employees**
SUBTITLE	**Abusive or Profane Language**
CROSS-REFERENCE	**MC 385.05, Relation of Offense to Discharge**

During the last 2 years of employment, the claimant, an Assembler, had received oral and written warnings and suspensions for a variety of offenses, including tardiness, use of profanity, insubordination, and poor work performance. A witness for the employer testified that the claimant's record was "probably the worst record that an employee has established with us."

The claimant's discharge finally came about as a result of the following incident: He and a co-worker were working together on an assembly line machine. The machine jammed and cartons began falling to the floor. The claimant shut off the machine in order to clear the jam. Then the co-worker restarted the machine. The claimant told him, "Hey, man, cut the damn machine off, you know." The co-worker then reported to his superiors that he could not work with the claimant anymore. The employer decided that this incident was "kind of a last straw."

HELD: In order to establish misconduct, it is not always necessary to show that the claimant's last act was a serious breach of duties owed the employer. If the act was but the last in a series of actions which, viewed in their entirety, demonstrated a willful and wanton disregard of the worker's obligations, it would establish misconduct. At the same time, the last act must, even if only in some trivial fashion, amount to a willful disregard of the employer's interests.

Within this context, abusive or profane language used in talking to fellow employees must be viewed in light of the total environment. There is a certain amount of "give and take" between employees, and language which does not go beyond that customarily used in the establishment could not serve as a basis for a finding of misconduct, unless the worker has been warned or reprimanded for use of such language; but, even then, it must be shown that the claimant chose to ignore the warning.

In the instant case, the final incident for which the claimant was discharged was in the nature of a spontaneous expression of exasperation, not uncommon in the work place. Standing alone, it certainly did not rise (or sink) to a level of misconduct. Nor, even in light of a previous warning, did it amount to a willful disregard of the employer's interests. Therefore, even though the employer may well have had good reason to dispense with the claimant's services basis of his overall record, the "last straw" was insufficient to constitute misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC-390.1**
DOCKET/DATE	***Manning v. Department of Employment Security,* 365 Ill.App.3d 553, 302 Ill.Dec. 807, 850 N.E.2d 244 (1st Dist., 2006)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Relations with Fellow Employee**
SUBTITLE	**Abusive or Profane Language**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a medical assistant. She relied on a co-worker to drive her to and from work. One day, the co-worker left work early without the claimant in order to pick up her child. The claimant became angry and began slamming exam room doors and swearing under her breath and was asked to refrain from this conduct. Later that evening, the co-worker called the claimant’s home several times and left insulting messages. In response, the claimant called the coworker and left a message. An excerpt from the message was played at the hearing and in it the claimant repeatedly used the f-word and profanities in reference to the co-worker and other co-workers. The claimant was discharged for leaving a hostile, intimidating and vulgar message on a co-worker’s home voice-mail. The claims adjudicator found that the claimant was discharged for misconduct connected with the job and was disqualified from receiving benefits. The Referee, the Board of Review, and the circuit court all upheld the claims adjudicator’s decision.

HELD: The appellate court affirmed the trial court’s conclusion that the claimant’s behavior constituted misconduct. Although the voice-mail message to the co-worker may not have caused actual harm to the employer, it was potentially harmful to its interests because the use of hostile and intimidating language to a co-worker could adversely affect the work environment. Moreover, though the vulgar message was left after work hours, the incident from which it arose occurred at work and included

the claimant's disruptive conduct at work of slamming doors and swearing. The profane comments in the message also were related to other co-workers and the work environment. Furthermore, even though the employer had no written policy concerning the use of abusive language towards co-workers, the court concluded that common sense implies that the use of hostile, intimidating and vulgar language disregards the employer's interests.

Note: This decision was cited in *Petrovic v. IDES* (2016 IL 118562) as a case decided under the "commonsense" doctrine, which reasoned that an employer's rule need not have been expressly stated, but could be inferred based on "common sense." In *Petrovic*, the IL Supreme Court narrowed the so-called, "commonsense" rule. Under the premise that an employee should not be disqualified unless he/she engaged in conduct he/she knew was prohibited, the Court announced the following rule: "in the absence of evidence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a prima facie intentional tort." Said another way, unless the conduct was illegal or intentionally tortious, an employer must prove, by direct evidence, the existence of a rule or policy that was expressly conveyed to the claimant. However, the *Petrovic* court did not expressly overrule *Manning*.

Agitation MC 390.15
No present case files

Altercation or Assault MC 390.2

ISSUE/DIGEST CODE	**Misconduct/MC 390.2**
DOCKET/DATE	**ABR-85-8835/5-12-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations With Fellow Employees**
SUBTITLE	**Altercation or Assault**
CROSS-REFERENCE	**MC 485.15, Violation of Company Rule**

The claimant was employed as a Sorter until his discharge for assaulting a co-worker.
The employer submitted in evidence a copy of its "Rules of Conduct," which provided:

> It is a violation of Group I rules to provoke or participate in fights involving physical contact; or assaulting any person or provoking or inviting another person to assault anyone, the violation of which is subject to discharge for first offense.

The claimant contended that his discharge could not have constituted misconduct, because he had been unaware of the employer's rule.

HELD: Generally, a worker's discharge as a result of his violation of a known and reasonable company rule will constitute misconduct.
An employee's obligation not to engage in fights upon company time or property is inherent in all employment relationships; accordingly, it is not even necessary that there be a specific company rule against fighting. A worker is presumed to have knowledge that fighting violates a reasonable standard of conduct which the employer has a right to expect from its workers.

In the instant case, because the claimant should have known that fighting would result in his discharge, he was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 390.2**
DOCKET/DATE	**83-BRD-12516/11-7-83**
AUTHORITY	**Section-602A**
TITLE	**Relations With Fellow Employees**
SUBTITLE	**Altercation or Assault**
CROSS-REFERENCE	**None**

The claimant was discharged for fighting on company premises. At the time of his discharge, the claimant was a maintenance foreman. The claimant called another maintenance foreman at five minutes before the end of the claimant's shift, as was the usual practice, to inform him of work left over from the claimant's shift. This work would have to be completed on the next shift, which was under the authority of the other foreman. He testified that the other foreman became upset and began cursing and calling him names. The claimant said that he responded with profanities.

The claimant then continued to finish the work that he was doing without giving the argument much thought since bad language and frequent arguments were commonplace. Approximately two minutes later, the other foreman, who substantially outweighed the claimant, burst into the claimant's work area, shouting obscenities, and seized the claimant. The claimant pushed the other man and attempted to break the grip, while the other foreman swung at the claimant and missed. The claimant then struck the foreman. The office was very small and full of furniture, and the other foreman blocked the only doorway.

The employer did not contradict the claimant.

HELD: The claimant reacted in self-defense and was unable to leave the office or to avoid the confrontation. The claimant did not start the fight and attempted to withdraw until the other foreman physically grabbed the claimant and attempted to strike him. The claimant's testimony was unrebutted and is credible. Accordingly, the claimant was discharged for reasons other than misconduct connected with his work and is not subject to any disqualification.

ISSUE/DIGEST CODE	**Misconduct/MC 390.2**
DOCKET/DATE	**ABR-85-8837/4-4-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations With Fellow Employees**
SUBTITLE	**Altercation or Assault**
CROSS-REFERENCE	**None**

Following a verbal disagreement with a co-worker, the claimant was required to discuss the matter with an Employee Relations Specialist. The Specialist asked the claimant to describe how she had felt toward the co-worker during their argument. The claimant replied: "I felt like slapping her in the face." The Specialist reported this remark to management. Management considered the remark to have been a threat of physical harm to the co-worker, and discharged the claimant.

HELD: It is a worker's obligation to conduct herself so that she can work with fellow employees. Since most people do not maintain continuous perfect relations with others, occasional isolated instances of verbal disagreements do occur, and, generally do not constitute misconduct. However, if quarrels continue after warnings or reprimands, a resultant discharge would be for misconduct, since the continued outbreaks could easily lead to physical violence which would not be in the best interest of the employer.

In the instant case, the claimant engaged in one, isolated argument. Her after-the-fact remark was not made in disregard of a warning or reprimand but was made upon request. No threat was communicated to an intended victim. No threat could have been inferred from the claimant's statement regarding a past incident. Because there was no showing that the claimant had disregarded warnings or that she intended to repeat her actions, it could not be concluded that her remark constituted misconduct connected with her work.

ISSUE/DIGEST CODE	**Misconduct/MC 390.2**
DOCKET/DATE	**83-BRD-12589/11-8-83**
AUTHORITY	**Section-602A**
TITLE	**Relations with Fellow Employees**
SUBTITLE	**Altercation or Assault**
CROSS-REFERENCE	**None**

The claimant went to his supervisor to complain about his receipt of defective boxes of merchandise from a co-worker. The claimant was dissatisfied with the supervisor's response, so he went to the manager's office to further complain about the matter. His supervisor then proceeded directly in front of him and bounced his chest into the claimant. The claimant was angered by this and retaliated by punching the supervisor in the face. The claimant was discharged for his conduct during the incident.

HELD: The claimant was discharged for physically striking his supervisor in the face during the course of an altercation. The evidence does not show that the supervisor's contact with the claimant placed the claimant in such imminent fear for his safety as to reasonably warrant the claimant's use of physical force. The claimant's physical response to actions initiated by his supervisor was unreasonably excessive and exhibited a willful disregard of duties owed the employer. The claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 390.2**
DOCKET/DATE	***Meeks v. IDES*, 567 N.E. 2d 481 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations with Fellow Employees**
SUBTITLE	**Altercation or Assault**
CROSS-REFERENCE	**MC 190.1, Evidence; MC 485.15, Company Rule**

The claimant, who worked in an office setting, was discharged after a fight with a fellow employee. At an appeal hearing, the employer did not produce any written rule or offer any testimony that fighting on the job was impermissible. The claimant contended that the employer did not satisfy all the required elements for misconduct under Section 602A because it did not prove *by direct evidence* that it had a "reasonable rule or policy."

HELD: Section 602A provides, in pertinent part, that misconduct arises from a violation of a "reasonable rule or policy." Whether a rule or policy exists need not be proven by direct evidence but may be determined by "common sense business practices." With the exception of some business ventures engaged in professional sports, any employer would obviously have a policy against physical violence. Here, there was an implicit rule against fighting. The "reasonable rule or policy" requirement of Section 602A was met.

Note: This decision was cited in *Petrovic v. IDES* (2016 IL 118562) as a case decided under the "commonsense" doctrine, which reasoned that an employer's rule need not have been expressly stated, but could be inferred based on "common sense." In *Petrovic*, the IL Supreme Court narrowed the so-called, "commonsense" rule. Under the premise that an employee should not be disqualified unless he/she engaged in conduct he/she knew was prohibited, the Court announced the following rule: "in the absence of evidence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a prima facie intentional tort." Said another way, unless the conduct was illegal or intentionally tortious, an employer must prove, by direct evidence, the existence of a rule or policy that was expressly conveyed to the claimant. However, the *Petrovic* court did not expressly overrule *Meeks*. Furthermore, under the holding of *Petrovic*, the employer did not need to prove the existence of a rule since the claimant's conduct would constitute an intentional tort.

Annoyance of Fellow Employees MC 390.25

ISSUE/DIGEST CODE	**Misconduct/MC 390.25**
DOCKET/DATE	**ABR-86-2404/8-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations with Fellow Employees**
SUBTITLE	**Annoyance of Fellow employees**
CROSS-REFERENCE	**MC 135/3. Discharge or Leaving; MC 139.05, Discrimination**

In September 1985, the claimant became ill with tuberculosis and was placed on indefinite leave. Thirteen months later, he was released to return to work, without restrictions. (Copies of medical reports were submitted to the employer and, later, in evidence at the appeal hearing). However, co-workers were still afraid of contagion and refused to work with the claimant. This view was also held by persons in management, who were afraid that their own jobs might be to return to work. The employer would not permit the claimant to return to work.

HELD: An employee has the obligation to so conduct himself as not to interfere with the proper operation on the employer's business. But when a discharge results because an individual's co-workers object to working with him because of their dislike for his race, religious beliefs, political beliefs, or other personal reasons - where no interference with the work has been demonstrated - such a discharge cannot be for misconduct. In this case, the discharge was not for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 390.25**
DOCKET/DATE	**ABR-83-14494/11-21-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations with Fellow Employees**
SUBTITLE	**Annoyance of Fellow Employees (Sexual Advances)**
CROSS-REFERENCE	**MC 310.15, Neglect of Duty; MC 485.05, Company Rule**

After the claimant, a meat cutter, made a statement of a sexual nature to a female co-worker, he was warned by his employer that any repetition of the event would lead to his discharge. Subsequently, the employer made an arrangement through which

it employed high school girls in a learning program. When it became known to the employer that from time to time the claimant made statements of a sexual nature to some of these employees, he was discharged.

Some of the female workers believed that the claimant's discharge was too harsh a penalty.

HELD: The work place is a place where work is performed. It is not a place where one makes sexual arrangements. A worker who does so does so at his peril. Whatever interferes with the normal operation of the employer's business damages the best interest of the employer.

Even if the conduct is not patently offensive, amounting only to excessive conversation, if it is established that the worker persisted in such conduct despite warnings or reprimands, his discharge will be for misconduct.

In the instant case, it was immaterial that some of the female workers considered the claimant's discharge too harsh a penalty. The claimant had been warned. His persistence in making comments of a sexual nature that had nothing to do with his work constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 390.25**
DOCKET/DATE	**ABR-85-5071/11-12-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations with Fellow Employees**
SUBTITLE	**Annoyance of Fellow Employees (Sexual Advances)**
CROSS-REFERENCE	**None**

The claimant, a Supervisor at a large plant, was asked by a female worker for transportation to her car, which was parked a good distance away at one of the employer's entrance gates. The claimant was discharged because, after he drove the worker to the wrong gate, he stopped the car; he kissed the worker; then he unzipped his pants. He later characterized his actions as "inadvertent" and apologized.

HELD: A worker should know that, in connection with work, sexual advances do not constitute proper conduct. Sexual advances which are offensive or repetitive and consequently unwelcome will constitute misconduct. In the instant case, the claimant knew or should have known that his actions were offensive and not in compliance with the standard of behavior an employer would expect from its worker. The claimant's assertion that his actions were "inadvertent" was contrary to the weight of human experience and inherently incredible. His apology, being after the fact, was irrelevant. The claimant's actions constituted misconduct connected with his work.

Debt MC 390.3
No Decisions

Dishonesty MC 390.35
No Decisions

Uncooperative Attitude 390.4
No Decisions

Tardiness MC 435
General 435.05

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	***Yolanda Smothers v. Dept. of Emp. Sec.*, 2021 IL App (1st) 191993, No.1-19-1993-U, Order filed 8/25/21**
AUTHORITY	**Section 602A(3) of the Act**
TITLE	**Tardiness**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**PR 380.1 Additional Proof, 56 Ill. Adm. Code 2720.315(c)**

Claimant worked for a janitorial services company from July 23, 2015 until her discharge on February 12, 2019. Claimant was discharged due to repeated tardiness issues. During claimant's employment claimant received both a verbal, and a written warning for various tardiness infractions. Claimant received employer's attendance policy which stated that three instances of late arrival in a six-month period will lead to a written warning, and subsequent late arrivals may result in "further discipline up to and including termination." Claimant signed off on the policy. The claims adjudicator allowed benefits. Following a hearing the referee reversed the claims adjudicator's award and denied claimant's claim for unemployment benefits finding that that claimant had "multiple incidents of tardiness" after she received the written warning. The referee concluded that claimant's tardiness was excessive, and the reasons were within her control, which evinced "deliberate and willful disregard." In claimant's appeal to the Board, claimant attached documents to the appeal, including medical records and handwritten explanations of specific late arrivals. The record does not contain a certification that she served the documents on employer.

The Board denied claimant's appeal. The Board declined to consider the documents claimant attached to her appeals because she did not certify that she served these documents on employer. The Board found that employer warned claimant regarding "excessive tardiness" and claimant then arrived late 15 more times, which constituted misconduct such that she was ineligible for unemployment benefits following her discharge under section 602(A)(3) of the Act. The Board further found that claimant failed to present credible testimony or evidence that she made a reasonable effort to remedy the reasons for her late arrivals, and that the reasons were not out of her control. Claimant appealed the Board and the circuit court affirmed the Board. Claimant appealed.

HELD: The appellate court affirmed the Board, stating that the record showed that claimant's conduct satisfied the standard for misconduct under Section 602(A)(3) of the Act. First, there is no dispute that claimant knew of employer's attendance policy and violated it repeatedly both before and after the written warning. The court found employer's policy reasonable. The Board also correctly determined that Section 602(A)(3)'s exceptions do not apply here. The record showed no evidence that claimant made reasonable efforts to remedy her late arrivals. Claimant arrived to work late on multiple occasions without any excuse after her written warning, and it was reasonable for the Board to conclude that this conduct demonstrated an unwillingness to alter her behavior. Second, claimant did not demonstrate that the conditions causing her late arrivals were beyond her control. Even accepting that certain instances of late arrivals were due to illness or were excused by her supervisor, as she claimed without evidence, it is undisputed that claimant provided no explanation for unexcused late arrivals on dates, which occurred after employer warned her in writing.

Finally, the court noted that the Board declined to consider the documents and handwritten statements claimant filed with her appeal to the Board because she did not certify that she served the documents on employer. A party wishing to include new documentation in an appeal to the Board must certify that it served the proposed new documents on the opposing party. 56 Ill. Adm. Code 2720.315(c) (2019). There is no certification in the record that claimant served the proposed new documents on employer here. The Board correctly declined to consider them.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	**83-BRD-6630/5-31-83**
AUTHORITY	**Section 602A**
TITLE	**Tardiness**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked for a hospital as a dietary aide for three years. She had received warnings and a suspension for absenteeism, tardiness and for failing to notify her employer on such occasions. On her last day she was late to work because she was waiting for her twelve-year old son to come home to care for her daughter, who has asthma. She was thirteen minutes late for work. She did not telephone the employer to report that she would be late, and as a result, she was discharged.

HELD: Although she had a compelling reason to be late, the claimant was discharged for failing to report her delayed arrival to the employer in a timely fashion. Therefore, she was discharged for misconduct connected with her work, and she is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	**83-BRD-897-EB/10-7-83**
AUTHORITY	**Section-602A**
TITLE	**Tardiness**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was discharged when he was 9 minutes late in returning from his break. He had been repeatedly warned about exceeding his authorized break time. The claimant acknowledged that he had violated this particular rule but gave no reason for doing so other than stating his belief that this was something that should not result in discharge.

HELD: The claimant was discharged for deliberately violating a known company rule after having several warnings for similar infractions. His discharge was for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	**83-BRD-11449/10-7-83**
AUTHORITY	**Section-602A**
TITLE	**Tardiness**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was tardy on her first day back from a vacation leave. She returned from an out-of-town trip the same day and did not allow sufficient travel time. She had received three warnings for tardiness, and she was discharged as a result of this last incident. She did not show that her tardiness was unavoidable.

HELD: The claimant had an obligation to her employer to arrange her travel schedule so as to avoid her late arrival. Her failure to do so was a disregard of her employer's interests in view of her prior warnings for the same offense. She was discharged for misconduct connected with her work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	**83-BRD-14714/12-9-83**
AUTHORITY	**Section 602A**
TITLE	**Tardiness**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was warned about his tardiness on April 14, 1982 and June 15, 1982. On March 28, 1983, he was put on probation with a final admonition that, if he was tardy again, he would be discharged. On the following day, the claimant was again late because his bus was delayed due to bad weather. He was discharged.

HELD: The claimant did not take extra precautions to avoid being tardy, which, in light of the fact that his job was in jeopardy, was a reasonable expectation. The claimant should have known that a further instance of tardiness would result in his discharge. He was discharged for misconduct connected with his work and is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	**83-BRD-14718/12-9-83**
AUTHORITY	**Section 602A**
TITLE	**Tardiness**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked for the employer part-time. He was discharged for tardiness and after written prior warnings. The claimant admitted that he came in late and stated that he either had to rely on a ride with other people or had to walk. On the day of his discharge, he arrived late at work because he had to walk.

HELD: The claimant was warned regarding his pattern of tardiness and, because of his lack of transportation, should have known that he had to take extra precautions to arrive at work on time. When the claimant arrived late on his last day, after receiving warnings regarding previous lateness, this constituted misconduct connected with the work, and he is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	**84-BRD-339/1-11-84**
AUTHORITY	**Section 602A**
TITLE	**Tardiness**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant had been warned about excessive tardiness on two occasions. She stated that her tardiness was caused by a faulty alarm clock. On the date of her discharge, she was two hours late for work. She again stated that her clock failed to awaken her.

HELD: The claimant was repeatedly tardy because she overslept when her alarm clock did not awaken her. Her failure to rectify the problem when it was within her control to do so amounted to an intentional breach of her obligation to her employer. (Compare *Wrobel v. Dept. of Employment Security*, 801 N.E. 2d 29, 344 Ill. App. 3d 533 (1st Dist. 2003), where misconduct was not found when the claimant was merely negligent or careless regarding backing up an alarm clock which failed to go off due to a power failure.) She was discharged for misconduct connected with the work, and she is disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	***Walter Bochenek v. IDES*, No. 87-0760 (1988)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Tardiness**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**MC 152, Absence, Reasons**

The employer was a small company that could not afford absenteeism and, therefore, warned the claimant repeatedly about his absenteeism and tardiness. Between January 14 and May 21 there were 88 workdays out of which the claimant was absent 7 times and tardy 9 times. On May 21, when he reported to work 45 minutes late, he was fired.

At his appeal hearing, the claimant testified that he had psychological problems and was under psychiatric care. He presented a statement from his doctor stating that he suffered from schizo-affective psychosis and was on medication. The doctor added:

> I always wondered how he was able to keep his job for six years - due to his delusions of grandeur and persecution. I understand that he finally lost it. He should be occupied in a new appropriate position.

The claimant contended that his illness(es) excused the acts which resulted in his separation from work.

HELD: Misconduct which disqualifies an employee from unemployment benefits includes acts of wanton or willful disregard of the employer's interest, deliberate violations of the employer's reasonable rules, disregard for the standards of behavior which an employer has the right to expect of its employee, and carelessness or negligence of such degree or recurrence as to manifest equal culpability and wrongful intent.

In this case, the claimant had been warned repeatedly that his chronic absenteeism and tardiness adversely affected his employer. Despite the fact that the claimant had been under psychiatric care, his doctor's statement did not indicate that the claimant's condition affected his attendance - only that he should now seek other appropriate work. The claimant was aware of the need to improve his attendance. He failed to improve his attendance. By the time of the final incident, his absenteeism and tardiness had reached such a degree of recurrence as to be considered misconduct that would disqualify him from receiving unemployment compensation.

The claimant was disqualified for misconduct.

ISSUE/DIGEST CODE	**Misconduct/ MC 435.05**
DOCKET/DATE	***Alternative Staffing, Inc. v. Illinois Department of Employment Security*, 983 N.E.2d 1036, 368 Ill.Dec. 232 (1st Dist., 2012)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Tardiness**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**MC 458.1, Violation of Company Rule, Absence**

The claimant worked as a payroll administrator for a staffing company. The claimant received several warning notices regarding her tardy infractions and the claimant signed some of those notices. Based on that tardiness, the claimant was suspended. The claimant also received warnings about payroll errors which the employer attributed to a drinking problem. Eventually, the employer terminated the claimant due to the claimant's repeated tardiness and poor performance. The claimant attributed some of her tardiness on her son's use of her car and extreme weather problems. The Referee held that the claimant was ineligible for benefits pursuant to Section 602(A) of the Act. The Board of Review set aside the Referee's decision and found that the final incidents of tardiness was beyond the claimant's control and, therefore found no misconduct. The circuit court affirmed the Board's decision.

HELD: The claimant had a history of tardiness and knew her job was in jeopardy. The totality of circumstances showed that the claimant was discharged for misconduct and the Board should have looked beyond just the last incident. The Board's decision was reversed.

Termination of Employment MC 440
General MC 440.05

ISSUE/DIGEST CODE	**Misconduct/MC 440.05**
DOCKET/DATE	**ABR-86-1890/7-24-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Termination of Employment**
SUBTITLE	**Discharge Distinguished from Lay-off**
CROSS-REFERENCE	**MC 5.05, Misconduct, Distinguishing the Issue**

On October 25, the claimant, a truck driver, was involved in an accident with the employer's truck, for which he was ticketed.

On October 26, for economic reasons, the employer reduced its work force; the claimant was one of the workers laid-off. The employer's terminal manager later testified that, since the day after the claimant's accident, there was no work available to assign to the claimant.

On October 29, the employer sent to the claimant a notice of suspension, pending investigation of the October 25 accident. The employer's policy provided for a such a suspension whenever a driver was involved in an accident for which he was ticketed.

On November 13, the claimant received a notice of discharge.

HELD: There cannot be a discharge from non-existing work. As soon as there is a work separation due to a lay-off, any subsequent action by the employer during the course of that lay-off is irrelevant.
In this case, the claimant was separated from work due to a lack of work resulting in an indefinite lay-off. By reason of that lay-off, the employer's subsequent review of the claimant's accident and the suspension and discharge were irrelevant.

The claimant was not subject to disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 440.05**
DOCKET/DATE	**84-BRD-3789/3-22-84**
AUTHORITY	**Section 602A**
TITLE	**Termination of Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked as a security guard and was originally given the uniform of another guard. Subsequently, he received his own uniform, but he never returned the other uniform. The claimant was placed on an indefinite layoff due to lack of work. Seventeen days later, the employer's representative went to the claimant's home to pick up the two uniforms and found that the claimant was in possession of a third uniform which he was not authorized to remove from the employer's premises. He was then notified that he was discharged for possession of the third uniform.

HELD: The claimant's employment had already been discontinued for non-disqualifying reasons when he was placed on an indefinite layoff. He could not subsequently be "discharged" for misconduct for events which occurred prior to the layoff. The claimant is not disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 440.05**
DOCKET/DATE	**ABR-80-10604/10-18-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Termination of Employment**
SUBTITLE	**Expiration of Contract**
CROSS-REFERENCE	**MC 5.05, Distinguishing the Issue**

The claimant, a Roman Catholic, worked for a Roman Catholic school, as a teacher. In November 1979, she married a divorced man of the Methodist faith. The marriage ceremony was not performed in the Roman Catholic Church and was not recognized as valid by that Church. One week later, the employer became aware of the claimant's marriage, and concluded that, by entering into the marriage, the claimant had breached her employment contract, which provided, in pertinent part:

> "(T)he teacher agrees to...act in accordance with the doctrine and precepts of the Catholic Church." However, rather than discharge the claimant immediately, the employer decided to permit her to continue teaching until June, 1980, the end of the academic year, at which time also the claimant's employment contract would expire. The employer decided not to renew the claimant's contract.

HELD: A work separation which is based upon the expiration of a contract does not fall within the purview of Section 602A of the Act. In the instant case, the claimant became an unemployed individual by operation of law, because her contract had expired, and for no other reason. This rendered any consideration of the misconduct issue moot; and, similarly, any reason the employer might have had for deciding not to renew the claimant's contract was irrelevant.

Union Relations MC 475
General MC 475.05
No Decisions

Argument with Representative MC 475.15
No Decisions

Labor Dispute, Participation in MC 475.35

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Ross v. IDES*, 201 Ill.App.3d 474, 147 Ill.Dec. 100, 559 N.E.2d 100 (1st Dist., 7/6/90)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**Voluntary Leaving/VL-475.35; Labor Dispute, Participation in**

The collective bargaining agreement (CBA) between the union and the employer was due to expire on August 1, 1986. Each party notified the other in May, 1986 of its intent to terminate the CBA, in accordance with a provision in the CBA requiring such notice within 60 days of the CBA's expiration. Negotiations for the new contract began on June 12, 1986 and ended in a stalemate on July 31, 1986, after each side traded several proposals and counter-proposals regarding wages and other working conditions. The shutdown of the plant took place in several stages but was complete by July 31, 1986.

HELD: Section 604 of the Act provides, in part, that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute

at the factory, establishment, or other premises at which he is or was last employed." In the instant case, the court found that a labor dispute began at the plant on June 12, 1986, the day the negotiations commenced regarding a new CBA, that the stoppage of work occurred on July 31, 1986 when the negotiations ended in a stalemate and the plant shutdown, and that the claimants' unemployment was caused by the work stoppage and the labor dispute. Consequently, the court held that the claimants were ineligible for benefits pursuant to Section 604.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Golab v. IDES*, 281 Ill.App.3d 108, 216 Ill. Dec. 897, 666 N.E.2d 347 (4th Dist., 5/29/96)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**Voluntary Leaving/VL-475.35; Labor Dispute, Participation in**

On April 30, 1993, the union's collective bargaining agreement (CBA) with the employer expired. The union members rejected the employer's contract offer and voted to continue working under the old contract while negotiations continued regarding a new contract. The employer informed the members that they could not work without a contract. When the members arrived at work on May 3, 1993, he told them to "pack up their tools" and leave. Negotiations for a new contract continued until a new contract was agreed upon on June 19, 1993. During the period negotiations were held, the company did not hire replacement workers to fill the members' positions and most of the work they would have completed was not done. Picketers also were stationed outside the company's premises during this period.

HELD: Under Section 604, ineligibility for benefits is based on three factors: (1) the existence of a labor dispute at the employer's premises; (2) the existence of a work stoppage; and (3) proximate causation between the labor dispute and the work stoppage. In the instant case, the court found that there was a labor dispute because the terms and conditions of labor remained unresolved at the time the previous contract expired, rejecting the union's contention that there was no labor dispute because its members were willing to continue working under the old contract while negotiations continued. The court also found that there was a stoppage of work due to the labor dispute based on evidence showing that the union members did not work at all while negotiations took place, the employer did not hire replacement workers, and much of the work the members usually completed was not done during the course of the dispute. The union argued, lastly, that the labor dispute and the work stoppage were not causally related because the company caused the work stoppage by its refusal to let the union members work. The court rejected this argument, stating that a "labor dispute" includes a "lock out", such as occurred in the instant case, adding that "neither the unreasonableness of the demands nor the merits of the dispute are material to a determination of whether a labor dispute actually exists." Since the evidence showed that the union members were unemployed because of a work stoppage caused by a labor dispute, they were ineligible for benefits pursuant to Section 604.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Bridgestone/Firestone, Inc. v. Aldridge et al.*, 179 Ill.2d 141, 227 Ill.Dec. 753, 688 N.E.2d 90 (1997)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**Voluntary Leaving/VL-475.35; Labor Dispute, Participation in**

On July 12, 1994, the claimants went on strike. The claimants conceded that they were not eligible for benefits pursuant to Section 604 of the Act which provides that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed." However, each of the 243 claimants in the instant case obtained interim employment with other employers during the course of the strike and each was subsequently fired or laid off from that job, which may have lasted from a few days to a few months. After being separated from the interim job, the claimants filed for, and were granted, unemployment benefits by the Department of Employment Security (IDES). The circuit court set aside IDES's decision and remanded the case back to IDES so that the latter could determine if the claimants had performed the interim employment "in good faith" and not merely to remove the disqualification for benefits imposed upon them by Section 604. The appellate court in *Bridgestone/Firestone, Inc. v. Doherty*, 284 Ill.App.3d 360, 219 Ill.Dec. 871, 672 N.E.2d 379 (4th Dist., 1996) affirmed the circuit court and remanded the cases back to IDES, not so that the Department could determine if the claimants had taken the jobs "in good faith", as directed by the circuit court, but in order to determine if any of the claimants had worked for an interim employer who could be determined to be the "last employer" as that term is defined in Section 1502.1 of the Act. In most instances, according to that section, the "last employer" is the last employer for which an

individual had worked for at least 30 days.

HELD: The Illinois Supreme Court reversed the appellate court and concluded that the claimants did not have to show that they worked for an employer that could be classified as a "last employer" as defined by Section 1502.1, (*i.e*., claimants did not have to show that they had worked for the interim employer for at least 30 days). However, the Supreme Court held that the claimants must demonstrate that they took the interim jobs "in good faith" and not merely to remove the disqualification imposed by Section 604. In providing guidance as to what constitutes "good faith", the Supreme Court cited the language used by the circuit court which had written that, "[O]bviously good faith is absent if a claimant is primarily motivated by a desire to remove the labor dispute disqualification and he or she does not undertake work expected to provide a significant support. Good faith is present if there is a genuine effort to remain in the active workforce and be regularly employed. Good faith does not necessarily require a belief that the interim employment will be permanent."

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Caterpillar, Inc. v. Doherty,* 299 Ill.App.3d 338, 233 Ill.Dec. 889, 701 N.E.2d 1163 (2nd Dist., 1998)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**None**

While on strike, the claimant was discharged for allegedly violating the employer's rules of conduct for striking employees by threatening a nonstriking worker. At the hearing, the nonstriking co-worker testified that the claimant followed him in his truck when they left work. While both were waiting at a red light, the claimant allegedly called him a "scab", cursed at him, made threats, and later tried to run him off of the road. The claimant testified that the co-worker initiated a verbal exchange while their vehicles were stopped at the red light by inviting the claimant to call him a "scab". The claimant obliged by calling the co-worker a "f*ing scab". The claimant denied threatening the co-worker or any of his passengers and denied trying to run him off of the road. The employer argued that the claimant was unemployed due to the on-going strike at the plant and should be disqualified from receiving benefits pursuant to Section 604 of the Act.

HELD: Section 604 of the Act provides, in part, that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed." In the instant case, the court held that the claimant's separation from work was not due to the work stoppage caused by the strike but to the employer's decision to discharge the claimant for violating its work rules. Consequently, Section 604 was not applicable to determining the claimant's eligibility for benefits, even though the strike and work stoppage continued after the claimant's discharge. Since the claimant was discharged for a work rule violation, Section 602 was the section of the Act relevant to determining the claimant's eligibility. Relying on that Section, the court found that the evidence supported a conclusion that the claimant's behavior did not constitute "misconduct" as defined in Section 602 and, thus, the claimant was not disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Caterpillar, Inc. v. Department of Employment Security,* 304 Ill.App.3d 492, 238 Ill.Dec. 93, 710 N.E.2d 890 (3rd Dist., 1999)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**None**

During the course of a strike, the six claimants involved in the case were discharged for alleged conduct on the picket line contrary to the employer's "Rules of Conduct for Striking Employees". The employer's witness testified at the hearing before the Referee that he saw one of the claimants walking in front of vehicles and shaking his fist, but he did not recall whether the employer received any complaints about the claimant's conduct or whether any vehicles were actually prevented from entering the plant. The claimant testified that he was on the picket line but did not strike any vehicle. Another witness corroborated the claimant's testimony. The employer argued that the claimants were unemployed due to the on-going strike at the plant and should be disqualified from receiving benefits pursuant to Section 604 of the Act.

HELD: Section 604 of the Act provides, in part, that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed." In the instant case, the court relied on *Caterpillar, Inc. v. Doherty*, 299 Ill.App.3d 338, 233 Ill.Dec. 889, 701 N.E.2d 1163 (2nd Dist., 1998) and held that the claimants' separation from work was not due to the work stoppage caused by the strike but to the employer's decision to discharge them for violating its work rules regarding conduct on the picket line. Upon discharge, the claimants were no longer unemployed due to a labor dispute. Consequently, Section 604 was not applicable to determining the claimant's eligibility for benefits, even though the strike and work stoppage continued after the claimant's discharge. Since the claimants were discharged for a work rule violation, Section 602 was the section of the Act relevant to determining the claimants' eligibility. Relying on that Section, the court found that the evidence supported a conclusion that the claimants' behavior did not constitute "misconduct" as defined in Section 602 and, thus, the claimants were not disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Bridgestone/Firestone, Inc. v. Doherty*, 305 Ill.App.3d 141, 238 Ill.Dec. 412, 711 N.E.2d 799 (4th Dist., 1999)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**Voluntary Leaving/VL-475.35; Labor Dispute, Participation in**

The claimants went on strike on July 12, 1994, and the strike ended on May 8, 1995. On September 6, 1994, the Department of Employment Security (IDES) issued a labor dispute determination that held that the strikers were ineligible to receive unemployment benefits pursuant to Section 604 of the Act. Subsequently, IDES received information indicating that the employer's plant had returned to normal production and that many of the striking workers had been permanently replaced. During the period between January 4 through January 17, 1995, the employer had sent letters to approximately 943 striking employees informing them they had been permanently replaced. As of January 17, 1995, the plant had about 950 employees as opposed to 1,209 before the strike. The plant began a continuous production schedule of 24 hours a day, seven days a week on January 15,1995. Statements by the employer's management officials in media outlets indicated that the plant had returned "to full production" although not to "full capacity" at that time. On February 23, 1995, IDES issued a supplemental labor dispute determination in which it concluded that the work stoppage caused by the labor dispute at the plant ceased during the week ending January 14, 1995 so that the claimants were not ineligible for benefits after that date pursuant to Section 604.

HELD: Section 604 of the Act provides, in part, that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed." In the instant case, the court found that the evidence supported a finding that the work stoppage ended when the plant returned to full production. A work stoppage ends, according to the court, when the employer regains production to a point where business operations are "substantially normal". The court noted, however, that production levels do not have to return exactly to prestrike levels before "substantially normal business operations" are reached. The court also held that the disqualification imposed by Section 604 ended when the workers were permanently replaced. The court reasoned that, since the employment relationship between the striking worker and the employer was ended when he/she was permanently replaced, it could no longer be maintained that the worker was unemployed due to a work stoppage caused by a labor dispute at the plant.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	**International Union of Operating Engineers, Local 148, AFL-CIO v. Department of Employment Security, 215 Ill.2d 37, 293 Ill.Dec. 606, 828 N.E.2d 1104 (2005)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Interest in**
CROSS-REFERENCE	**Voluntary Leaving/VL-475.35; Labor Dispute, Interest in**

The employer's collective bargaining agreements (CBA) with the two unions at its plant, Local 702 of the Electrical Workers and Local 148 of the Operating Engineers, expired on June 30, 1992. On May 20, 1993, the employer locked out both unions. In accordance with Section 604 of the Act, the Department of Employment Security (IDES) determined on June 11, 1993 that the members were not eligible for unemployment benefits because their unemployment was due to a work stoppage that resulted from a labor dispute at their plant. On June 14, 1993, Local 148 reached an agreement with the employer and the lockout ended

with respect to its members on June 22, 1993. However, its members did not return to work the following day but voted to honor the picket line established by Local 702. Local 148 members did not partake in any of Local 702's picketing activities. On August 25, 1993, the employer ended its lockout of Local 702 and the members of both unions returned to work on August 28, 1993. Local 702 and the employer reached an agreement on a new CBA in January, 1994. The Director of IDES issued a decision on February 16, 1995 in which she found that the members of Local 148 had a direct interest in the continuing dispute between the employer and Local 702 even after Local 148 had concluded its own agreement with the employer and ruled that Local 148 members were not eligible for unemployment benefits for the entire period from May 20 to August 28, 1993. Local 148 filed a complaint in the circuit court to review the Director's decision, contending that its members were eligible for benefits after the employer had ended the lockout of its members on June 22, 1993 until they returned to work on August 28, 1993. The circuit court agreed with the plaintiff and reversed the Director's decision, finding that Local 148 members were eligible for benefits during this period. The Director and the employer appealed. The appellate court affirmed the circuit court in *International Union of Operating Engineers, Local 148, AFL-CIO v. Department of Employment Security,* 345 Ill.App.3d 382, 280 Ill.Dec. 364, 802 N.E.2d 289 (5th Dist., 2005) and the employer appealed.

HELD: Section 604 of the Act provides, in part, that Aan individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed. However, Section 604 also provides that this disqualification will not apply if the individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and is not in the same grade or class as those individuals participating, financing or directly interested in such dispute. Section 604 provides, further, that an individual's failure to cross a picket line is not, by itself, considered to be participation in a labor dispute. In the instant case, the court found that Local 148 of the Operating Engineers had a direct interest in the dispute between the Electrical Workers' Union and the employer, where the record showed that the Operating Engineers' contract with the employer provided them with a legally enforceable right, and not just a Amere expectancy, with regard to improved health care benefits which the Electrical Workers might achieve in their contract with the employer. Consequently, the Illinois Supreme Court reversed the appellate court and held that the members of Local 148 of the Operating Engineers were not eligible for benefits when they stayed off the job from June 23, 1993 to August 28, 1993 while the dispute between the Electrical Workers and the employer continued.

Membership or Activity in Union MC 475.5
No Decisions

Refusal to Join or Retain Membership in Union MC 475.6
No Decisions

Rival Union MC 475.9
No Decisions

Violation of Union Rule MC 475.95
No Decisions

Violation of Company Rule MC 485
General MC 485.05

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**ABR-83-14494/11-21-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Social Relationships**
CROSS-REFERENCE	**MC 310.15, Neglect of Duty; MC 390.25, Fellow Employees**

After the claimant, a meat cutter, made a statement of a sexual nature to a female co-worker, he was warned by his employer that any repetition of the event would lead to his discharge. Subsequently, the employer made an arrangement through which it employed high school girls in a learning program. When it became known to the employer that from time to time the claimant made statements of a sexual nature to some of these employees, he was discharged.

Some of the female workers believed that the claimant's discharge was too harsh a penalty.

HELD: The workplace is a place where work is performed. It is not a place where one makes sexual arrangements. A worker who does so does so at his peril. Whatever interferes with the normal operation of the employer's business damages the best interest of the employer.

Even if the conduct is not patently offensive, amounting only to excessive conversation, if it is established that the worker persisted in such conduct despite warnings or reprimands, his discharge will be for misconduct.

In the instant case, it was immaterial that some of the female workers considered the claimant's discharge too harsh a penalty. The claimant had been warned. His persistence in making comments of a sexual nature that had nothing to do with his work constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**ABR19872/6-7-91**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Harm**
CROSS-REFERENCE	**None**

The claimant was a cashier working in a convenience store that sold sandwiches, pop, cookies, etc. The store had a rule that unsalable foods were to be either thrown away or purchased. The claimant had never been warned for violating this rule. A customer ordered three cookies, at a cost of 35 cents each. A fourth cookie stuck to the three cookies, so that half of that fourth cookie went to the customer. After the customer left, the claimant picked up the remaining, unsalable half cookie and ate it. She was fired because she did not pay for it.

HELD: Misconduct requires that, in the absence of a warning or explicit instruction, an individual's conduct result in harm. Here, the cookie was ruined, unsalable, and had no value. There was no harm.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Adams v. Ward*, 565 N.E. 2nd 53 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Awareness of Rule**
CROSS-REFERENCE	**None**

The claimant was a janitor whose duties included cleaning locker rooms where employees changed out of dirty uniforms after working with printers ink. Those employees were to place their dirty uniforms in a laundry bin. There was also a trash bin. One day, the claimant found two very dirty, ink-stained uniforms in a pile of trash and threw them into the trash bin. The next day, he was fired.

The employer contended that because there was a laundry bin it was implicit that all uniforms be placed in that bin to be washed and reused.

The claimant stated that, although he was aware that there was a company policy of keeping a separate bin for ink-covered uniforms to be laundered, he believed that the two very dirty uniforms were in the trash pile because they were supposed to be discarded.

HELD: Misconduct requires that there be a violation of a reasonable rule or policy. A rule or policy need not be expressly set forth; it may be implicit. Still, it is not reasonable unless a worker knows, or should know, of its existence.

Here, there was no rule or policy clearly articulated that all soiled uniforms were to be placed into the laundry bin. Nor was it implicit, just because there was a laundry bin, that all soiled uniforms were to placed into that bin, as opposed to the trash bin. It would be just as reasonable to expect that, at some point in time, a uniform would have no further value to the employer, at which point it would be discarded or destroyed.

There was no misconduct because the employer failed to establish that it had a rule or policy of which the claimant should have been aware.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Caterpillar v. IDES*, 730 N.E.2d 497, 313 Ill. App. 3d 645 (2d Dist., 2000)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Willful Violation/Reasonableness of Rule/Unwritten Rule/Harm**
CROSS-REFERENCE	**MC 255.1, Insubordination, Disobedience; MC 390.25, Relations with Fellow Employees, Annoyance of Fellow Employees (Sexual Advances)**

The claimant was employed as a manager with the employer, and participated on the employer's diversity council. The diversity council met to discuss, among other things, gender issues in the workplace including sexual harassment and the employer's sexual harassment policy. The employer charged the claimant with engaging in unwelcome sexual advances and other harassing behavior toward a co-employee and with harassing the co-employee's boyfriend, who was also an employee of the employer. The claimant was discharged for disobeying an order because he continued to engaged in the harassing behavior after being told to stop, for harassing the co-worker and her boyfriend, and for misuse of company resources because he sent personal e-mails to the co-employee.

A Hearings Referee found the claimant to be ineligible for benefits under Section 602A of the Act because he was discharged for violating the employer-s sexual harassment policy and for misconduct connected to his work. The Board of Review reversed. The Board found (1) the employer told the claimant to stop seeing the co-employee, (2) the claimant was terminated because he would not stop seeing the co-employee, and (3) most of the claimant's conduct with the co-employee took place outside of work, and concluded (1) the contention that the claimant was discharged for misuse of company resources was without merit, (2) there was insufficient evidence to show the claimant harassed the co-employee's boyfriend, and (3) the claimant's disregard of the order to stop seeing the co-employee was not willful.

HELD: The Appellate Court reversed the Board and found the claimant ineligible for benefits under Section 602A. The Court observed that an employee's act of misconduct is willful if he is aware of a company rule and then disregards that rule. The Court, noting there was no evidence the claimant was insane or acted involuntarily when he disobeyed the direct order to stay away from the co-worker, concluded the claimant's disregard of the order was willful. The Court also concluded the order was reasonable since standards of behavior an employer has a right to expect constitute reasonable rules and policies. The Court noted it made no difference whether a rule or policy is written or otherwise formalized since the existence of a reasonable rule or policy need not be proved by direct evidence, but may be determined by a commonsense realization that certain conduct intentionally and substantially disregards an employer's interests, and concluded an employer has a right to expect an employee to comply when he is expressly ordered to stop making unwanted contact with a co-worker. Finally, the Court reasoned the element of harm was satisfied because the claimant disobeyed a direct order to stay away from the coworker, and alternatively because actual harm was caused by the claimant's conduct as it hindered the co-employee's ability to perform her job. It is well established that depriving an employer of an employee's services causes harm to the employer within the meaning of Section 602A of the Act.

Note: This decision was cited in *Petrovic v. IDES* (2016 IL 118562) as a case decided under the "commonsense" doctrine, which reasoned that an employer's rule need not have been expressly stated but could be inferred based on "common sense." In *Petrovic*, the IL Supreme Court narrowed the so-called, "commonsense" rule. Under the premise that an employee should not be disqualified unless he/she engaged in conduct he/she knew was prohibited, the Court announced the following rule: "in the absence of evidence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a prima facie intentional tort." Said another way, unless the conduct was illegal or intentionally tortious, an employer must prove, by direct evidence, the existence of a rule or policy that was expressly conveyed to the claimant. However, the *Petrovic* court did not expressly overrule *Caterpillar*. Furthermore, the claimant did violate the employer's harassment policy, and, even if there was no policy, under the holding of *Petrovic*, the employer did not need to prove the existence of a rule since the claimant's conduct would constitute an intentional tort.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Caterpillar v. Fehrenbacher*, 286 Ill. App. 3d 614 (2nd Dist. 1997)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Reasonableness of Rule; Governing Behavior in Performance of Work**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MC 475.05, Union Relations**

The claimant was employed as a lathe operator with the employer. The claimant placed a sign in the window of his truck which said “Support S-55 Stop Scabs From Taking Union Jobs.” When the claimant parked his truck in the employer’s parking lot he was asked twice to remove the sign because if violated the employer’s rule prohibiting the display of the word “scab” anywhere on the employer’s property. The claimant refused to remove the sign and was discharged. The Board of Review ruled that displaying the sign with the word “scab” was not misconduct under Section 602A because the employer’s rule was not reasonable. The Circuit Court reversed the Board because of a federal appellate court decision which upheld the authority of an employer to ban the display of the word “scab” in the workplace.

HELD: The claimant’s peaceful display of the sign with the word “scab” outside the workplace was not misconduct under Section 602A because the employer’s rule prohibiting the display of the word “scab” anywhere on the employer’s property was not reasonable. The federal appellate court decision relied on by the Circuit Court involved a restriction only on displays in the workplace during working hours and was premised on the theory that the display of the word “scab” in the employer’s plant would disrupt production. The relationship between displays and disruptions in production is greatest when the displays occur at the same time and place as the production. Court decisions subsequent to the federal appellate court decision have struck down employer rules banning the display of inflammatory words and union insignia anywhere on an employer’s property. In addition, other court decisions have recognized that strong words such as ”scab” are commonplace in labor disputes and may be protected pro-union speech. Restrictions on such protected speech require “special circumstances,” and there is no evidence of any “special circumstances” in the record.

The claimant’s alleged misconduct was not connected to his work because the placement of the sign in the window of his truck occurred outside the claimant’s actual place of work and did not relate to the performance of his job. In addition, the employer’s rule did not govern the claimant in the performance of his work because the rule as applied to the claimant only governed his use of the employer’s parking lot, which under the facts in this case was only an adjunct to the performance of his work.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Farmers State Bank v. IDES*, 576 N.E. 2d 532 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Awareness of Rule**
CROSS-REFERENCE	**MC 490.05, Violation of Law**

Farmers Bank kept a special drawer, designated "drawer five," as an accommodation to customers. Customers could write checks that would ordinarily result in overdrafts, except, checks put in drawer five would not immediately be debited to the customer's checking account. They would be kept in drawer five until the customer deposited the necessary amount, usually within a matter of a few days. Aside from customers, there were employees, officers, and directors of the bank who used drawer five to prevent overdrafts in their personal checking accounts.

The claimant was an assistant cashier with no supervisory responsibilities. She discovered that a fellow employee put three personal checks, totaling $12,000, into drawer five, and that the checks had been there for at least two weeks. Another six days went by before the claimant reported this to management.

Farmers Bank fired the claimant for delaying in reporting the misapplication of funds. The bank cited an Illinois statute requiring the bank to report any misapplication of funds within 48 hours of discovery.

HELD: There is no misconduct unless an individual violates a reasonable rule. A rule is not reasonable unless it provides guidelines that are, or should be, known by the worker.

Here, the bank had no formalized rules concerning the duration of time a check could be held in drawer five; it was just customary that checks would be covered within a few days. Further the statute cited applied to management's reporting requirements, not the claimant's. Therefore, there was no basis for concluding that the claimant should have been aware of rule or law regarding a time in which to report the misapplication of funds.

In this case, the claimant's delay in bringing the matter to management's attention may have amounted to poor judgment, it did not violate a reasonable rule, as misconduct under Section 602A requires.

ISSUE/DIGEST CODE	**Misconduct/ MC 485.05**
DOCKET/DATE	***Petrovic v. Department of Employment Sec.*, 2016 IL 118562, 51 N.E.3d 726, 401 Ill.Dec 895 (2016)**
AUTHORITY	**Section 602A of Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Awareness of Rule**
CROSS-REFERENCE	**MC 255.2 Exceeding Authority; PR 380.1 Rehearing or Review, Reweighing the Evidence**

The claimant was employed by American Airlines for 22 years. On January 1, 2012, the claimant was working as a tower planner at O'Hare Airport. Claimant received a call from a friend at another airline. The friend asked claimant whether she could do something for a passenger who was scheduled to fly on American. The claimant agreed and requested that the catering department deliver a bottle of champagne to the passenger. She then asked a flight attendant whether it would be possible to upgrade the passenger. The passenger was upgraded from business class to first class. On January 24, 2012, the claimant was terminated because she upgraded the passenger and requested the champagne without proper authorization. The termination letter in the record stated that the claimant's actions violated two express policies governing American employees.

The Board found the claimant ineligible. The referee made no finding that the claimant violated an express rule or policy of the employer. Rather, the referee concluded that "there are some acts of misconduct that are so serious and so commonly accepted as wrong that employers need not have rules covering them," and "[i]n this case, the claimant's action in giving away the employer's champagne and a free upgrade to first class was unacceptable by any standard." The circuit court reversed the Board's decision, holding that American failed to provide proof that the claimant violated an express rule or policy and in the absence of an express rule, the claimant could not have known that her actions were forbidden. The appellate court reversed the circuit court, holding that that the claimant "sought an upgrade for a friend of a friend without management authorization or payment" and "caused a $7,100 upgrade to first class to be issued without management approval." According to the court, the claimant's actions violated an American policy that only authorized employees may issue upgrades.

HELD: The Illinois Supreme Court reversed the appellate court. It held that the judicially created commonsense exception cannot be reconciled with the plain language in section 602(A), which clearly requires evidence of a deliberate violation of a reasonable rule or policy of the employer, though evidence of a rule need not be shown where the employee's conduct would otherwise be illegal or constitute a *prima facie* intentional tort. The court stated, "in the absence of evidence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a *prima facie* intentional tort." Furthermore, an employer who asserts an employee's disqualification for benefits based on misconduct has the burden of proving such misconduct. In doing so, the employer must prove that the employee was aware that their conduct was forbidden.

The Illinois Supreme Court also addressed the argument that IDES did not have standing to appeal the circuit court's judgment. The Court held that, in addition to its adjudicatory duties, IDES is specifically entrusted with administering the Act, preserving the fund, and handling its assets in accordance with the Act. Thus, IDES has an independent interest in maintaining a uniform body of law involving the Act and protecting the fund.

Note: This case arose before the eight subsections were added to the definition of misconduct and, therefore, there was no discussion of the fact that some of the new misconduct provisions do not require an employer to prove the existence of an express rule.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Katten Muchin and Zavis v. IDES*, 279 Ill. App.794 (1st Dist. 1996)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Cumulative Rule Violations**
CROSS-REFERENCE	**None**

The claimant was employed as a paralegal in the employer law firm's docket department. The claimant's personnel file contained four memoranda from his supervisor dated between May 21, 1991, and September 23, 1991, addressing various employer rule infractions, including failure to comply with docket procedures, rudeness to other staff, tardiness (for which the claimant was placed on 30-days' probation), poor work attitude and product, and unwillingness to cooperate with the employer's policies and procedures. The claimant was discharged on September 25, 1991.

The Board determined that misconduct as defined under Section 602A requires a *final* willful or deliberate act. The Board found the evidence failed to establish a proximate cause or occurrence that resulted in the claimant's discharge, and concluded the claimant was discharged for reasons other than misconduct connected to his work. The Circuit Court remanded, listing five questions for the Board to address in a supplemental decision. In the supplemental decision the Board answered the five questions, finding: (1) the claimant's tardiness, failure to follow office procedure, and attitude toward others were not willful or deliberate; (2) the facts alleged by the employer were not established by witnesses with personal knowledge; (3) the claimant did not violate any procedures after receiving a warning on May 21, 1991; (4) the claimant's tardiness did not continue after being warned on July 15, 1991; and (5) the claimant had been placed on 30-day's probation for excessive tardiness on July 15, 1991, and had not been placed on probation at any other time for any other infractions. The Board held that, because Section 602A requires a discharge *for* misconduct, the Board must look to the last act precipitating a discharge to determine the cause of the discharge, and again concluded the claimant was qualified for benefits because he was not discharged for misconduct connected with his work. The Circuit Court affirmed, finding section 602A requires a triggering event or proximate cause, and noting the Board found claimant's testimony credible and the employer's evidence insufficient to contradict the Board's conclusion.

HELD: Section 602A misconduct does not require a showing of a particular incident of a rules violation that triggers an employee's discharge. Since the Section 602A definition of misconduct includes *repeated* rules violations following a warning, Section 602A misconduct may result from cumulative rules violations taken as a whole. Therefore, Section 602A misconduct can be premised on either a particular incident of a rules violation that triggers an employee's discharge, or the employee's cumulative rules violations taken as a whole. Reversed and remanded to the Board for a determination whether the claimant's cumulative rules violations constituted misconduct under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Kiefer v. IDES*, 266 Ill. App. 3d 1057 (1st Dist. 1994)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Harm**
CROSS-REFERENCE	**MC 485.25, Other Work**

The claimant was employed as a marketing associate and assistant to the president of the employer, a PPO which offered discounts to persons who purchased health insurance from Association Life Insurance Company ("ALIC") and who obtained healthcare from members of the employer PPO. The employer was not itself an insurance company. The claimant was also licensed to sell health insurance in Illinois, and sold health insurance for ALIC. In connection with her sales of health insurance, the claimant created a form called a Request For Quote. The heading on the form included the names of both the employer and ALIC. The claimant sent the form to a group of dentists who were members of the employer PPO in order to gather information for providing them a health insurance quote from ALIC. The employer's president discharged the claimant upon learning she had included the name of the employer in the heading on the form.
The Board held the claimant had been discharged for misconduct under Section 602A of the Act because she had wilfully and deliberately distributed misleading information about her employer, its services and products, to third parties to the employer's detriment. The Circuit Court affirmed the Board, and the claimant appealed.

On appeal, the employer argued the claimant's conduct potentially obligated it to pay insurance claims submitted by the dentists' employees, and this threat of future financial loss caused it harm. The employer also argued the claimant's use of the employer's name on the form potentially subjected it to monetary sanctions for violating state insurance laws, and potentially damaged its reputation after customers who were mislead by the form learned the employer was not an insurance provider.

HELD: The claimant did not engage in misconduct as defined under Section 602A of the Act because the claimant's conduct did not potentially harm the employer. The employer conceded it suffered no actual harm, and it's claimed risk of future harm is nothing more than a remote possibility. The claimant sold no insurance policies using the form, so the employer had no risk of future contractual liability caused by the claimant. Further, no evidence shows that claimant's one-time use of the employer's name on the form caused threats of monetary sanctions or loss of goodwill that were ever likely to evolve into actual threats. Courts that have held a threat of potential harm to constitute "harm" under the Act considered threats that were real and impending, not threats that were remote and speculative possibilities such as those in this case.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE ***Nichols v. IDES*, 578 N.E. 2d 1121 (1991)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Reasonableness of Rule**
CROSS-REFERENCE **None**

The claimant was a maintenance worker who in past seasons, in addition to other duties, cut grass. This season, other maintenance workers were assigned that task until, one day, the claimant was asked to cut the grass. He refused and was fired.

The claimant argued that the employer's directive was outside the scope of his job duties and unreasonable as a matter of law; therefore, his refusal could not constitute misconduct.

HELD: Section 602A defines misconduct in pertinent part as a violation of a reasonable rule governing the performance of work. If an individual is directed to perform work outside his job duties, that directive might be unreasonable. However, the fact that an individual is not personally assigned a task for some time does not mean that it is not within the scope of his job duties. Here, the task was within the scope of his job duties as a maintenance worker. His refusal to do his work constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE ***Glasper v. Board of Review*, 578 N.E. 2d 254 (1991)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Reasonableness of Rule**
CROSS-REFERENCE **None**

The employer's rule provided that:

> Any employee exhibiting behavior which leads management to suspect that he/she is under the influence of a mind altering substance will be sent immediately to the clinic for a drug/alcohol screening test. Positive results or refusal to take such test will result in immediate dismissal.

The claimant was seen coming out of a liquor store during lunch break. When he returned to the office his eyes were glassy and his speech was slurred. His supervisor asked him to submit to a drug test. The claimant refused and was fired.

On appeal, the claimant's only argument was that he was not intoxicated, that his eyes were glassy because of dust and that his speech was slurred because of a speech impairment.

HELD: Section 602A defines misconduct in pertinent part as a violation of a reasonable rule. Here, nothing in the record, including the claimant's explanations, detracted from the reasonableness of the employer's rule: it was related to the business, it was known to the claimant, and it was applied fairly (the claimant's condition would allow the employer to suspect that the claimant had been drinking).

The claimant willfully violated a reasonable rule. He was discharged for misconduct and benefits were denied.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE ***Raymond A. Walthall v. IDOL*, 497 N.E. 2d 782 (1986)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Awareness of Rule**
CROSS-REFERENCE **MC 255.1, Insubordination, Disobedience**

The employer, a department store, had a rule that workers were to eat only in designated areas, such as the cafeteria or lounge, and away from work areas where eating would be both counterproductive and a health hazard. The claimant, a warehouseman, had never been warned about violating this rule.

He was on his 15-minute morning break. He moved away from his immediate work area and into a corner, where he peeled some hard-boiled eggs and began to eat them. His supervisor saw him doing this, informed him that he was violating the employer's rule, and directed him to eat in one of the designated areas. The claimant, however, continued to eat, quickly consuming the rest of his eggs.

HELD: A deliberate violation of an employer's known and reasonable rule constitutes misconduct.

In this case, initially, the claimant might not have been aware of the employer's rule. Therefore, at the time he began eating, there was no demonstration that his violation willful.

However, after he received a warning from his supervisor, he was certainly aware of the rule and knew that his supervisor expected his immediate compliance. At this point, he chose to disobey the supervisor's order. This disobedience was a deliberate violation of the employer's known and reasonable rule and constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**85-BRD-04821/6-27-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Awareness of Rule**
CROSS-REFERENCE	**None**

The claimant had been employed as an Engraver for thirty-three years. Toward the end of a December vacation, he sprained his knee in an accident at home. He was unable to report to work when his vacation ended. Despite the fact that the claimant continued to be incapacitated throughout the month of January, he did not seek medical attention. He did, however, provide his employer with regular updates concerning his physical condition, insofar as it prevented him from working. The employer appeared to be understanding, and even suggested that the claimant take additional vacation time, to which he was entitled, and not return to work until mid-February. Upon the claimant's return to work in mid-February, he was informed that he would be required to furnish a medical statement, verifying the treatment he had received from a doctor. The claimant had never made any representations to his employer that he had seen a doctor. He explained that because he had not been treated by a doctor, he would be unable to furnish the required medical statement. Subsequently, the claimant was discharged, in accordance with a new rule, adopted by the employer the previous year, which required a doctor's statement whenever an employee was absent due to illness or injury.

The claimant testified that no one had been made aware of this new rule and even supervisory personnel had admitted that the new rule had not been brought to anyone's attention. The rule had not been posted on the employee bulletin board, where workers might have been put on notice as to the correct procedures.

HELD: In order for a disqualification to be imposed, it would have to be established that the claimant violated a known company rule. Knowledge can be actual or implied.

In the instant case, the evidence established that the claimant did not have actual knowledge of the rule. He did not know that the employer would require a medical verification of his injury. Nor was it established that the claimant should have known of the rule. The claimant complied with what he perceived, based upon his years of service, to be the employer's ongoing policy.

In the absence of knowledge by the claimant, his actions, or omissions, in failing to seek medical treatment or obtain medical verification, did not constitute misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**85-BRD-04514/6-18-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Awareness of Rule**
CROSS-REFERENCE	**MC 15.15, Absence, Permission**

The claimant was employed as a Night Auditor for three years. Prior to taking a previous vacation, the claimant had sought approval from the Office Manager. This time, the claimant approached the Assistant Office Manager, and stated that she intended to take a vacation which would commence in the following days. The Assistant Office Manager requested that the

claimant write down the dates that she wished to be off from work, then "never told me I could not go, so I assumed it was okay." The claimant then took her vacation, and was discharged, because it was determined that her vacation time had not been approved, in accordance with the employer's rule that approval come from the Office Manager after a review of a written request. The claimant testified that she was unaware of this formal procedure.

HELD: In order for a disqualification to be to be imposed, it would have to be established that the claimant violated a known company rule. Knowledge can be actual or implied. In this case, given the claimant's previous course of conduct, the Assistant Office Manager's equivocal response, and the short notice period between the request and desired vacation dates, the claimant knew or should have known that her job tenure was in jeopardy if she did not receive express approval. Therefore, she violated a known company rule.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **83-BRD-3233/3-29-83**
AUTHORITY **Section 602A**
TITLE **Violation of Company Rule**
SUBTITLE **General**
CROSS-REFERENCE **None**

The hospital rule prohibited employees from smoking except at lunch time or on breaks in assigned areas. The claimant had been warned about smoking while performing his work and while not in the assigned area. On the date of his discharge, he was again discovered smoking in an unassigned area while performing his work.

HELD: It is the employer's right to establish reasonable rules for the conduct of its business. A hospital, in particular, has a substantial interest in protecting the health of its patients, and the restricted smoking rule was for this purpose. Therefore, the rule was reasonable. Having been warned previously, the claimant willfully and deliberately violated a reasonable rule and was discharged for misconduct connected with his work. He is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **83-BRD-11433/10-7-83**
AUTHORITY **Section 602A**
TITLE **Violation of Company Rule**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked a second shift as a nursing assistant and had to wait an hour for her "ride" before she could go home. Alleging that she worked on things that were available, she began putting in overtime for herself and was paid for this time for two pay periods until a time sheet audit uncovered an additional claim for a third successive pay period. She had not been given permission to work overtime.

The employer's handbook specifically stated that no employee was to work overtime without permission and that falsification of the work time sheet was grounds for dismissal. The claimant signed a receipt for the employer indicating she "had read and understood" the rules, and she admitted that her supervisor and other employees had told her that claiming unauthorized overtime was improper. The employer stated that, as a general rule, it does not give people permission to work overtime because it increases its operating costs. The claimant was discharged when her third pay period claim for overtime was discovered.

HELD: The claimant's violation of the employer's reasonable rule against the unauthorized accrual of overtime is misconduct connected with the work, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **83-BRD-11549/10-17-83**
AUTHORITY **Section 602A**
TITLE **Violation of Company Rule**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was discharged for making personal telephone calls on the company phone in violation of a published company rule. She had been warned for a similar infraction a month earlier and was told that a repetition of the offense would result in her discharge.

HELD: The willful refusal of an employee to comply with reasonable rules promulgated by the employer in the conduct of its business is a violation of the authority implicit in the agreement of hire. Moreover, where there has been a prior warning for the same offense with a threat of discharge, there is willful disregard of the employer's interest which establishes misconduct connected with the work. She is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**ABR-85-2212/8-21-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Significance and Substantial Harm**
CROSS-REFERENCE	**None**

The claimant was employed as a department store Cashier for 5 years until her discharge in December, 1984, for violating her employer's rule, which was:

> Friends and relatives when shopping should make purchases from someone other than yourself to eliminate misunderstanding.

On December 8, 1984, the claimant was on her lunch break when her daughter entered the employer's store. Her daughter selected items to purchase, then stood in line, making her way toward the register. The register was being serviced by a Relief Cashier at the time. Then the claimant returned from her lunch break, and took over for the Relief Cashier. The claimant was unaware that her daughter had been standing in line until her daughter reached the register with her purchases. The claimant saw that all the other register lines were backed up, so she did not send her daughter to another cashier. The claimant attempted to contact her supervisor, who was unavailable. So, the claimant told her Relief Cashier to stand by and witness the transaction as the claimant rang up her own daughter's purchases. The purchases were rung up correctly.
The issue presented was whether the claimant's technical violation of her employer's rule constituted misconduct connected with her work within the meaning of Section 602A.

HELD: A discharge resulting from a violation of an employer's rule is not, per se, for misconduct connected with the work. Before a discharge for a violation of an employer's rule can be construed as misconduct, a minimum set of conditions must be satisfied; among them: the violation must be significant and the violation must tend to substantially harm the employer's interests. A violation is not significant unless it interferes with the employer's operations, or, if it is minor or trivial, is but the last in a series of actions, which, when viewed in their entirety, evidence a willful disregard of the worker's obligations to her employer.

In the instant case, there was no interference with the employer's operations. Nor had the claimant been willfully disregarded her employer's interests; there was no evidence that the claimant had previously failed to observe the rules or policies of the employer. Also, there was little or no possibility of substantial harm to the employer, since the claimant had taken steps to ensure that she would ring up the prices correctly, and did, in fact, ring up the prices correctly. Accordingly, the claimant's discharge as a result of violating her employer's rule was not for misconduct connected with her work.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**ABR-85-7438/3-13-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Social Relationships**
CROSS-REFERENCE	**MC 85.05, Connection With Work**

The claimant, a 30 year old High School Teacher, was physically attracted to one of his 17 year old students, and asked her for a date. The student did not make a date with the claimant. The claimant persisted in trying to talk with her, including going to the student's home. Following his visit to her home, the student's mother complained to the high school principal, who issued a warning to the claimant: He was to have no more personal contact with the student.

Although the claimant did not subsequently meet or talk directly with the student, he did, upon occasion, go out of his way to drive past her home. Then, at the onset of summer vacation, he went to the student's work place, where he discussed with the student's work supervisor his (the claimant's) prospects of dating the claimant during the summer. Following this incident, the student's mother again complained to the claimant's principal, that her daughter was being harassed, whereupon the claimant was discharged.

HELD: Discharges because of social relationships outside of working hours and away from the employer's premises are not generally considered to be connected with the work, even though there may be a rule or order prohibiting such relationships. However, discharges arising out of a worker's private activities may be connected with the work if the acts in question are sufficiently identified with the work or tend to injure the employer's interests.

In the instant case, the claimant was a teacher. Both he and his employer, a school, were responsible to the community, in that they had been entrusted to look after the well-being of students - many of them minors. The claimant's conduct toward one of his students - a minor - was violative of the public's trust, and therefore tended to injure his employer's interests. The claimant's actions were inherently misconduct connected with his work, regardless of the fact that many of the claimant's acts took place outside of working hours and away from the employer's premises .

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Crowley v. IDES*, 546 NE 2d 1042 (1989)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Reasonableness of Rule**
CROSS-REFERENCE	**MC 255.304, Insubordination, Refusal to Work Overtime**

The claimant was a bus driver for a mass transit company. The employer received passengers' complaints about him
The employer's policy was to discuss such complaints as soon as drivers got off work, so that the discussions would not interfere with bus driving schedules. The drivers' union did not object to this policy. Also, the discussions generally lasted no more than 2 to 3 minutes.

One day, when the claimant got off work, a supervisor asked him to discuss the passengers' complaints about him. The claimant refused to discuss the complaints, unless he was paid for his time. He was suspended for 5 days for refusing to discuss the complaints. In ensuing weeks, he continued to refuse to discuss the complaints, despite the employer's and union's urging. He told a supervisor: "If you wish to discuss complaints with me, either I want to be paid, or I'll see you when I am on the clock." Finally, the employer fired him for refusing to discuss the complaints the employer's way.

The claimant argued to the court that, under the Fair Labor Standards Act, applicable to mass transit companies, he was entitled to be paid for any time demanded of him by his employer, when that time was outside normal working hours and attendance was involuntary.

HELD: Misconduct is a disregard of a standard of behavior an employer has a right to expect from a worker. But a demand that an employee work in violation of a statute would be insistence on behavior the employer has no right to expect.

Misconduct is a disregard of a reasonable policy. A policy that requires a worker to violate a statute is unreasonable.

Here, the employer demanded that the claimant work in violation of federal statute. This was insistence on behavior the employer had no right to expect. It was an unreasonable policy. The claimant's disregard for that policy did not constitute misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**ABR-94-7167/9-21-94**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**"Governing Behavior ... In Performance of Work"**
CROSS-REFERENCE	**MC 85.05, Connection with Work**

The employer, a school district, had a rule (in Illinois' statutes) prohibiting it from retaining any worker convicted of public indecency. The claimant was a utility worker, whose work placed him in the presence of students ranging from kindergarten through 12th grade. He was discharged after being convicted of public indecency, for acts he committed while he was off-duty and off school premises.

HELD: "Misconduct" requires that an employer's rule or policy govern an individual's behavior in performance of his work. The term is not limited to actions that occur while a worker is on-duty or on the employer's premises. Off-duty actions that materially jeopardize the public's perception of the employer's services or a claimant's ability to properly and fully carry out his duties involve the performance of work. Here, the employer's rule governed the claimant's behavior in performance of his work. He was discharged for misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**ABR-95-6405/8-2-95**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Reasonableness of Rule**
CROSS-REFERENCE	**None**

The claimant became ill in the middle of her shift. She sought permission to leave work early, and permission was granted, conditionally: the claimant was instructed to stop by a co-worker's house and get the co-worker to work the remainder of her shift. The claimant was unable to get the co-worker to replace her. When the claimant failed to return to work that day, she was fired.

HELD: Section 602A defines misconduct in pertinent part as a violation of a reasonable rule or policy. Whatever the reasonableness or unreasonableness of the requirement that the claimant obtain a replacement, a rule or policy that requires an individual to report to work when she is ill is, itself, unreasonable. Here, the claimant was absent because she was ill, which is not misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Wrobel v. Dept. of Employment Security*, 801 N.E. 2d 29, 344 Ill. App. 3d 533 (1st Dist. 2003)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Deliberate and Wilful Violation**
CROSS-REFERENCE	**MC 435.05, Tardiness, Reasons; MC 485.1,Violation of Company Rule, Tardiness**

The claimant was employed as a pressman with a large metropolitan newspaper. His shift started at 6:00 a.m. If he was going to be absent or late, he was required to call a supervisor by 5:00 a.m. The employer had a progressive discipline policy which called for discharge of an employee who accumulated six attendance infractions in a twelve month period. Failing to call in an absence or late arrival, or calling in late, counted as two infractions. The claimant had frequent absence and tardiness problems, including failure to make timely calls to a supervisor. After being told another attendance infraction could result in discharge, the claimant called in at 5:50 a.m. to tell his supervisor he would be late to work. The claimant was subsequently discharged.

The Board of Review adopted the referee's decision *in toto*, finding the final attendance infraction occurred because the claimant overslept when his electric clock-radio failed to go off due to an overnight power outage and his back up wind-up alarm clock failed to go off because he forgot to set it. The claimant also admitted the electric clock-radio's power could have been backed up with batteries but he never put any in. The Board concluded the circumstances causing the claimant's final attendance violation were within the claimant's ability to control or avoid, and held the claimant was properly discharged for misconduct under Section 602A of the Act because he did not take steps to ensure his alarm clocks would go off, even in the event of a power failure. The Circuit Court affirmed the Board's decision.

HELD: The Appellate Court reversed the Board, finding the claimant did not deliberately and willfully violate the employer's attendance rule when he committed the final attendance infraction. The Court reasoned the limitation of the definition of misconduct under Section 602A to deliberate and willful violations of an employer's work rule means that Section 602A misconduct is limited to acts by an employee that are intentional. The Court observed that misconduct under Section 602A requires a conscious act of an employee. The Court found that the claimant had only committed the unconscious act of

oversleeping (when his alarm clock failed to go off due to the power outage). There was nothing in the record to suggest the claimant had chosen to oversleep, and the other actions of the claimant established by the record, such as his forgetting to set his back up alarm clock, only showed the claimant had been negligent or careless rather than acting intentionally (compare with 84-BRD-339/1-11-84, where misconduct was found when the claimant knew her alarm clock did not work properly but did nothing to rectify the problem).

The Court rejected the Board's argument that deliberate and willful conduct on the part of the claimant should be inferred because the claimant was not fired on the basis of the last infraction alone, but on the basis of his history of attendance infractions which had occurred with sufficient frequency to demonstrate willful violation of the employer's attendance rule. The Court found (1) the Board's argument was inconsistent with the factual findings and legal reasoning of the referee, which the Board had adopted *in toto*, since the referee had focused exclusively on the claimant's final attendance infraction, and (2) the record indicated the reasons for only one other attendance infraction, which had occurred when the claimant's electric clock radio failed to go off for unknown reasons, and therefore any or all of the other attendance infractions could have been the result of the claimant's negligence. The Court refused to infer a deliberate and willful violation of an employer's attendance rule based on the number of infractions alone.

ISSUE/DIGEST CODE	**Misconduct/ MC 485.05**
DOCKET/DATE	***Pesoli v. Department of Employment Security*, 983 N.E.2d 1, 367 Ill.Dec. 847 (1st Dist., 2012)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Deliberate and Willful Violation**
CROSS-REFERENCE	**MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed as a secretary in the radiation department of a hospital. A co-worker reported that the claimant was talking on the phone with friends about a neighbor's child who had been hit by a car and admitted to the hospital as a patient. An audit of the claimant's computer revealed that the claimant had accessed the child's records. The child's records were not related to the claimant's job duties. The hospital's confidentiality policy provides, in part, that a patient's records are confidential except to the extent necessary for an employee to perform a job duty. This policy was required under Federal law. The claimant was discharged for accessing a patient's records that were not connected with her job duties.

Initially, the claimant admitted that she had accessed the records because her son had witnessed the accident and wanted to know if the child was still a patient. Later, the claimant alleged that someone had called about the child and that she might have accessed the records to redirect their call to the correct department. The claimant's conflicting testimony raised a question of credibility.

The Board held that the hospital provided credible evidence that the claimant violated the hospital's confidentiality policy. The claimant appealed and both the circuit court and appellate court affirmed the Board's decision that the claimant was discharged for work-related misconduct and was ineligible under Section 602(A).

HELD: There are three elements of misconduct: (1) deliberate and willful violation of a rule or policy of the employer; (2) the rule or policy was reasonable; and (3) the employee's violation either harmed the employer or was repeated by the employee despite previous warnings. In regards to the first element, the record shows that the claimant was aware of the hospital's policy and the claimant consciously disregarded the policy. In regards to the second element, the hospital's confidentiality policy was reasonable because the hospital promulgated the policy to comply with Federal law and to protect the confidentiality of its patients' health information. In regards to the third element, the hospital could experience potential harm from the loss of business or lawsuits for the breach of confidentiality. The Board's decision was affirmed.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***McAllister v. Board of Review of the Dep't of Employment* Sec., 263 Ill. App. 3d 207**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Intoxicants**
CROSS-REFERENCE	**MC 85.05, Connection With Work**

Claimant was employed as a bus operator for the Chicago Transit Authority (CTA) from December 4, 1972, until April 15, 1991. On April 10, 1991, after allowing all passengers to disembark at the bus terminal claimant pulled the bus around to the

other side of the terminal in order to use the bathroom. CTA policy requires a driver to secure the bus by placing the gear in neutral and applying the hand brake. Claimant failed to comply with this policy because he was in a hurry. When he came out of the bathroom, claimant saw the bus slowly moving forward until it struck a guard rail. At the end of the day, claimant reported the incident and also submitted to blood and urine tests. Medical tests indicated the presence of cocaine. Claimant stated that he had consumed cocaine after work six days earlier. The employee handbook prohibited the presence of any kind of controlled substance or narcotics in the system of an employee while at work. Following a hearing, the referee found that the presence of the illegal drug in the claimant's system while on duty, regardless of whether he would have been deemed under the influence of the substance, was sufficient to constitute a violation of an employer policy which harmed the employing unit. The Board found that claimant was discharged for misconduct connected with work. The circuit court reversed the Board stating that there was no showing of impairment and a lack of harm to the employer and no previous warning regarding narcotics.

Held: Illinois law requires that the CTA establish and enforce a drug testing program consistent with Federal statutes and regulations. (70 ILCS 3605/47, 3615/2.24 (West 1992).) In addition, the CTA must maintain a drug-free workplace to be eligible for a grant or contract from a federal agency. 41 U.S.C. §§ 701, 702. The United States Supreme Court has stated that drug testing of persons in safety-sensitive positions is justified without individualized suspicion because an employee can cause great human loss before any signs of impairment become noticeable. The CTA has a rule forbidding narcotics in an employee's system. Additionally, the collective bargaining agreement between the CTA and the union representing bus operators gives the CTA the right to test any bus operator for drugs after an accident. The administrative rule and examples reflect the legislature's recognition that the presence of a controlled substance during working hours within the system of a commercial driver can constitute harm to the commercial carrier. In this case the Board found that the presence of the illegal drug in the claimant's system while on duty was a violation of the CTA's policy and constituted harm to the employing unit. The appellate court held that the circuit court exceeded its scope of review in making an independent determination that the CTA had not been harmed by the claimant's use of cocaine in this case.

Where an employer shows that it fired a former employee for failing a drug test, which test was part of a program to promote safety in the employer's workplace, the former employee is disqualified from receiving unemployment benefits. Such a result is particularly appropriate where passing such a test was an agreed condition of employment. Under such circumstances, the employer is not required to make any further showing, such as impairment or strange conduct on the job.

ISSUE/DIGEST CODE	**Misconduct/MC 485.1**
DOCKET/DATE	**ABR-85-2000/6-13-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Absence -- Notice**
CROSS-REFERENCE	**MC 15.1, Absence, Notice**

The employer had a rule, which stated, in pertinent part:

> Absence for three consecutively scheduled work days without making proper notification to the employee's supervisor, in accordance with department call-in procedures...can lead to...immediate discharge.

The claimant acknowledged that she had been aware of the rule.

On Saturday, April 28, 1984, the building in which the claimant resided burned down. The claimant's apartment, including her belongings, was destroyed. An infant died in the claimant's arms. On Monday, April 30, the claimant's first scheduled work day after the fire, she telephoned her employer, stating that she would be unable to report to work as scheduled because of her need to obtain new housing for herself and her daughter. The claimant assumed that her employer understood that she would return to work as soon as she had obtained new housing. On Monday, May 7, having obtained new housing, the claimant reported to work. She was informed that she had been discharged, effective May 3, for not reporting her absence for three consecutive days.

The employer contended that the claimant's failure to abide by the employer's known rule concerning absenteeism and notice constituted misconduct:

> [T]he claimant proved her ability to contact the employer regarding her absence by her call on the first day. The claimant also testified that during the period in question, she was looking for new living quarters.

The Referee in his decision (allowing benefits without a disqualification under Section 602A) seems to state that the trauma the claimant had suffered was the factor that prevented her from calling. However, it was not stated that the claimant was under a doctor's care, or that she was otherwise disabled. Indeed, her ability to engage in an active search for housing would seem to preclude a decision that the trauma suffered was disabling.

HELD: An employer has the right to expect its workers to come to work promptly as scheduled unless prevented from doing so by compelling circumstances. An employer has the right to expect prompt notification from the worker when the worker is prevented from reporting to work. Prompt notification often means notification as required by the employer under rules it has specifically promulgated. Where, however, unusual facts exist, what constitutes prompt notification may be other than the employer's rules, insofar as unemployment insurance eligibility is concerned. While, generally, infractions of an employer's attendance rules are held to constitute misconduct, absences, generally, are not caused by a fire destroying a worker's home or resulting in a child dying in a worker's arms, as happened in the instant case. Where no reasonable person would have concluded that an employer would discharge a worker, it could not be held that the worker's actions constituted misconduct. Accordingly, this claimant was discharged not for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.1**
DOCKET/DATE	**ABR-85-6603/1-29-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Temporary Cessation of Work**
CROSS-REFERENCE	**MC 310.2, Neglect of Duty**

The claimant, a Parking Enforcement Officer, had received warnings and a suspension for neglect of duty. On the morning of her discharge, she was warned about "going out of service" (shutting off radio contact) without giving headquarters her location and a reason. One hour after returning from lunch, and 10 minutes before a scheduled break, the claimant shut off radio contact with headquarters, without giving her location or a reason. She was discharged.

The claimant stated that an "emergency" had prevented her from complying with the employer's directive. The emergency was that she wished to go to the bathroom.

HELD: When a worker has been discharged because she ceased work without authorization, or because she left work early without authorization, the following factors should he considered:

1 - The worker's reason(s) for ceasing to work;

2 - The worker's reason(s) for failing to obtain authorization;

3 - The length of time the worker failed to work;

4 - The seriousness of the work cessation in terms of damage to the employer's interest.

In the instant case, the claimant did not have good cause for failing to notify the employer before "going out of service." Her proffered justification was contrary to the weight of human experience: Except for illness or physical dysfunction, neither of which the claimant cited to have existed, the need to go to the toilet does not come without warning. Such warning would have been sufficient for the claimant to have notified headquarters.

If a worker does not have good cause, either for ceasing work or failing to obtain authorization, then a determination of misconduct depends upon how substantially the worker has violated the standard of behavior expected of her. Generally, brief cessations of work do not constitute misconduct. However, if a worker has been warned about such behavior, or is aware that the cessation of work may be detrimental to the employer's interests, then the worker's actions will constitute misconduct.

In light of the warnings the claimant had to keep her employer informed, even for a short period of time, constituted misconduct.

Absence, Tardiness, or Temporary Cessation of Work MC 485.1

ISSUE/DIGEST CODE	**Misconduct/MC 485.1**
DOCKET/DATE	***Shirley London v. IDES*, 532 NE2d 294 (1988)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Tardiness**
CROSS-REFERENCE	**None**

Most of the claimant's co-workers reported to work at or before 8 a.m. The claimant, who worked for the employer for 7 years, had permission to report later. Her family had only 1 car and she used it to transport her husband to work in Indiana and her daughter to school before driving herself to work.

After a succession of comptrollers complained that the claimant's schedule was "screwing up the operations," the employer circulated a memorandum stating that employees were required to report to work at 8 a.m. The claimant, although warned about tardiness, was never told, specifically, that her accommodation was rescinded. Months later, she was told to take 30 days to try to make necessary travel arrangements to insure her arrival by 8 a.m. She began to arrive at work between 8:20 and 8:30 and the employer acknowledged that there was continual improvement.

The 30 days passed and, one morning, the claimant notified the employer that she would be absent so she could attend to an unexpected personal matter. The employer suspended her for being absent, during a busy period, without giving notice prior to the day of absence.

The employer also decided that, if the claimant arrived later than 8 a.m. on the day she was to return from her suspension, she would be discharged. On the day of her return, the claimant reported to work at 8:06, due to road construction delays, and she was fired.

HELD: Tardiness constitutes misconduct only if it displays a worker's willful disregard for her duties or her employer's interests. Prior transgressions might demonstrate such a willful disregard. But, where prior transgressions themselves are not willful, it is similar to there being no record of prior transgressions.

In this case, the final incident appeared to be unavoidable. And an examination of prior incidents did not indicate willful behavior. The claimant's tardiness that preceded warnings was with good cause as part of an accommodation. During the lag period when the accommodation was being rescinded, her punctuality improved. There being no evidence of willful behavior, there was no misconduct.

Note: This case pre-dates the statutory general definition of misconduct and the new subsections. A different result might be possible under Section 602(A)3.

ISSUE/DIGEST CODE	**Misconduct/MC 485.1**
DOCKET/DATE	***Loretta L. Wright v. IDES*, 519 NE2d 1054 (1988)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Tardiness**
CROSS-REFERENCE	**None**

The claimant was late to work 5 times between August, 1984 and February, 1985. (There was no evidence presented as to how late she was or why she was late.) Upon each occasion she received an oral reprimand, except that, in the last instance, she also received a written warning explaining that she would be terminated for her next offense.

On March 28, 1985, the claimant was scheduled to report to work at 7 a.m. Her car would not start, so she had to take a bus. The bus was delayed. The claimant arrived at work at 7:05 a.m. This resulted in her discharge.

HELD: Misconduct is conduct evincing such willful disregard of the employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of its employee.

Tardiness without good cause, which is excessive in degree or frequency, constitutes misconduct.

In this case, the claimant's final incident of tardiness was unavoidable and for good cause. (Nor, for that matter, was there evidence that any of the previous incidents had been deliberate or excessive to any degree.) Therefore, the claimant's tardiness could not be construed as misconduct. The claimant was allowed benefits without disqualification under Section 602A.

Note: This case pre-dates the statutory general definition of misconduct and the new subsections. A different result might be possible under Section 602(A)3.

ISSUE/DIGEST CODE	**Misconduct/MC 485.1**
DOCKET/DATE	**ABR-85-2543/9-20-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Absence -- Notice**
CROSS-REFERENCE	**MC 15.1, Absence, Notice**

The claimant was employed as a Housekeeper, until August 21, 1984, when she became ill at work and was sent home. A doctor examined her that same day, and in the days following, and diagnosed her condition as ptomaine poisoning / bladder disease. The doctor recommended bed rest for 1-2 weeks.

The claimant spoke with her employer on August 22, 23, and 24, explaining that she was seeing her doctor for tests, but otherwise was confined to her bed, per the doctor's instructions. The claimant did not speak with her employer again, until August 31, when her supervisor telephoned. The supervisor informed her that she had been discharged because she had not continued to call in every day that she had been ill.

HELD: An employer has the right to expect its workers to come to work promptly as scheduled unless prevented from doing so by compelling circumstances. An employer has the right to expect prompt notification from the worker when the worker is prevented from reporting to work. Prompt notification often means notification as required by the employer under rules it has specifically promulgated. At the same time, the circumstances which bring about a worker's absence from work may, of themselves, constitute notice to the employer. Thus, the nature of a worker's illness may put the employer on notice that she will be absent from work for some time. To require daily notice in such instances, before the individual knows precisely when she will be able to return to her job, would not be of any assistance to the employer and would serve no practical purpose.

In the instant case, despite the claimant's failure to call in every day, the employer had knowledge of the nature of the claimant's illness, and had no reasonable expectation that her return to work would be imminent. Because the employer had already been put on notice, the claimant's discharge could not have been for misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.1**
DOCKET/DATE	**ABR-09-7323**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Absence, Tardiness or Temporary Cessation of Work**
CROSS-REFERENCE	**None**

During the last year of her employment, the claimant’s attendance was spotty due to personal illnesses and the illness of her mother. The employer was aware that the claimant’s mother was ill and in need of the claimant’s care. The claimant began calling off of work on January 9, 2009 because her mother was ill and needed her care. The claimant called off of work every day and spoke either to her supervisor or to the receptionist. On January 30, 2009, the employer sent the claimant a letter notifying her that she was being discharged for missing work for three weeks without calling in. The employer’s witness testified that the employer had contacted someone at the claimant’s home who told them that the claimant was caring for her mother.

HELD: The Board of Review found that the claimant was absent from work due to compelling family circumstances, *e.g.*, the need to care for her sick mother, and that she properly reported her absences to the employer. Under such circumstances, the Board could not say that the claimant’s absences from work were willful and deliberate as those terms are used in Section 602(A) of the Act. Consequently, the Board concluded that the claimant was discharged from work for reasons other than misconduct and was not disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 485.1**
DOCKET/DATE	**ABR-08-8408**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Absence, Tardiness or Temporary Cessation of Work**
CROSS-REFERENCE	**None**

The claimant worked for the employer for about one year during which time he had received verbal warnings regarding his attendance. The claimant was discharged after being tardy for two consecutive days due to marital problems, of which the employer was aware. He notified the employer of his impending tardiness in a timely fashion in compliance with the employer's policy.

HELD: The Board of Review affirmed the Referee's decision that the claimant's tardiness under these circumstances was not a deliberate and willful violation of the employer's attendance policy and, thus, the claimant's behavior did not constitute misconduct as that term is defined in Section 602(A) of the Act.

ISSUE/DIGEST CODE	**Misconduct/ MC 485.1**
DOCKET/DATE	***Woods v. Illinois Department of Employment Security*, 968 N.E.2d 1241, 360 Ill.Dec. 488 (1st Dist., 2012)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Absence, Tardiness or Temporary Cessation of Work**
CROSS-REFERENCE	**MC 5.05, Misconduct, Definition of Misconduct**

The claimant was employed by a job placement agency and assigned to a client to work as a temporary customer support specialist. During her six month tenure with the client, the claimant was tardy six times and absent seven times. At the hearing, the employer's witness testified that the on-site supervisor spoke to the claimant about her attendance and that the client had asked the witness to speak to the claimant about her attendance. The claimant admitted that she was absent seven times and acknowledged that she was aware of the employer's call-off procedure. Since work was slowing with the client, the employer decided that it had to lay someone off and selected the claimant because of her poor attendance. The circuit court affirmed the Board's decision that the claimant was discharged for misconduct connected with her work. On appeal, the claimant argued that the alleged misconduct had to be the sole reason for the discharge.

HELD: Section 602(A) does not require that misconduct is the sole reason for a claimant's discharge from employment in order for the claimant to be disqualified from receiving benefits. Thus, a claim for benefits could be denied even if economic reasons had influenced the employer's decision to discharge the claimant. The decision of the Board was affirmed.

ISSUE/DIGEST CODE	**Misconduct/ MC 485.1**
DOCKET/DATE	***Abbott v. Illinois Department of Employment Security*, 954 N.E.2d 292, 352 Ill.Dec. 432 (2nd Dist., 2011)**
AUTHORITY	**Sections 602(A) and 601(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Absence, Tardiness or Temporary Cessation of Work**
CROSS-REFERENCE	**VL-135.15; Discharge or Leaving, Constructive Quit**

The claimant was enrolled in a U.S. Department of Labor apprenticeship training program. Under this Federal program, the claimant worked as an apprentice plumber for the employer and was required to maintain at least a 2.0 grade point average in required apprenticeship classes. The employer paid for the claimant's courses and required that the claimant maintain at least a 2.5 grade point average without receiving any grades of D or below. The employer also required that the claimant attend school for eight hours per week and be available to work for an additional 32 hours per week. The claimant signed a form acknowledging the employer's attendance policy. Eventually, the employer fired the claimant because the claimant was absent or worked less than a full day on 25 occasions in a 51-week period and the claimant received a 2.14 GPA, which included Ds. At the hearing, the claimant admitted that she was absent from work occasionally, but denied being absent 25 times in a 51-week period. The claimant also testified that she informed the employer that her absences were due to the fact that she was the primary caretaker of her ill mother and that no other family members were available to care for her mother.

The Referee held that the claimant was ineligible for unemployment benefits because she voluntarily left the job without good cause attributable to the employer. The Board reversed the Referee's decision and held that the facts of the case did not raise an issue of voluntary leaving under Section 601(A). The Board also found that the claimant had not committed misconduct under Section 602(A); therefore the Board held that the claimant was eligible for benefits. The circuit court reversed the Board's decision and held that the claimant was ineligible under Section 602(A) because the claimant intentionally violated the employer's attendance policy. The claimant appealed. On appeal, the employer argues that the claimant's absences were intentional because she consciously chose to care for her mother instead of coming to work instead of coming to work.

HELD: The employer offered no evidence to suggest that the claimant was being untruthful when she described her mother's ill health as the reason for her absence. Further, the record shows that the mother's ill health was a circumstance beyond the claimant's control. Therefore, the decision of the circuit court was reversed and the Board's decision was affirmed.

Assaulting Fellow Employee MC 485.15

ISSUE/DIGEST CODE	**Misconduct/MC 485.15**
DOCKET/DATE	**ABR-85-8835/5-12-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Assaulting Fellow Employee**
CROSS-REFERENCE	**MC 390.2, Relations with Fellow Employees**

The claimant was employed as a Sorter until his discharge for assaulting a co-worker.

The employer submitted in evidence a copy of its "Rules of Conduct," which provided:

> It is a violation of Group I rules to provoke or participate in fights involving physical contact; or assaulting any person or provoking or inviting another person to assault anyone, the violation of which is subject to discharge for first offense.

The claimant contended that his discharge could not have constituted misconduct, because he had been unaware of the employer's rule.

HELD: Generally, a worker's discharge as a result of his violation of a known and reasonable company rule will constitute misconduct.

An employee's obligation not to engage in fights upon company time or property is inherent in all employment relationships; accordingly, it is not even necessary that there be a specific company rule against fighting. A worker is presumed to have knowledge that fighting violates a reasonable standard of conduct which the employer has a right to expect from its workers.

In the instant case, because the claimant should have known that fighting would result in his discharge, he was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.15**
DOCKET/DATE	***Meeks v. IDES*, 567 N.E. 2d 481 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Assaulting Fellow Employee**
CROSS-REFERENCE	**MC 190.1, Evidence; MC 390.2, Fellow Employees**

The claimant, who worked in an office setting, was discharged after a fight with a fellow employee. At an appeal hearing, the employer did not produce any written rule or offer any testimony that fighting on the job was impermissible. The claimant contended that the employer did not satisfy all the required elements for misconduct under Section 602A because it did not prove *by direct evidence* that it had a "reasonable rule or policy."

HELD: Section 602A provides, in pertinent part, that misconduct arises from a violation of a "reasonable rule or policy." Whether a rule or policy exists need not be proven by direct evidence but may be determined by "common sense business

practices." With the exception of some business ventures engaged in professional sports, any employer would obviously have a policy against physical violence. Here, there was an implicit rule against fighting. The "reasonable rule or policy" requirement of Section 602A was met.

NOTE: This decision was cited in *Petrovic v. IDES* (2016 IL 118562) as a case decided under the "commonsense" doctrine, which reasoned that an employer's rule need not have been expressly stated, but could be inferred based on "common sense." In *Petrovic*, the IL Supreme Court narrowed the so-called, "commonsense" rule. Under the premise that an employee should not be disqualified unless he/she engaged in conduct he/she knew was prohibited, the Court announced the following rule: "in the absence of evidence of an express rule violation, an employee is only disqualified for misconduct if her conduct was otherwise illegal or would constitute a prima facie intentional tort." Said another way, unless the conduct was illegal or intentionally tortious, an employer must prove, by direct evidence, the existence of a rule or policy that was expressly conveyed to the claimant. However, the *Petrovic* court did not expressly overrule *Meeks*. Furthermore, under the holding of *Petrovic*, the employer did not need to prove the existence of a rule since the claimant's conduct would constitute an intentional tort.

Clothes MC 485.2

ISSUE/DIGEST CODE	**Misconduct/MC 485.2**
DOCKET/DATE	**ABR-85-3359/10-2-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Clothing and Appearance**
CROSS-REFERENCE	**MC 363.05, Personal Appearance; MC 485.8, Safety**

The claimant was employed as a Carpenter in a nuclear power plant. His job would require him to work in potentially radioactive areas, where the wearing of a securely fitted mask, to protect against contamination, was mandatory. So that the claimant's mask would fit properly, he was requested to cut off his beard. When the claimant refused to cut off his beard, he was discharged**.**

HELD: Employers have the right to prescribe certain standards of dress for their employees. Such standards may be prescribed because the employer wishes to maintain a certain "atmosphere," or appearance of neatness or cleanliness, or to protect employees' safety. A rule requiring the wearing of certain items deemed necessary for safety is generally reasonable, unless outweighed by special considerations, and a worker who is discharged for a willful violation of such a rule is generally discharged for misconduct connected with his work. In the instant case, the employer's need for safety measures outweighed the claimant's interest in maintaining his beard. The claimant's refusal to comply with his employer's reasonable safety regulation constituted misconduct connected with his work within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.2**
DOCKET/DATE	**ABR-86-259/4-8-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Clothing and Appearance**
CROSS-REFERENCE	**MC 363.05, Personal Appearance**

The claimant worked as a Porter in a bowling alley. While working on the day shift, he wore, per requirements, a red casual shirt. Before he began working on the night shift, he was informed that he would be required to wear a white shirt, red vest, and black bow tie. One night, the claimant reported to work not wearing the required attire. Although directed to do so by his manager, the claimant replied that he did not wish to "look like a clown." The claimant was fired.

HELD: Employers reserve the right to prescribe certain standards of dress and appearance for their employees. Such rules may be for the purpose of establishing a certain "atmosphere" in the establishment or for making employees easily identifiable and accessible, and are generally reasonable. A willful violation of such a reasonable rule may tend to injure the employer's interests, and therefore constitutes misconduct.

In the instant case, the claimant willfully violated his employer's reasonable rule. His actions constituted misconduct.

Competition, Other Work, or Recommending Competitor to Patron MC 485.25
No Decisions

Dishonesty MC 485.3

ISSUE/DIGEST CODE	**Misconduct/MC 485.3**
DOCKET/DATE	**ABR-87-2086/6-30-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Dishonesty**
CROSS-REFERENCE	**MC 190.1, Evidence, Burden of Proof and Presumptions**

At the time of hire, the claimant signed a document, which read, in pertinent part:

> ...The undersigned hereby agrees and consents to submit to a lie detector test at any time...she might be requested to do so at the request of the employer.

The claimant worked in a store, in a department which had been experiencing theft problems. The claimant was transferred to a new department, and, shortly thereafter, the new department experienced missing funds. The claimant, together with other employees, was directed to take a lie detector test. The claimant refused to take the test. She was discharged.
At an appeal hearing, the claimant testified that she was not scheduled to work nor did she work on the day funds were discovered missing from her department. She denied misappropriating any funds.

The employer offered no evidence concerning any theft. But, the employer contended that, even if the claimant was not the person responsible for the missing funds, her refusal to submit to a lie detector test - in violation of the agreement at the time of hire - constituted misconduct.
HELD: A worker who is discharged because she has violated a known and reasonable rule is discharged for misconduct.

The fact that a worker knows of an employer's rule, or has consented at the time of hire to abide by an employer's rule, does not undo any fundamental unreasonableness of that rule.

Polygraph tests shift the burden from the employer (to establish guilt) to the worker (to establish innocence). Polygraph results have not been shown to be reliable. Polygraph results are inadmissible in a court of law. Therefore, it cannot be concluded that a requirement to submit to a polygraph test is a reasonable one; and, accordingly, a worker who is discharged solely on the basis of refusing to take a polygraph test is discharged for reasons other than misconduct.

In this case, the employer did not possess any tangible, competent evidence bearing on the claimant's alleged involvement in any misappropriation of funds. She was discharged solely upon the basis of her refusal to submit to polygraph testing, which alone did not prove dishonesty or constitute misconduct.

Employment of Married Women MC 485.35
No Decisions

Gambling or Game Playing 485.4
No Decisions

Intoxicants, Us of MC 485.45

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	***Overstreet v. IDES*, 168 ILL App 3d 24 (1987)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Intoxication and Use of Intoxicants**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

The claimant was a Bus Driver. She took sick leave from January 30, 1985 to March 15, 1985. Because she had been on sick leave for more than 7 days, she was required by her employer's policy to submit to a medical examination upon returning to work. The examination included blood and urine tests which, when analyzed, indicated the presence of cocaine. Upon receipt of this information, the employer removed the claimant from service and required her to undergo a second test, the result of which also indicated the presence of cocaine. On March 20, the Claimant was discharged from her job and referred to a

rehabilitation program. The program was to run for a minimum of 30 days. The claimant, during the course of the program, filed for unemployment insurance benefits.

The claimant admitted that the test results were accurate. But she argued that she had not used the narcotics at work. Upon review, she added that, since the time of the occurrence, she had successfully completed the program and had refrained from the use of narcotics.

HELD: Reporting to work under the influence of narcotics, where it shown that being under the influence might impact upon the ability to perform one's work, constitutes misconduct, irrespective of whether the actual use of the narcotic is at or prior to reporting to work. In this case, the claimant repeatedly used narcotics, and it was reasonable to conclude that she was under the influence of such narcotics after she had reported back to work. The claimant was a bus driver, and her use of cocaine prior to reporting for work as a bus driver constituted a deliberate violation of her employer's policy and indicated a disregard of the standards of behavior which the employer had the right to expect. What she did subsequent to the work separation (successfully completing a rehabilitation program) was irrelevant. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	***Profice v. Board of Review*, 481 N.E. 2d 1229 (1985)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Use of Intoxicants**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

The claimant worked for the CTA as a Bus Servicer. Although she was not a bus driver, her duties included the driving of buses from location to location in the employer's yard and fueling those buses.

Her foreman was looking for another worker, and was walking toward the women's locker-room, when he observed the claimant exiting the door to that room. Still looking for the other worker, he knocked on the door. When the worker opened the door, he smelled the aroma of marijuana smoke. He reported this to a supervisor.

At an appeal hearing, the supervisor testified that he, too, smelled the odor of marijuana smoke in the women's locker-room. On the locker-room bench, he found half a marijuana cigarette and drug paraphernalia. The claimant and her co-worker were called into the supervisor's office. Marijuana was found in the worker's purse. The supervisor testified that both had "glassy eyes." Subsequently, the claimant tested positive for THC, the primary chemical element of marijuana.

Although the claimant admitted that she had smoked marijuana, she stated that she did so off-duty and denied doing it on the job. She also contended that, because she was a Bus Servicer, not a driver, she could not have harmed her employer or anyone else, even if she had been under the influence of marijuana while at work.
Mt

HELD: A discharge for using intoxicating narcotics on the job, or for reporting to work in an impaired condition due to the use of narcotics, is a discharge for misconduct.

In this case, the evidence established that the claimant was in a room with a worker who kept marijuana in her purse, the strong odor of marijuana was present in the room, marijuana cigarette and related paraphernalia were found in the room, the claimant manifested signs of having smoked marijuana recently, and she tested positive for THC. Despite the claimant's denial, the Board of Review's decision that the claimant used marijuana (and was under its influence) during working hours was supported by the manifest weight of the evidence. Further, the claimant did drive buses and did use flammable liquids while under the influence of marijuana. This did pose a danger to the CTA, co-workers, and others. This was a discharge for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.45**
DOCKET/DATE **ABR-85-4255/8-28-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Intoxicants, Use of**
CROSS-REFERENCE **None**

On Christmas Eve, 1984, the claimant, an Assistant Butcher, was discharged for being under the influence of alcohol during working hours. He had previously received warnings for being intoxicated at work, including on the previous Thanksgiving and Christmas Eve.

HELD: A worker who is discharged for violation of an employer's rule or order regarding the use of intoxicants on the employer's premises and on company time is generally discharged for misconduct connected with his work.

In the instant case, the evidence established that, notwithstanding the fact that it was Christmas Eve, the claimant knew or should have known that being under the influence of alcohol during working hours was a prohibited act. The claimant's actions constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.45**
DOCKET/DATE **ABR-19-1830292/1-11-19**
AUTHORITY **Sections 602A, 602A(7) of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **Violation of Company Rule**
CROSS REFERENCE **MC 270.05 Intoxicants**

Claimant was employed as a custodian for an employer that had a contract to clean schools. On Claimant's day off, the employer called Claimant to come in to work. Claimant told the employer that she had been drinking. The employer told Claimant to come to work anyway because she was needed. The employer had a no "under the influence" policy. The principal of the school, at which Claimant worked, reported to the employer that Claimant appeared to be "inebriated". At the hearing, Claimant admitted to being under the influence of alcohol. Following the hearing the Referee set aside the Local Office determination and allowed benefits under Section 602A(7) of the Act.

HELD: The Board of Review affirmed the Referee and allowed benefits under both Section 602A and 602A(7). Under Section 602A(7), an individual is disqualified from benefits if he or she reports to work under the influence of alcohol, in violation of the employer's policies, unless the individual is compelled to report to work by the employer outside of scheduled and on-call working hours and informs the employer that he or she is under the influence of alcohol. As the Claimant was not scheduled for work, informed her supervisor that she'd been drinking, and was told to come to work anyway, the Claimant was not disqualified under Section 602A(7). Similarly, because the Claimant did not "deliberately" and "willfully" violate the employer's reasonable rule regarding coming to work under the influence because she was explicitly told to come to work despite her admission that she'd been drinking, she did not meet the general definition of misconduct under section 602A of the Act.

ISSUE/DIGEST CODE **Misconduct/MC 485.45**
DOCKET/DATE **ABR-86-1900/7-23-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Possession of Controlled Substance**
CROSS-REFERENCE **None**

The claimant was arrested in the employer's parking lot, where he was found to be knowingly in possession of marijuana. He was discharged for violating the employer's rule prohibiting the possession of illicit drugs on the employer's premises.

HELD: A rule concerning the possession of illicit drugs on the employer's premises is generally reasonable, and, accordingly, a worker who is discharged for the violation of such a rule is discharged for misconduct. In the instant case, because the evidence showed that the claimant was knowingly in possession of an illicit drug on the employer's premises, his discharge was for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	**ABR-85-9186/5-12-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Intoxicants, Use of**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

The claimant had received warnings concerning bringing alcoholic beverages into the employer's plant, being under the influence of intoxicants at work, and the consumption of alcohol in general, resulting in his participation in employer programs for alcoholism.

On his final day of work, he was attempting to enter the employer's plant with an open soft drink can. Pursuant to the employer's rule, which required employees to submit to an examination of articles they were attempting to bring into the plant, the security guard at the gate asked the claimant to permit her to examine the contents of the can. Instead of turning over the can, the claimant threw it into a parking lot. The can was later retrieved and examined by the employer's personnel and the claimant was discharged.

The claimant contended that he suffered from the disease of alcoholism, and, because his discharge resulted from the effects of the disease, it could not have been a discharge for misconduct.

HELD: Generally, an individual who is discharged for violating a known and reasonable company rule is discharged for misconduct. In such cases, the individual is discharged because he has violated a standard of conduct which an employer has the right to expect from its workers, and not because of the lack of suitable work.
In the instant case, the employer had promulgated a reasonable rule requiring employees to submit to an examination of articles they were attempting to bring into the plant. The claimant was aware of the rule. The claimant was discharged because he refused to permit the security guard to examine the contents of the article he was attempting to bring into the plant. Whether or not the can the claimant attempted to bring into the plant contained alcohol, the claimant violated the employer's rule.

Whether or not the claimant was an alcoholic, there was no showing that his alcoholism compelled him to refuse to permit the security guard to examine the soft drink can. There was no showing that his alcoholism compelled him to toss the soft drink can into a parking lot. There being no compelling reason for the claimant to violate the employer's rule, his violation of the rule constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	***Covarrubias v. Bd. of Review, 2023 IL App (1st) 220553-U***
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Intoxication and Use of Intoxicants**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

Claimant was a Chicago police office. While on furlough, claimant attended a family party where he became intoxicated and left the party. The police were called after claimant began arguing with a woman on the street. Claimant was taken to the station and various allegations were made against him. Claimant was suspended for violating the employer’s policy prohibiting intoxication on and off duty. Claimant filed for benefits and, due to remands, there were three hearings. Claimant admitted being intoxicated to the point where he blacked out. Claimant was aware of the policy prohibiting being intoxicated on or off duty, though he alleged the policy was selectively enforced. The Board of Review denied benefits. The circuit court reversed the Board and the city appealed.

HELDt: The appellate court addressed several issues.

Reasonable work rule:

A reasonable rule or policy can govern behavior outside work when a sufficient nexus exists between the behavior and the workplace to make the rule or policy work-related. Rules regulating alcohol consumption when an employee is not working have been deemed reasonable when affecting the employee's appearance or conduct on the job. A police officer's work duties are broad because "[t]he nature of a police [officer's] job is that [they] be fit and armed at all times, whether on or off duty, and

subject to respond to any call to enforce the laws and preserve the peace." Given the broad nature of his duties, a sufficient nexus exists between an officer's conduct and work.

Willful and deliberate violation:

The court dismissed the selective enforcement argument as the court had previously ruled that selective enforcement does not excuse violating employment rules. Furthermore, the court stated that the claimant admitted he was so drunk he blacked out and could not remember events over the next several hours, including his interactions with police officers or his conduct at the police station. The Board could infer from this testimony that the claimant acted willingly in consuming alcohol to the point of blacking out.

Harmed the police department:

The court affirmed that the harm caused by an employee's rule violation can be potential. The court stated that the public depends on the police department to maintain safety in the community. Claimant's conduct harmed the police department by undermining the public's trust and jeopardizing the public's safety. Law enforcement officers are held to a high standard of conduct, and the claimant's conduct discredited the department.

Here the evidence in the record, primarily the claimant's testimony, supported the Board's decision that he had willfully violated a reasonable rule and harmed the police department.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	***Tammy Fields v. IDES* et al, 23 L 50585 (2023)**
AUTHORITY	**Section 602A of the Act/Section 602A(5) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Intoxication and Use of Intoxicants**
CROSS-REFERENCE	**None**

Claimant was discharged for refusal to take a drug test requested by her employer. The employer had a policy which required an employee to submit to a drug test when the employer had reasonable cause. The policies stated that failure to take the requested drug test could result in termination of employment. The employer had received multiple complaints from customers about the claimant. Upon receiving the complaints, the employer observed the claimant's behavior and saw claimant was unsteady, uneasy, lacking coordination, and having difficulty performing her job duties. The employer determined it had reasonable cause to request claimant submit to a drug test. Claimant refused, stating she did not take the test because she had just come from the bathroom. Claimant did not even try to take the drug taste. Claimant was then terminated. Benefits were denied.

HELD: Misconduct was established under both the general definition and under subsection 602A(5). Claimant willfully and deliberately violated the employer's policies providing for drug tests upon reasonable cause. This conduct harmed the employer as it opened it up to potential liability. Under 602A(5), claimant was given a reasonable and lawful instruction to take a drug test upon reasonable cause. Claimant refused to do so. Claimant did not establish that her refusal to follow the instruction was due to a lack of ability, skills, or training or that obeying the instruction would result in an unsafe act. Misconduct was therefore established under 602A(5) as well.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	**ABR-89-6042/8-28-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Use of Intoxicants (after prior violation)**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

The claimant was absent from work for 21 days; he had been hospitalized as part of an employer-sponsored drug and alcohol rehabilitation program. Following his return to work, he agreed that, as a condition of his continued employment, he would abstain from drug and alcohol use; to verify this, he was to submit to unannounced drug screens, for a period of 1 year. One week after his return to work, the claimant tested negative for drugs. Two weeks after his return to work, he tested positive for marijuana and cocaine; as a result, he was fired. The question presented was whether the employer's drug policy including unannounced drug testing - was reasonable.

HELD: Section 602A defines "misconduct," in pertinent part, as a violation of a "reasonable rule or policy." When a worker's use of drugs or alcohol impairs his work or causes him to be absent from work, it is reasonable for an employer to require, as a condition of continued employment (in lieu of outright discharge), that the worker submit to drug rehabilitation - including unannounced drug tests. In this case, the scope of the employer's measures was reasonable and not unduly intrusive. The claimant was discharged for misconduct and was ineligible for benefits under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	***Robinson v. IDES* (1994)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Intoxication and Use of Intoxicants**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MC 270.05, Intoxicants**

The employer had a drug-free workplace policy, which included drug tests for work-related injuries, and, if drugs were found, subsequent unannounced tests, then, if drugs were found, a discharge.

The claimant's job was spray painting cabinets and computers. He was an excellent worker. After he sustained a scratch on the job, he was required to take a drug test. He tested positive for morphine and marijuana. A year later, over a weekend, off the job, he attended a wedding reception, where he had a few lines of cocaine and smoked marijuana. The next day, when he reported to work, he was required to take an unannounced drug test. The test revealed traces of the drugs in his system and he was discharged. He was then denied unemployment benefits.

The claimant contended that the rule that resulted in his discharge was unreasonable because it had nothing to do with his work performance, which was excellent, but, rather, with his off-duty conduct.

HELD: Section 602A provides, in pertinent part, that "misconduct" means a violation of a "reasonable rule ... governing the individual's behavior in performance of his work."

The goal of a drug-free workplace and substance abuse policy is to create and maintain a work environment free from the adverse effects of using drugs. The fact that an individual is a good worker whose job performance is not yet affected by drugs does not render a drug-free workplace policy and disciplinary rules unreasonable.

Here, the employer's rule was reasonable. The claimant deliberately and willfully violated the rule. The claimant had been warned (and, therefore, harm was irrelevant). All the conditions for a discharge for misconduct under Section 602A were met.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	**ABR-97-6027 / 7-30-97**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Use of Intoxicants Off the Job**
CROSS REFERENCE	**MC 85.05, Connection with Work; MC 270.05, Intoxicants**

The claimant worked as a craps dealer on a riverboat casino. Pursuant to company policy (and in accordance with federal regulations), he was administered a random drug test, which he failed, due to his use of drugs while off duty.

HELD: ABR-85-3809, previously contained in this Digest, holding that, in a particular fact situation, off the job use of drugs did not constitute misconduct, is hereby ***overruled***. The Board of Review now holds that, under certain circumstances, even if drug use occurs off the job, it constitutes misconduct. This is certainly true where the employer is governed by federal regulations which require the removal of an individual who tests positive for drugs.

Maintenance of Equipment MC 485.5
No Decisions

Manner of Performing Work MC 485.55

ISSUE/DIGEST CODE	**Misconduct/MC 485.55**
DOCKET/DATE	**83-BRD-11551/10-17-83**
AUTHORITY	**Section 602A**
TITLE	**Violation of Company Rule**
SUBTITLE	**Manner Of Performing Work**
CROSS-REFERENCE	**None**

The claimant was discharged for not following proper procedures in counting her cash receipts. The claimant has been warned for failing to follow the employer's written rule that cash drawers were to be counted by both the outgoing and the incoming managers at the change of a shift. The claimant was discharged after she again counted her receipts alone before the end of her shift and had no reasonable explanation for doing so.

HELD: The claimant was discharged for failing to follow the employer's reasonable instructions, behavior which could have resulted in substantial loss to her employer. Since she had been warned about the same offense and was aware of the importance of the procedure in maintaining control of cash receipts, she intentionally and deliberately failed to perform the work properly. She was discharged for misconduct connected with her work and is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 485.55**
DOCKET/DATE	**83-BRD-12457/11-3-83**
AUTHORITY	**Section 602A**
TITLE	**Violation of Company Rule**
SUBTITLE	**Manner Of Performing Work**
CROSS-REFERENCE	**None**

The claimant was discharged after he used vulgar and profane language while speaking to customers on the employer's premises. He was previously warned for being rude to customers.

HELD: The evidence established that the claimant carelessly and negligently repeated the use of vulgar or profane language while dealing with customers and in violation of a reasonable rule of conduct which the employer had a right to control. The discharge was for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 485.55**
DOCKET/DATE	**Livingston v. Department of Employment Security, 375 Ill.App. 3d 710, 313 Ill.Dec. 820, 873 N.E.2d 444 (1st Dist., 2007)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Manner of Performing Work**
CROSS-REFERENCE	**None**

The claimant worked as a Certified Nursing Assistant (CNA) in the employer's nursing home. She was discharged for slapping an elderly resident in the face. The claimant denied slapping the resident. She testified that the resident was angry because she did not want to get up for breakfast. The claimant stated that she was afraid that the resident was going to hit her so she put her hand on the resident' s face. She admitted that it was not necessary to touch the resident's face to calm her down, nor was it appropriate. A fellow CNA testified that when she walked by the resident's room, she heard the resident yelling loudly, Stop it, stop doing that. The co-worker did not hear the claimant say anything in response but observed the claimant strike the resident with the back of her hand. She also heard the slap. The co-worker reported the incident to the charge nurse. The claimant was denied unemployment benefits on the basis that her behavior constituted misconduct.

HELD: The appellate court found that the claimant acted willfully and deliberately since, although she knew of the employer's policy against slapping and/or inappropriately touching a resident, she went ahead and slapped an elderly resident in the face. The employer's policy prohibiting such physical abuse of a resident was obviously reasonable. The court found, too, that the

claimant caused actual harm to the employer's interest because the co-worker was taken away from her normal duties by reporting the incident to the charge nurse. The claimant's behavior also caused potential harm to the employer by placing the employer in jeopardy of violating state regulations prohibiting abusive treatment of nursing home residents, exposing the employer to tort litigation, and possibly damaging its business reputation.

Money Matters, Garnishments MC 485.6
No Decisions

Motor Vehicle MC 485.65

ISSUE/DIGEST CODE	**Misconduct/MC 485.65**
DOCKET/DATE	**83-BRD-6617/5-31-83**
AUTHORITY	**Section 602A**
TITLE	**Violation of Company Rule**
SUBTITLE	**Motor Vehicle**
CROSS-REFERENCE	**MC 490.2, Motor Vehicle Law under Violation Of Law**

The claimant worked for the employer as a school bus driver until she was discharged. The school district had specific rules and regulations pertaining to the operation of buses, and the drivers were to observe the rules of the road of the State of Illinois. The claimant admitted driving a bus containing student passengers through a railroad crossing when the warning gates were down and the warning lights were flashing.

HELD: The violation of State and school district driving rules evidenced intentional and wilful disregard of the employer's interests. Therefore, the claimant was discharged for misconduct connected with her work, and she is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 485.65**
DOCKET/DATE	***Zuaznabar v. IDES*, 257 Ill. App. 3d 354 (1st Dist. 1993)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rules**
SUBTITLE	**Motor Vehicle**
CROSS-REFERENCE	**MC 485.05, Deliberate and Willful Violation, Harm/Warning**

The claimant was employed as a bus driver with the employer bus company. Two managers covertly followed the claimant while he drove his route, and testified that the claimant made two unauthorized stops, failed to report the unauthorized stops to the employer's central office, and allowed a passenger to cash a check during one of the unauthorized stops. They also testified that, although they did not "clock" him, the claimant drove too fast for conditions, and followed other vehicles too closely. All of these actions violated the employer's rules, and the claimant was discharged. At hearing the employer testified that during the claimant's eleven months with the employer the claimant had engaged in other incidents of unsafe driving and had received approximately five warnings alleging 14 infractions of the employer's rules. However, the employer offered no documents or other evidence to support its claims of prior misconduct by the claimant. The hearings referee held that the claimant deliberately and willfully violated the known and reasonable of rules of the employer despite repeated warnings, and found him ineligible for benefits under Section 602A of the Act. The Board affirmed the hearings referee, and the circuit court affirmed the Board.

HELD: The circuit court is reversed because the employer failed to prove that the claimant's alleged unsafe driving or unauthorized stops were deliberate or willful conduct, and that it suffered actual harm or gave the claimant explicit warnings about the conduct for which he was discharged. The employer did not produce any objective evidence that the claimant drove unsafely by exceeding the speed limit under the relevant conditions, or that the claimant acted more than negligently by stopping without authorization due to his physical necessity. In drafting Section 602A of the Act, the legislature intended that persons discharged for incapacity, inadvertence, negligence or inability to perform assigned tasks should receive unemployment benefits. In addition, the employer failed to prove it suffered actual harm from the plaintiff's conduct. A mere potential for injury is not enough to establish harm for purposes of Section 602A (compare to *Greenlaw v. IDES*, 233 Ill. App. 3d 446 (1st Dist. 1998)). The record also shows that the claimant did not receive prior warnings specific to the conduct for which he was discharged. Although the record supports the discharge of the claimant for numerous incidents of improper conduct, his discharge does not disqualify him from receiving unemployment benefits under Section 602A of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 485.65**
DOCKET/DATE	**ABR-09-15206**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Motor Vehicle**
CROSS-REFERENCE	**MC-190.15: Evidence-Weight and Sufficiency**

The claimant was discharged on July 15, 2009 for speeding while transporting a patient. The employer's dispatch supervisor testified that the employer's Global Positioning System (GPS) tracked the claimants' vehicle, but he was not aware of the date the vehicle was tracked. The GPS system purportedly showed that the claimant had driven at speeds of 82 and 83 mph on July 14, 2009. The employer's human resources person testified that she was not aware of how the GPS system was calibrated and whether it is accurate from day to day. The claimant denied that she had driven over the speed limit.

HELD: The Board of Review found that the claimant's testimony denying that she had exceeded the speed limit was more credible than that of the employer's witnesses where (1) none of whom had first hand knowledge of the claimant's alleged speeding, (2) the employer's dispatch supervisor was unaware of the exact date that the employer's GPS system had tracked the claimant, and (3) the human resources person was unaware of how the employer's GPS system was calibrated and whether it was accurate from day to day. Evidence upon which a decision is based must be competent, credible, and of such a nature that reasonable people would rely upon it. Here, the evidence submitted by the employer was not insufficient to prove that the claimant was discharged for misconduct connected with the work.

ISSUE/DIGEST CODE	**Misconduct/MC 485.65**
DOCKET/DATE	***Hurst v. Department of Employment Security,* 393 Ill.App.3d 323, 332 Ill.Dec. 777, 913 N.E.2d 1067 (1st Dist., 2009)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Motor Vehicle**
CROSS-REFERENCE	**Procedure/PR 400.05: Representation, general**

The claimant's position as a customer service technician required that he have a valid driver's license. The claimant was arrested for drunk driving. The employer's rule required that a worker report any arrest upon returning to work, but the claimant did not report the arrest until several days after his return, telling his supervisor that he was unaware of the rule. The record showed that he had received and read the employee handbook containing the rule and had attended a meeting, held two weeks before his arrest, at which the rule had been discussed. The claimant was subsequently discharged for failing to report his arrest to the employer.

HELD: Initially, the appellate court held that the claimant had waived the issue that the rule did not govern his behavior in the performance of his work and, thus, could not form the basis for a finding of misconduct by not raising this issue in administrative proceedings before the Referee or the Board of Review. Despite its ruling of waiver, the court found that the rule related to the claimant's work since the failure to report his arrest occurred at the workplace and had a direct effect on his ability to perform his job duties which required possession of a valid driver's license.

The court found that (1) the claimant's failure to adhere to the rule was deliberate and wilful since he had received and read the employee handbook containing the rule and had attended a meeting where the rule was discussed two weeks before his arrest; and, (2) the claimant caused harm by impeding the employer's ability to ascertain whether he had a valid driver's license, exposing the employer to potential liability for injuries caused by the claimant while driving on an invalid license when performing his duties, and negatively impacting the employer's interest in maintaining an orderly workplace. The court concluded that the Board of Review's decision that the claimant was disqualified from receiving benefits because his behavior constituted misconduct was not against the manifest weight of the evidence.

Lastly, the court found that the claimant received a fair hearing because the Referee did not prevent him from fully presenting his case and was not unobjective in conducting the hearing, even though she took a strong negative position on the plaintiff's claim that he was allowed to keep his old driver's license when he renewed it.

ISSUE/DIGEST CODE	**Misconduct/MC 485.65**
DOCKET/DATE	**ABR-818-1817354/8-31-18**
AUTHORITY	**Section 602A(8) of the Act**
TITLE	**Violation of Company Rules**
SUBTITLE	**Motor Vehicle**
CROSS REFERENCE	**MC 485.8 Safely Regulation**

Claimant was employed as a truck driver. He was discharged because he fell asleep while driving his truck and ran off the road. The employer's policies and DOT regulations prohibited a driver from driving while fatigued. Further, employer had a policy which required a driver, who feels too tired to drive safely, to notify its dispatcher. Claimant became tired during his route but did not notify his dispatcher. Claimant blamed his tiredness on the stress of personal matters and that the employer had overworked him and refused his request for several days off the previous week. The Local Office allowed benefits and, following a hearing, the determination was affirmed.

HELD: The Board of Review set aside and denied benefits. The claimant was allowed benefits under the general definition of misconduct which defines misconduct as a deliberate and willful violation of a reasonable policy. Negligence under the general definition of misconduct will not result in a disqualification. The claimant did not deliberately fall asleep. However, Section 602A(8) uses a less stringent standard than the deliberate and willful standard to establish misconduct. Under Section 602A(8), neither the requirement of a prior warning, nor a showing of harm to the employer is necessary to establish misconduct. In this case, the evidence shows that the claimant continued to drive while he felt fatigued, to the point where he fell asleep and ran off the road. Under these circumstances, he was, or should have been, reasonably aware that there was a substantial risk he could injure himself by driving in that condition and that his conduct constituted a substantial deviation from the standard of care a reasonable person would have exercised in the situation. As such, the claimant's conduct constituted misconduct under Section 602A(8) of the Act.

Personal Content and Convenience MC 485.7

ISSUE/DIGEST CODE	**Misconduct/MC 485.7**
DOCKET/DATE	***Washington v. Board of Review*, 570 N.E. 2d 566 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Personal Comfort and Convenience (Sleeping)**
CROSS-REFERENCE	**MC 310.15, Manner of Performing Work**

The claimant, a secretary, was assigned to take minutes of a committee meeting. At the start of the meeting, she took an aspirin because she was suffering from a headache. During the meeting, she rested an elbow on the table and leaned her head against her hand. She dozed off and awoke 30 minutes later. She was discharged for sleeping on the job.

HELD: Misconduct requires "willful" behavior. Falling asleep on the job is willful only if an individual purposely takes a nap, or, knowing that she might fall asleep, fails to follow the employer's procedures (fails to inform the employer).

Here, nothing in the facts indicated that the claimant purposely took a nap or expected to fall asleep. She accidentally fell asleep. Accidents are not willful. There was no misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.7**
DOCKET/DATE	**ABR-85-6507/2-21-86**
AUTHORITY	**Section 602 of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Personal Comfort and Convenience**
CROSS-REFERENCE	**MC 602.05, Felony or Theft**

The claimant, a Licensed Practical Nurse, was discharged for placing personal, long distance calls - which the employer determined to be "excessive" - from the employer's telephone.

Both the Adjudicator and the Referee concluded that the claimant was discharged for theft, pursuant to the provisions of Section 602B.

HELD: Whether an individual commits a theft is not dependent upon either the quantity or value of property taken. An accusation that implies that some unspecified but lesser amount of property taken would be permissible is patently inconsistent with a finding of theft.

In the instant case, the claimant's "excessive" long distance telephone calls were undoubtedly placed at the employer's expense. But, for that matter, based upon the evidence presented, any personal long distance call she made would have been at the employer's expense (not to mention any personal local calls). Because the employer implied that some (an unspecified number of) personal calls were acceptable, it could not be concluded that the "excessive" personal calls constituted theft.

At the same time, the claimant's actions were cognizable under Section 602A of the Act. Whether or not an employer has an express rule on the subject, a worker knows - or should know that the work place is a place for work, not personal business. Further, a worker knows - or should know -that there are charges for long distance telephone calls, and that "excessive" calls of this nature can be expensive. In the instant case, the claimant should have known that her continuous use of the employer's telephone for personal calls was adverse to the employer's interests, and she could have foreseen that her actions would result in her discharge. She was discharged for misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.7**
DOCKET/DATE	**ABR-85-7221/3-13-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Personal Comfort and Convenience (Taking Personal Telephone Calls)**
CROSS-REFERENCE	**MC 310.05, Neglect of Duty**

The employer's rules provided that workers should make and/or accept personal telephone calls only during breaks or lunch hour, or in the case of emergencies. The claimant, an Apprentice Photo Re-toucher, had been warned to discontinue his practice of accepting personal telephone calls at his work station during business hours. Nonetheless, the claimant continued to receive personal telephone calls, until, finally, the employer discharged him for that reason. The claimant contended that the only reason he continued to accept personal phone calls was that the switchboard operator had put the calls through to him, and, therefore, he could not be held responsible for accepting the calls.

HELD: Excessive, non-work related (telephone) conversations which waste the employer's time and interfere with the normal operation of the employer's business may constitute misconduct. If the worker knows, or should know, that he should desist, then his actions will constitute misconduct. In the instant ease, the claimant had been put on notice, both by the employer's stated rule and by specific warnings. The claimant's contention that he did not have the ability to desist was without merit: He could have told his family, relatives, friends and acquaintances to call him at designated times, other than working hours. His actions constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.7**
DOCKET/DATE	***Odie v. Department of Employment Security*, 377 Ill.App.3d 710, 317 Ill.Dec. 190, 881 N.E.2d 358 (1st Dist., 2007)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Personal Comfort and Convenience**
CROSS-REFERENCE	**MC 310.15 Personal Comfort and Convenience**

The claimant, a certified nurse’s assistance, was assigned to monitor approximately 25 residents in the employer’s dayroom and to provide assistance as necessary, which required her to be awake and alert. Without informing anyone, the claimant, suffering from a toothache, took extra-strength Tylenol, which she believed to cause drowsiness, and fell asleep for 10 to 20 minutes. When awakened by a visitor and informed that a resident was shouting for help, the claimant told the visitor that the resident does that all the time and went back to sleep. The claimant knew that her job was in jeopardy due to previous infractions of the employer’s policies, although she had never received a warning for sleeping on the job. The claimant knew that sleeping on the job was a cause for termination.

HELD: The court found that the claimant’s violation of the employer’s reasonable policy was deliberate and willful. The claimant was aware that her job was in jeopardy due to prior infractions of the employer’s rules. Nevertheless, without informing anyone, she took a drug which she knew caused drowsiness and subsequently fell asleep. When awakened by a visitor who told her that a resident was shouting for help, her response was one of indifference rather than alarm and

embarrassment, even though it was her responsibility to ensure the well-being of the nursing home's residents. Such circumstances demonstrate that the claimant's acts cannot be excused as being unintentional, thereby distinguishing the instant case from the court's prior rulings in *Washington v. Board of Review*, 570 N.E.2d 556 (1st Dist., 1991) and *Wrobel v. IDES*, 801 N.E.2d 29 (1st Dist., 2003).

Removal of Property MC 485.75
No Decisions

Safety Regulation MC 485.8

ISSUE/DIGEST CODE	**Misconduct/MC 485.8**
DOCKET/DATE	**ABR-85-4050/10-4-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Knowledge of Safety Regulation, Actual or Implied**
CROSS-REFERENCE	**MC 490.05, Violation of Law**

The claimant worked for a restaurant franchise as its Food Service Manager. He was discharged after it was reported that he had instructed employees to rinse and re-use disposable items, such as drinking cups and cup lids, even if they had been picked up off the floor.

At a hearing before a Referee, the employer testified that published company rules prohibited the re-use of single service items. The claimant testified that he was unaware of any such company rules. The employer testified that each manager who had attended its training course had received a copy of the rules. The claimant testified that, while he had attended the training course, he had never received a copy of the rules. The employer further testified that State rules and regulations on food service sanitation prohibited the re-use of single service items.

HELD: In order for a disqualification for a rule violation to be imposed, it would have to be established that the claimant violated a known rule. Knowledge can be actual or implied; that is, it is sufficient that the worker knew - or should have known - that his actions were not in compliance with the reasonable standards of behavior expected of him as an employee.

In the instant case, even if, as the claimant contended, he was unaware of precise company rules, he should have known that the practice of re-using disposable service items was an unsanitary practice, and, as such, was a violation of not only his employer's policy, but also of State regulations pertaining to sanitary requirements in the service of food to the public. The totality of the evidence established that the claimant's failure to comply with either his employer's rules or the State's regulations was inexcusable and constituted misconduct connected with the work within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.8**
DOCKET/DATE	**ABR-85-3359/10-2-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Safety Regulation**
CROSS-REFERENCE	**MC 363.05, Personal Appearance; MC 485.2**

The claimant was employed as a Carpenter in a nuclear power plant. His job would require him to work in potentially radioactive areas, where the wearing of a securely fitted mask, to protect against contamination, was mandatory. So that the claimant's mask would fit properly, he was requested to cut off his beard. When the claimant refused to cut off his beard, he was discharged.

HELD: Employers have the right to prescribe certain standards of dress for their employees. Such standards may be prescribed because the employer wishes to maintain a certain "atmosphere," or appearance of neatness or cleanliness, or to protect employees' safety. A rule requiring the wearing of certain items deemed necessary for safety is generally reasonable, unless outweighed by special considerations, and a worker who is discharged for a willful violation of such a rule is generally discharged for misconduct connected with his work. In the instant case, the employer's need for safety measures outweighed the claimant's interest in maintaining his beard. The claimant's refusal to comply with his employer's reasonable safety regulation constituted misconduct connected with his work within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 485.8**
DOCKET/DATE **84-BRD-3829/3-19-84**
AUTHORITY **Section 602A**
TITLE **Violation of Company Rule**
SUBTITLE **Safety Regulation**
CROSS-REFERENCE **None**

The claimant had received written warnings about horseplay, and the employer held regular safety meetings with all employees. On the date of discharge, the claimant and co-worker pulled a ladder out of a pit as a joke with the idea of marooning other workers in the pit. Unbeknown to them, there were workers on the ladder, who fell to the bottom of the pit. No one was injured in the fall.

HELD: The claimant could have caused physical injury to his co-workers and a loss of time and money to the employer. The claimant's carelessness or negligence was of such a degree as to manifest intentional disregard of a standard of behavior which the employer had a right to expect of him and of the duties and obligations he owed to his employer. In light of the prior warnings, we must conclude that the claimant knew or should have known that such conduct could result in his discharge.

He was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 485.8**
DOCKET/DATE **ABR-85-5864/1-16-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Safety Regulation**
CROSS-REFERENCE **None**

The employer promulgated a rule designed to reduce the number of industrial accidents believed to be related to the use of drugs by employees. That rule was that any employee suffering from the results of an industrial accident who was being treated at the employer's medical clinic, had to submit to a urine test to determine the presence of drugs.

The claimant was a Welder. Welders frequently suffer from an eye irritation known as "Welder's Flash," which is treated with eye drops. The claimant suffered from such an eye irritation, and requested that his employer furnish him with the necessary eye drops. The employer, which usually kept eye drops at the plant, had run out of them. It was suggested that the claimant report to the medical clinic to obtain them.

When the claimant reported to the medical clinic and picked up the eye drops, he was asked to furnish a urine sample. He refused. Upon his refusal, he was discharged, for having violated the employer's rule.

HELD: Generally, the violation of a reasonable safety rule will constitute misconduct connected with work. Whether or not a rule is reasonable is determined not only by its intended result or the procedures by which it is enforced, but by examining its application in terms of its scope as well.

In the instant case, the claimant did go to the employer's medical clinic for treatment of an industrial injury. But he should not have been subject to the employer's rule. His injury did not fall within the purview of the employer's policy; it was not the result of an accident, but was a normal result of welding.

Under this set of facts, the application of the employer's rule was unreasonable. The claimant was discharged for reasons other than misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.8**
DOCKET/DATE **ABR-84-FE-23/7-14-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Safety Regulation**
CROSS-REFERENCE **None**

The claimant, a custodial worker, had been found in the employer's boiler room washroom, where she had propped the door shut with a chair. The claimant's action of propping the washroom door shut violated the employer's safety rule which stated that aisles, stairways, doorways, and emergency exits were to be kept unobstructed at all times. The employer stated that the claimant was discharged for her violation of that safety rule.

The claimant testified that she worked with 8 male custodial workers. She shared with them a common washroom off the boiler room. Due to the respective locations, whenever anyone opened the boiler room door, the washroom door would blow open, unless it was secured by a lock. The claimant stated that the lock on the bathroom door had been inoperable. Therefore, in order not to be disturbed while she was occupied in the washroom, the claimant had propped the chair against the door to prevent its blowing open. The claimant urged that, because, under the circumstances, her actions had been reasonable, her discharge for violating the employer's safety rule was not a discharge for misconduct.

HELD: A worker who is discharged for the violation of an employer's known and reasonable rule regarding safety regulations is generally discharged for misconduct connected with her work. However, if a worker has good cause for her violation of the rule, then no misconduct is involved. Good cause may be determined by balancing the employer's generally reasonable interest in its employees' safety (including the loss of time and money involved in accidents) against special considerations or reasonable accommodations, depending upon the facts of each case.

In the instant case, the employer had promulgated a rule which, on its face and in its general application, was reasonable. However, the claimant also had a legitimate interest in securing her privacy. Compelling circumstances, constituting good cause, required the claimant to secure the door. Therefore, even though there was a technical violation of the employer's rule, no misconduct was involved.

ISSUE/DIGEST CODE **Misconduct/MC 485.8**
DOCKET/DATE ***Brodde v. Didrickson*, 645 N.E. 2d 990 (1995)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Safety Regulation**
CROSS REFERENCE **MC 5.05, Definition**

When a carton-opening machine jammed, the claimant, a production supervisor, out of frustration at not meeting her production schedule, bypassed the machine's safety system by deactivating its safety shield, then reached into the machine with her hands, while it was still operating. She was advised this was a rules violation, but responded it was her safety alone at stake. The claimant suffered no injuries from her actions but was fired anyway.

HELD: Section 602A defines "misconduct" as the deliberate and willful violation of an employer's work rule which harms the employer. Here, the employer's rule was reasonable (designed to safeguard employees). The claimant's violation of the rule was deliberate (irrespective of her intent not to cause anyone else injury). Although the claimant escaped actual harm, the term "should be viewed in the context of potential harm and not in the narrow context of actual harm." The claimant could have been injured, and, by her example, she suggested to subordinates that safety rules could be ignored, which could also result in harm. This was misconduct under Section 602A.

ISSUE/DIGEST CODE **Misconduct/ MC 485.8**
DOCKET/DATE ***Donald Farris v. Department of Employment Security et al.*, 2014 IL App (4th) 130391**
AUTHORITY **Section 602(A) of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Safety Regulation**
CROSS-REFERENCE **MC 310.15, Neglect of Duty, Personal Comfort and Convenience**

The claimant was employed as a farm hand at a pig-breeding facility. The employer had strict rules to avoid bacterial contamination of the pigs. The policy required, in part, that employees shower and change their clothing when entering and exiting the breeding area. The claimant was found in the washroom outside of the breeding area, wearing his breeding area clothing. As a result, he was discharged for leaving the breeding area with his breeding area clothing and without showering. The Board of Review found that the claimant was discharged for misconduct pursuant to Section 602(A).

The circuit court found no misconduct because the claimant was caught and discharged before he reentered the breeding area, thereby no harm to the employer. The Department appealed.

HELD: With respect to misconduct under Section 602(A), harm includes potential harm. If the claimant had reentered the clean area without showering he could have infected the pigs with bacterial contaminants. Hence, the record shows that the claimant caused potential harm to the employer. The circuit court decision was reversed and the Board's decision was confirmed.

ISSUE/DIGEST CODE	**Misconduct/MC 485.8**
DOCKET/DATE	**ABR-818-1817354/8-31-18**
AUTHORITY	**Section 602A(8) of the Act**
TITLE	**Violation of Company Rules**
SUBTITLE	**Safety Regulation**
CROSS REFERENCE	**MC 485.65 Motor Vehicle**

Claimant was employed as a truck driver. He was discharged because he fell asleep while driving his truck and ran off the road. The employer's policies and DOT regulations prohibited a driver from driving while fatigued. Further, employer had a policy which required a driver, who feels too tired to drive safely, to notify its dispatcher. Claimant became tired during his route but did not notify his dispatcher. Claimant blamed his tiredness on the stress of personal matters and that the employer had overworked him and refused his request for several days off the previous week. The Local Office allowed benefits and, following a hearing, the determination was affirmed.

HELD: The Board of Review set aside and denied benefits. The claimant was allowed benefits under the general definition of misconduct which defines misconduct as a deliberate and willful violation of a reasonable policy. Negligence under the general definition of misconduct will not result in a disqualification. The claimant did not deliberately fall asleep. However, Section 602A(8) uses a less stringent standard than the deliberate and willful standard to establish misconduct. Under Section 602A(8), neither the requirement of a prior warning, nor a showing of harm to the employer is necessary to establish misconduct. In this case, the evidence shows that the claimant continued to drive while he felt fatigued, to the point where he fell asleep and ran off the road. Under these circumstances, he was, or should have been, reasonably aware that there was a substantial risk he could injure himself by driving in that condition and that his conduct constituted a substantial deviation from the standard of care a reasonable person would have exercised in the situation. As such, the claimant's conduct constituted misconduct under Section 602A(8) of the Act.

Store Purchases MC 485.85
No Decisions

Time Clock MC 485.9

ISSUE/DIGEST CODE	**Misconduct/MC 485.9**
DOCKET/DATE	**G*ibson v. IDES* et al, 24 L 50256 (2024)**
AUTHORITY	**Section 602A of the Act/Section 602A(3) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Time Clock**
CROSS REFERENCE	**None**

Claimant worked as a senior accountant when he was discharged due to excessive absenteeism. The employer had an attendance policy which claimant was aware of. The employer warned claimant about his excessive absenteeism and memorialized the warning in a written email on August 29, 2023. Claimant was scheduled to start working at 9:00 AM. Claimant arrived late to work on the following days: 9:02 AM on August 31, 2023; 9:15 AM on September 1, 2023; 9:15 AM on September 5, 2023; and 9:24 AM on September 6, 2023. Claimant testified he was tardy for work due to public transportation. Claimant did not provide transportation excuse slips.

HELD: The employer had a reasonable attendance policy which was known by claimant. The claimant had a history of tardiness and knew their job was in jeopardy. The totality of circumstances showed that the claimant was discharged for misconduct. Claimant willfully and deliberately violated the employer's attendance policy despite a written warning from the employer. Claimant was therefore terminated for misconduct under the general definition.

Misconduct was also established under subsection 602A(3). Claimant repeatedly violated the employer's attendance policy following a written warning. Claimant failed to establish that he made reasonable efforts to remedy the reasons for his attendance violations or that the violations were outside of his control.

ISSUE/DIGEST CODE	**Misconduct/MC 485.9**
DOCKET/DATE	***Megan Martinez v. IDES* et al, 24 MR 25 (2024)**
AUTHORITY	**Section 602A(5) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Time Clock**
CROSS REFERENCE	**None**

Claimant worked as a branch manager and had a discussion with the District Manager about her working hours. The District Manager ordered claimant to work from 9:00 AM through 5:30 PM, the normal office work hours. Claimant was told exceptions could be made on a case-by-case basis. Claimant refused to work the normal office hours. Claimant wanted to work from 8:00 AM through 3:30 PM. The District Manager refused this request. Claimant was discharged when she refused to comply with the instruction. Claimant argued that as a manager, she had the power to set her own hours. The Employer had a policy known to Claimant which provided normal work hours were from 9:00 AM through 5:30 PM and that decisions regarding hours worked were made by management above the branch manager level.

HELD: Claimant was ordered by the District Manager to work the normal work hours as set by the policy, 9:00 AM through 5:30 PM. This instruction was reasonable and lawful. Claimant refused to obey this instruction and failed to establish that her failure to do so was due to a lack of ability, skills, or training or that obeying it would result in an unsafe act. Misconduct was therefore established under subsection 602A(5).

Residency Requirement MC 485.95

ISSUE/DIGEST CODE	**Misconduct/ MC 485.95**
DOCKET/DATE	***Cannici v. Ill. Dep't of Empl. Sec. Bd. of Review,* 2021 IL App (1st) 181562**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Residency Requirement**
CROSS-REFERENCE	**MC 5.05 Definition (Potential Harm)**

The Village of Melrose Park (Village) employed Claimant as a firefighter from 2000 to 2016. In 2000, he bought a house in the Village. Claimant and children lived in the Village house until 2008 when Claimant purchased a house in Orland Park. His wife and the children lived in the Orland Park house while Claimant lived in the Village house. In June 2013, Claimant rented the Village house to tenants and lived with his family in the Orland Park house. Claimant continued to pay the utilities and taxes for the Village house. He continued to use the address of the Village house for his mail, including for personal and official business. In June 2016, Claimant learned that his residency was being questioned and he moved back into the Village house after the tenants moved out. His wife and children did not return to the Village house. Also, in June 2016, the Village fire chief filed written charges against Claimant, seeking termination of his employment for violating the Village's residency requirement by failing to maintain his principal residence in the Village. Following an August 2016 hearing before the Village's board of fire and police commissioners, Claimant's employment was terminated for violating the Village's residency ordinance. An IDES claims adjudicator determined that Claimant was disqualified from receiving unemployment benefits because he was discharged for misconduct since he had been discharged for violating the Village's residency requirement, which was a known and reasonable rule. Claimant appealed. At Claimant's hearing the Claimant argued that under the Illinois Supreme Court's decision in *Maksym*, 242 Ill. 2d 3030, he established his principal residency in the Village by living and owning his house there since he became a firefighter and never intended to abandon his Village residency. The Referee affirmed the Local Office determination and issued a decision stating that the Claimant was discharged for misconduct under the Act. Claimant appealed. The Board affirmed the Referee's decision, finding that Claimant's factual place of abode was with his family in Orland Park and not in the Village. The Board found that Claimant's violation of the reasonable residency rule harmed the Village by undermining his employer's authority because when employees "flout" their employer's rules, it creates confusion

and morale problems among the offending employees' co-workers. Claimant appealed.

HELD: In affirming the Board, the court first addressed the residency requirement. Claimant argued that under *Maksym*, a person establishes his residency by showing physical presence and an intent to remain in that place as a permanent house; however, once residency has been established, the test is no longer physical presence but, rather, abandonment. Claimant argued *Maksym* stated that residency is presumed to continue, and the contesting party has the burden to show that residency had been abandoned, and both the establishment and abandonment of residency is largely a question of intent as shown by a person's acts and testimony. Claimant asserted that the Board incorrectly inferred that he intended to abandon his Village house based on his physical presence in Orland Park. The court stated that the issue involved statutory construction. The court stated that the best signal of legislative intent is the language used in the statute, which must be given its plain and ordinary meaning citing *Gillespie Community Unit School District No. 7 v. Wight & Co.*, 2014 IL 115330, ¶ 31. In reviewing the Village municipal code, the court stated that giving the statutory language its plain and ordinary meaning, the Village's residency requirement clearly and unambiguously provided that Claimant had to live within the boundaries of the Village in a house that was his primary or most important residence throughout his period of employment. Furthermore, the court rejected Claimant's argument that, pursuant to *Maksym*, defendants bore the burden to show that Claimant intended to abandon his established status as a resident of the Village. The court distinguished the *Maksym* decision as the Municipal Code in that case did not clearly define resident or residency, which was not the case in the Village Code which clearly defines resident and residence, and it requires its employees to maintain their status as residents during their employment. Regarding the intent to maintain or abandon residency, the court stated the Board properly interpreted the plain language of the residency requirement of the Village's Code and the *Maksym* analysis of the Illinois Municipal Code concerning a resident's intent to abandon an established residency is not relevant here. With regard to willful and deliberate conduct on Claimant's part the court stated that the evidence was Claimant's maintenance of the fiction that he lived in the Village while continually living in Orland Park with his family for three years and then promptly returning to the Village when he was caught, *i.e.*, notified of the investigation. There is no dispute that Claimant's conduct was a series of conscious choices regarding where he resided at a particular time.

Claimant stated that the Village did not present any witness to contradict any of his testimony and asserted that everything that he said was true. However, the Board, as the fact finder, was permitted to disbelieve testimony that was contradicted by the circumstances or inherently improbable. See *Crabtree v. Illinois Department of Agriculture*, 128 Ill. 2d 510, 518 (1989). The Board disbelieved Claimant's testimony that he did not understand that he was violating the residency ordinance, and the court cannot reevaluate that credibility determination on administrative review. Claimant further argued that others had violated the residency requirement. The court stated that even if there had been evidence of selective enforcement, that cannot excuse employee behavior where there is a finding that the employee violated employment rules; cause for discharge can be found regardless of whether other employees have been disciplined differently. Claimant further argued that the Village failed to present any evidence that his conduct harmed his employer because no evidence showed that his residency had any negative effect on his coworkers or that they even knew where he slept at night. The court reaffirmed that the weight of authority recognizes that harm to the employer can be established by potential harm and is not limited just to actual harm, *Hurst v. Department of Employment Security*, 393 Ill. App. 3d 323, 329 (2009). The court stated that violation of the residency ordinance was insubordinate and potentially harmful to the Village's interests.

Violation of Law MC 490
General MC 490.05

ISSUE/DIGEST CODE	**Misconduct/MC 490.05**
DOCKET/DATE	***Farmers State Bank v. IDES*, 576 N.E. 2d 532 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Law**
SUBTITLE	**Awareness of Law**
CROSS-REFERENCE	**MC 485.05, Violation of Company Rule**

Farmers Bank kept a special drawer, designated "drawer five," as an accommodation to customers. Customers could write checks that would ordinarily result in overdrafts, except, checks put in drawer five would not immediately be debited to the customer's checking account. They would be kept in drawer five until the customer deposited the necessary amount, usually within a matter of a few days. Aside from customers, there were employees, officers, and directors of the bank who used drawer five to prevent overdrafts in their personal checking accounts.

The claimant was an assistant cashier with no supervisory responsibilities. She discovered that a fellow employee put three personal checks, totaling $12,000, into drawer five, and that the checks had been there for at least two weeks. Another six days went by before the claimant reported this to management.

Farmers Bank fired the claimant for delaying in reporting the misapplication of funds. The bank cited an Illinois statute requiring the bank to report any misapplication of funds within 48 hours of discovery.

HELD: There is no misconduct unless an individual violates a reasonable rule. A rule is not reasonable unless it provides guidelines that are, or should be, known by the worker. A State law that is applicable to an employing unit's business may constitute an implicit rule that should be known by the worker.

Here, however, the statute cited applied to management's reporting requirements, not the claimant's. Therefore, there was no basis for concluding that the claimant should have known about it.

In this case, the claimant's delay in bringing the matter to management's attention did not violate a reasonable rule, as misconduct under Section 602A requires.

ISSUE/DIGEST CODE	**Misconduct/MC 490.05**
DOCKET/DATE	***Employment Division v. Smith*, 110 S. Ct. 1595 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Law**
SUBTITLE	**Religious Practice that Violates Criminal Law**
CROSS-REFERENCE	**MC 5.05, Misconduct; MC 270.05, Use of Intoxicants**

The claimants were discharged from their jobs at a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug. Generally, the use of peyote violated Oregon's controlled substance law. However, the claimants ingested the drug for sacramental purposes in connection with their Native American Church.
The question presented to the United States Supreme Court was whether the claimants could be disqualified for unemployment benefits for misconduct, or whether such a disqualification would violate the First Amendment's Free Exercise Clause.

HELD: Unemployment insurance benefits cannot be denied when the denial is specifically directed at religious beliefs (see, e.g., MC 5.05, *Hobbie*; RW 90.05, *Frazee*). However, benefits can be denied when there is a neutral, across-the-board, criminal prohibition on a particular form of conduct. Here, based upon Oregon's drug law, unemployment benefits could be denied.

ISSUE/DIGEST CODE	**Misconduct/MC 490.05**
DOCKET/DATE	**ABR99133/l-30-90**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Law**
SUBTITLE	**Possession and Sale of Drugs Off the Job**
CROSS-REFERENCE	**MC 85.05, Connect w/ Work; MC 270.05, Use of Drugs**

The claimant worked for the Department of Corrections as a youth supervisor. He was arrested, then convicted, for possession of a controlled substance with intent to deliver. Neither the drug incident nor arrest took place during working hours or on the employer's premises. Still, after he was convicted, the employer fired him.

HELD: To constitute "misconduct," an act must violate a policy that governs the individual's performance of work. Ordinarily, a distinction would be made between an individual's personal affairs and his obligations to his employer. However, a worker's obligations to his employer are broader in some occupations than in others, such as where the worker is a public servant and the public's trust and confidence are involved. Here, the claimant owed a duty to the public through his employer and he breached that duty. This was a discharge for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 490.05**
DOCKET/DATE	***Eastham v. Hous. Auth. of Jefferson County, 2014 IL App (5th) 130209***
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Law**
SUBTITLE	**Use of Drugs Off the Job**
CROSS-REFERENCE MC	**MC 85.05, Connect w/ Work; MC 270.05, Use of Drugs**

Claimant was required to submit to a random drug test by his employer, the Housing Authority of Jefferson County. Claimant informed his supervisor that he believed he would fail the drug test because he had smoked marijuana during a recent vacation. His employment was terminated before the results of the drug test were available. The test subsequently came back negative. The employer policy provided that employees may not use or be under the influence of alcohol or any controlled substance "while in the course of employment." The Board of Review upheld the denial of benefits based on the conclusion that the drug and alcohol-free policy of Claimant's employer applied even while Claimant was not performing services. The circuit court reversed the Board, finding that (1) the phrase "while in the course of employment" includes only the times during which an employee is performing work duties; and (2) the policy is unreasonable to the extent it can be interpreted to regulate an employee's conduct outside of work.

HELD: The appellate court affirmed the circuit court. Illinois courts have defined the phrase "in the course of employment" in the context of workers' compensation claims, holding that injuries occur in the course of employment if they take place (1) at a place where the employee is reasonably expected to fulfill her duties; and (2) while she is performing those duties. Here the trial court properly found that the policy had been misapplied since the policy encompassed only acts that occurred "at a place where the worker may reasonably be in the performance of his duties and while he is fulfilling those duties or is engaged in something incidental thereto."

A reasonable rule or policy is one which is connected to the employee's performance of his job, Section 602(A) of the Act. The Act expressly provides that violation of an employer's rule will only disqualify a discharged employee from receiving unemployment benefits if the rule is one governing the individual's behavior in performance of his work. However, courts have found that a reasonable rule or policy can govern behavior outside work as long as there is a sufficient nexus between that behavior and the workplace.

The appellate court distinguished the decision in *McAllister v. Board of Review of the Department of Employment Security*, 263 Ill. App. 3d 207, 635 N.E.2d 596, 200 Ill. Dec. 257 (1994). In that case Claimant was a CTA bus driver who tested positive for cocaine following an accident. The appellate court recognized in that case that Claimant was in a safety-sensitive position and thus there was a sufficient nexus between the off-duty use of cocaine by a bus driver and the safety of his passengers. In this case Claimant was not in a safety sensitive position. Furthermore, unlike the Claimant in this case, the drug test in McAllister was positive. Nothing in *McAllister* supports the notion that a policy is reasonable within the meaning of the Unemployment Insurance Act if it permits an employer to discharge an employee for off duty conduct without a positive drug test result.

ISSUE/DIGEST CODE	**Misconduct/MC 490.05**
DOCKET/DATE	***Craig v. Dep't of Emp. Sec.*, 2022 IL App (1st) 210475**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Law**
SUBTITLE	**Use of Drugs Off the Job**
CROSS-REFERENCE MC	**MC 85.05, Connect w/ Work; MC 270.05, Use of Drugs**

Claimant tripped on the sidewalk outside Terminal 5 at O'Hare International Airport and fell, injuring himself, while performing his duties as a lead branch serviceman with United Airlines. Because he was injured in the fall and requested medical attention, United's policies subjected the Claimant to a drug test which showed a positive result for cocaine. Employer terminated Claimant citing violation of United's "Working Together Guidelines" which "insist on" a drug-free workplace. Claimant filed for benefits. On his questionnaire Claimant stated that he was aware of employer's drug-free policy, a violation of which would result in his discharge. Claimant was denied and he appealed.

The Board stated that: Claimant tested positive for cocaine and admitted using it shortly before submitting to the test; the employer's policy was reasonable; the violation was within Claimant's ability to control; and his conduct harmed the employer's interest in safety and in maintaining a drug-free workplace.

HELD: The appellate court addressed Claimant's assertion that, while Claimant's conduct in consuming cocaine was illegal and a violation of employer's policy, the act was outside of the workplace. The court cited *Eastham v. Hous. Auth. of Jefferson County*, 2014 IL App (5th) 130209 and *McAllister v. Bd. of Review of the Dep't of Empl. Sec.*, 263 Ill. App. 3d 207 for the proposition that behavior outside the workplace can represent misconduct if there is sufficient nexus between that behavior and the workplace. In *McAllister*, the court stated that there is a sufficient nexus existing between a safety sensitive job and drug use outside the workplace.

In this case, Claimant was aware of the employer's zero tolerance policy and was aware that the use of cocaine could result in his discharge. The appellate court found that Claimant engaged in illegal activity by using cocaine outside of his place of employment, which has a sufficient nexus between that behavior and the workplace, as he had a safety-sensitive job working on airplanes. As such, Claimant's conduct constituted misconduct under the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 490.05**
DOCKET/DATE	**83-BRD-12654/11-9-83**
AUTHORITY	**Section 602A**
TITLE	**Violation of Law**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was on layoff status and collecting unemployment benefits until he was called back to work by the employer. On August 30, 1983, he began to perform his usual work for the employer. However, he did not report his return to work to the local unemployment insurance office. In addition, from August 30, 1983, through September 25, 1983, the claimant simultaneously collected unemployment benefits and worked for the employer for wages. When it was discovered that the claimant collected unemployment benefits while working for the employer, the claimant was discharged.

HELD: The claimant's misrepresentation increased the employer's liability for payment of unemployment benefits at a time in which the employer was also paying the claimant for the work he performed. The claimant was discharged for misconduct in connection with his work, and he is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 490.05**
DOCKET/DATE	**84-BRD-3047/2-29-84**
AUTHORITY	**Section-602A**
TITLE	**Violation of Law**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was employed as a service technician for a telephone company. A criminal complaint was filed by a customer of the employer, and the claimant was convicted of soliciting the minor child of the customer while making a service call in the customer's home. The claimant was discharged after the conviction.

HELD: The claimant's act was clearly against the interest of the employer who might well have been subjected to a suit for civil damages. The claimant was discharged for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 490.05**
DOCKET/DATE	**ABR-85-4050/10-4-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Law**
SUBTITLE	**Knowledge of Law, Actual or Implied**
CROSS-REFERENCE	**MC 485.8, Violation of Company Rule**

The claimant worked for a restaurant franchise as its Food Service Manager. He was discharged after it was reported that he instructed employees to rinse and re-use disposable items, such as drinking cups and cup lids, even if they had been picked the floor.

At a hearing before a Referee, the employer testified that published company rules prohibited the re-use of single service items. The claimant testified that he was unaware of any such company rules. The employer testified that each manager who had attended its training course had received a copy of the rules. The claimant testified that, while he had attended the training course, he had never received a copy of the rules. The employer further testified that State rules and regulations on food service sanitation prohibited the re-use of single service items.

HELD: In order for a disqualification for a rule violation to be imposed, it would have to be established that the claimant violated a known rule. Knowledge can be actual or implied; that is, it is sufficient that the worker knew - or should have known - that his actions were not in compliance with the reasonable standards of behavior expected of him as an employee.

In the instant case, even if, as the claimant contended, he was unaware of precise company rules, he should have known that the practice of re-using disposable service items was an unsanitary practice, and, as such, was a violation of not only his employer's policy, but also of State regulations pertaining to sanitary requirements in the service of food to the public. The totality of the evidence established that the claimant's failure to comply with either his employer's rules or the State's regulations was inexcusable and constituted misconduct connected with the work within the meaning of Section 602A.

Conversion pf Property Law MC 490.1
No Decisions

Liquor Law MC 490.15
No Decisions

Motor Vehicle Law MC 490.2

ISSUE/DIGEST CODE	**Misconduct/MC 490.2**
DOCKET/DATE	**83-BRD-6617/5-31-83**
AUTHORITY	**Section 602A**
TITLE	**Violation of Law**
SUBTITLE	**Motor Vehicle Law**
CROSS-REFERENCE	**MC 485.65. Motor Vehicle under Violation of Company Rule**

The claimant worked for the employer as a school bus driver until she was discharged. The school district had specific rules and regulations pertaining to the operation of buses, and the drivers were to observe the rules of the road of the State of Illinois. The claimant admitted driving a bus containing student passengers through a railroad crossing when the warning gates were down and the warning lights were flashing.

HELD: The violation of State and school district driving rules evidenced intentional and wilful disregard of the employer's interests. Therefore, the claimant was discharged for misconduct connected with her work, and she is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 490.2**
DOCKET/DATE	**84-BRD-3454/3-12-84**
AUTHORITY	**Section-602A**
TITLE	**Violation of Law**
SUBTITLE	**Motor Vehicle Law**
CROSS-REFERENCE	**None**

The claimant, a truck driver, was discharged when he received his fourth speeding ticket which resulted in the suspension of his chauffeur's license for six months. He alleged that the employer's scheduling required him to exceed the speed limit in order for him to obtain sufficient rest between runs. The employer stated that there was a company rule requiring drivers to leave for destinations in time to drive within the speed limits, and it denied "close" scheduling. Claimant did not file a grievance over the scheduling.

HELD: The claimant knew he was violating the law and the employer's work directives; if he felt that his trips were scheduled too closely together to allow for proper rest, he should have filed a complaint or a grievance. His termination resulted from misconduct connected with his work because he chose to disregard the law and his employer's rules. He is disqualified for benefits.

Felony, Theft MC 602
General MC 602.05

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**83-BRD-12609/11-8-83**
AUTHORITY	**Section 602B**
TITLE	**Discharge For Felony Or Theft**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The employer submitted a timely "Notice of Possible Ineligibility," which stated that the claimant was discharged for theft. The employer stated that the claimant misappropriated hospital property.

In a statement to the claims adjudicator (a representative of the Director of Labor), the claimant stated as follows: "...I did take a handful of individual packages of Sanka coffee from the ingredient room of the hospital, and I put them in my pants pocket...I took the Sanka for my mother who had been asking for it."

The claimant took approximately twenty packages of the Sanka coffee, which had been allocated for consumption by the employer's patients.

HELD: The Illinois Unemployment Insurance Act provides for a loss of benefit rights in unemployment insurance where a claimant is discharged because of the commission of a felony or theft in connection with his work, provided the employer notified the Director of such possible ineligibility in a timely manner, and one of the following has occurred:

1) the claimant has admitted his commission of a felony or theft to representative of the Director;

2) he has signed a written admission of such act and such admission has been presented to a representative of the Director;

3) such act has resulted in a conviction by a court of competent jurisdiction.

In this instance, the claimant admitted the commission of the theft to the claims adjudicator, who is a representative of the Director, and the employer filed a timely notice of possible ineligibility. The theft was connected with the work, and no benefit rights shall accrue to the claimant based upon wages earned for service rendered by the claimant prior to the date of his discharge.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**83-BRD-13407/11-21-83**
AUTHORITY	**Section 602B**
TITLE	**Discharge For Felony Or Theft**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked as a security guard. On March 20, 1983, another security guard observed the claimant placing a television stand in the trunk of his car. He was arrested and convicted of a theft. The employer filed a timely protest alleging theft.

HELD: Section 602B, while not a criminal statute, is penal in nature, and imposes a forfeiture of rights which would otherwise have accrued on taxed employment. Accordingly, it is construed strictly. The conditions for application of Section 602B are as follows:
"First: There must be a commission of a felony or theft by the claimant in connection with his work for which the employer is not responsible;

Second: The employer must give timely notice to the Director of the possible application of this Section; and

Third: There must be a written confession by the claimant presented to the department, or an admission by the claimant of the act to a representative of the Director, or a conviction by a court of competent jurisdiction."

All of the above conditions were met. Therefore, the claimant was discharged for theft connected with the work, and no benefit rights shall accrue to the claimant based upon wages from any employer for services rendered prior to the date on which the claimant was discharged for the theft.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**ABR-85-7085/3-13-86**
AUTHORITY	**Section 602B of the Act**
TITLE	**Felony or Theft**
SUBTITLE	**What Constitutes an Admission**
CROSS-REFERENCE	**None**

In its timely Notice of Possible Ineligibility, the employer alleged that the claimant had been "discharged on the basis of consuming food which he had not paid for (stealing)." During a subsequent interview with the Claims Adjudicator (a representative of the Director), the claimant stated, in pertinent part:

> I did tell (the employer) that I had consumed a (food item) prior to paying for it...I was going to borrow the money from a co-worker to pay for the (food item), but before I could do this, (the employer) called me...

HELD: Section 602B provides for disqualification where a claimant has been discharged for the commission of a theft connected with work. One of the (disjunctive) conditions for such a disqualification is that the claimant has admitted the commission of a theft to a representative of the Director. For a claimant's statement to constitute an admission of theft, it must be inferred from that statement that there was not only a physical act of taking and carrying away the property belonging to another, but, concurrently, an intent to permanently deprive the rightful owner of that property.

In the instant case, the claimant admitted that he had taken the employer's property. The claimant's statement to the Adjudicator indicated that, at the time the claimant took the employer's property, he did not have sufficient funds to pay for it, nor had he even ascertained whether he ever would have sufficient funds, nor had he spoken with the employer about taking food prior to making payment. Therefore, it could have been inferred that, concurrent with the physical act of taking, the claimant had the requisite, objective intent to permanently deprive the employer of the merchandise in question. The claimant's statement set forth sufficient facts for the Adjudicator, and subsequently the Referee, to conclude that the claimant had been discharged for theft connected with his work within the meaning of Section 602B.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**ABR-85-1017/8-16-85**
AUTHORITY	**Section 602B of the Act**
TITLE	**Felony or Theft**
SUBTITLE	**Theft - What Constitutes an Admission**
CROSS-REFERENCE	**None**

In its Notice of Possible Ineligibility, the employer alleged that the claimant, a Cashier, had been stealing money from its cash drawer. Later, when the claimant spoke with a Claims Adjudicator (a representative of the Director), the claimant admitted that she had taken money from the cash drawer:

> The owner...allowed us (the claimant and her husband, the store manager) to borrow from the cash drawer and re-pay at payday. We had borrowed $60 and I handed the money (back) to him. I'm not responsible for shortages - nor did I steal any monies.

The Claims Adjudicator issued a determination, subsequently affirmed by the Referee, which imposed a disqualification under the provisions of Section 602B.

HELD: Section 602B provides for a disqualification where a claimant has been discharged for the commission of a felony or theft connected with work. One of the (disjunctive) conditions for such a disqualification is that the claimant has admitted the commission of the felony or theft to a representative of the Director. For a claimant's statement to constitute an admission of theft, it must be inferred from that statement that there was not only a physical act of taking and carrying away belonging to another, but concurrently an intent to deprive the rightful owner of that property.

In the instant case, although the claimant admitted utilizing the employer's funds, her statement to the Claims Adjudicator was that the employer had permitted the borrowing of funds and that she was only borrowing the money. The statement did not establish that the claimant intended to permanently deprive the employer of that money. Therefore, because the claimant's statement to the Claims Adjudicator failed to establish the requisite intent, it did not constitute an admission of theft, and, accordingly, the disqualifying provisions of Section 602B could not be applied.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**ABR-85-3983/9-9-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Felony or Theft**
SUBTITLE	**Section 602A in lieu of Section 602B**
CROSS-REFERENCE	**None**

The employer submitted a Notice of Possible Ineligibility, in which it alleged that the claimant had been discharged for theft connected with his work. The Claims Adjudicator issued a determination, allowing benefits to the claimant without disqualification under Section 602B, Felony or Theft, because the statutory requirements for such a disqualification had not been met: The claimant had not admitted an act of theft to a representative of the Director; no admission signed by the claimant had been submitted; the claimant had not been convicted by a court of competent jurisdiction.

The employer appealed that determination, and a hearing was held, at which the evidence established that the claimant had admitted, verbally, to his employer that he had taken property from the employer for his personal use. Based upon that finding, the Referee concluded that the claimant had been discharged for misconduct connected with his work and was subject to a disqualification under the provisions of Section 602A of the Act.

The claimant appealed that decision, contending that "theft" was cognizable only under Section 602B of the Act, and, that being the case, the Referee was precluded from rendering a decision that the claimant was subject to a disqualification under the provisions of Section 602A.

HELD: Section 602B of the Act is penal in nature as it cancels all wage credit earned by a worker on or prior to the date of his discharge. The Legislature has provided that this penalty of wage credit cancellation cannot be imposed unless certain conditions (previously cited) are met. If these conditions are not met, but the evidence establishes felony or theft, then the provisions of Section 602A of the Act are applicable.

In the instant case, the claimant's verbal admission to his employer did not meet the statutory standard set forth in Section 602B. However, his verbal admission did establish that he had committed a theft. Therefore, it was not incorrect for the Referee to consider the disqualifying provisions of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**84-BRD-221/1-9-84**
AUTHORITY	**Section 602B**
TITLE	**Discharge For Felony or Theft**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant gave a signed statement to the claims adjudicator in which he admitted that he took two cans of chili belonging to the vending company from behind the vending machine in the employer's cafeteria. He was stopped by the security guard and, at his grievance hearing, he offered to buy the whole case to avoid a discharge. Although the chili was not actually owned by the employer, it would have been required to compensate the vending company for the loss. He was discharged because of the theft.

HELD: The statute requires that certain conditions must be met before an individual loses accumulated benefit rights due to a job-related theft:

1) a timely notice of possible ineligibility filed by the employer within the specified time period.

2) the claimant's discharge was directly due to the offense, and the offense was connected with the work.

3) the claimant admitted the commission of the offense to a representative of the Director of Labor, has signed a written admission submitted to such representative, or has been convicted by a court of competent jurisdiction.

Since the claimant admitted the theft to the representative of the Director of Labor, the employer filed a timely notice of it, and the theft was connected with the work, no benefit rights shall accrue to the claimant based upon wages earned for service rendered by him prior to the date of his discharge.

ISSUE/DIGEST CODE **Misconduct/MC 602.05**
DOCKET/DATE **ABR-85-5351/12-19-85**
AUTHORITY **Section 602B of the Act**
TITLE **Felony or Theft**
SUBTITLE **Connection with Work**
CROSS-REFERENCE **MC 85.05, Connection with Work; MS 95.1, Construction**

The claimant worked as Office Manager for a Dentist. In her statement to the Adjudicator, the claimant admitted that she had knowingly filed a false insurance claim - for dental services allegedly performed upon her by her employer. The claim for those non-existent services was filed against the claimant's husband's insurance policy. The claimant had used, without authorization, her employer's signature stamp, in order to ensure that the claim would be processed without question. The claimant stated that she had filed the false claim because she needed the money.

The claimant received payment from her husband's insurance company. When her employer learned what had transpired, he discharged the claimant for "insurance fraud."

The issue presented was whether the claimant had committed a theft within the meaning of Section 602B, since, technically, she had committed a theft against the insurance company and not her employer.

HELD: The disqualifying provisions of Section 602B of the Act do not require that the theft for which the claimant is discharged be committed against the employer, but only that the theft be connected with her work.

In the instant case, the claimant's unauthorized use of the employer's signature stamp implicated the employer in the fraud, even if only to the extent that it required the employer to take time away from his work to deal with the matter by accounting for his services. There was also the potential for damage to the employer's reputation and business.

The claimant's actions were sufficiently material to the employer's interests as to be connected with her work. The claimant was properly subject to the disqualifying provisions of Section 602B.

ISSUE/DIGEST CODE **Misconduct/MC 602.05**
DOCKET/DATE ***Cetnar v. Board of Review*, 495 N.E. 2d 1128**
AUTHORITY **Section 602 of the Act**
TITLE **Felony or Theft**
SUBTITLE **What Constitutes an Admission**
CROSS-REFERENCE **MC 5.05, Misconduct, Sole Accountability**

The employer discovered that a large-scale construction project was being carried out at the residence of its maintenance superintendent, and that employees were working on that project on company time, using materials transported from the employer's plants. The claimant, a Maintenance Electrician. was discharged for his part in what was deemed the misappropriation of company property (theft).

In his written statement to the Adjudicator the claimant stated that on certain occasions his general foreman would send him out of the employer's plant to work on private property and would tell him what materials he needed for the job. The claimant would punch out for the day, then give his timecard to the foreman. The claimant maintained that he was given authorization by his foreman to remove materials from the plant and specifically stated, "I have not taken any materials from (the employer) without authorization." The claimant stated that it was customary for maintenance department workers to perform work at the residences of management personnel and testified that in the early years of his employment he had performed such work at the home of the company's owner.

HELD: The offense of theft is defined as the knowing exercise of unauthorized control over the property of the owner with the intent to permanently deprive the owner of its use or benefit. Section 602B is properly interpreted as requiring the employee to admit facts sufficient to satisfy each essential element of the offense of theft. It does not matter whether or not a claimant's testimony is credible or that underlying facts reveal that a theft has occurred; a denial of guilt, no matter how incredible, does not constitute an admission.

The record in this case clearly established that, throughout the course of the administrative proceedings, the claimant maintained that he believed he was authorized to remove materials from the employer's plant and to use them in performing work at the

homes of management personnel. From the claimant's statement to the Adjudicator, it could not have been inferred that he knowingly exercised unauthorized control over the employer's property.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**ABR-85-6507/2-21-86**
AUTHORITY	**Section 602 of the Act**
TITLE	**Felony or Theft**
SUBTITLE	**Quantity or Value of Property Taken**
CROSS-REFERENCE	**MC 485.7, Violation of Company Rule**

The claimant, a Licensed Practical Nurse, was discharged for placing personal, long distance calls - which the employer determined to be "excessive" - from the employer's telephone.

Both the Adjudicator and the Referee concluded that the claimant was discharged for theft, pursuant to the provisions of Section 602B.

HELD: Whether an individual commits a theft is not dependent upon either the quantity or value of property taken. An accusation that implies that some unspecified but lesser amount of property taken would be permissible is patently inconsistent with a finding of theft.

In the instant case, the claimant's "excessive" long distance telephone calls were undoubtedly placed at the employer's expense. But, for that matter, based upon the evidence presented, any personal long distance call she made would have been at the employer's expense (not to mention any personal local calls). Because the employer implied that some (an unspecified number of) personal calls were acceptable, it could not be concluded that the "excessive" personal calls constituted theft.

At the same time, the claimant's actions were recognizable under section 602A of the Act. Whether or not an employer has an express rule on the subject, a worker knows - or should know that the work place is a place for work, not personal business. Further, a worker knows - or should know - that there are charges for long distance telephone calls, and that "excessive" calls of this nature can be expensive. In the instant case, the claimant should have known that her continuous use of the employer's telephone for personal calls was adverse to the employer's interests, and she would have foreseen that her actions would result in her discharge. She was discharged for misconduct within the meaning of Section 602A.

VOLUNTARY LEAVING

Voluntary Leaving VL 5
General VL 5.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 5.05**
DOCKET/DATE	**ABR-87-7823/4-26-88**
AUTHORITY	**Section 601A the Act**
TITLE	**Voluntary Leaving**
SUBTITLE	**vs. Layoff**
CROSS-REFERENCE	**None**

The claimant was granted a leave of absence so that he could look after the needs of his daughter, a newborn who was seriously ill. Seven weeks later, the child died. Shortly thereafter, the claimant returned to his job, but the employer had no work for him. The Referee held that the claimant left work voluntarily for personal reasons not attributable to his employer.

HELD: An individual who is granted a leave of absence leaves work voluntarily if he fails to return to work at the expiration of that leave. But if, instead, at the expiration of a leave, a worker is advised by the employer that work is not available, the separation is a layoff.

In this case, the claimant was granted a leave of absence of indefinite duration and returned to work at the expiration of that indefinite leave of absence. Upon his return, he was told that work was not available. Therefore, this was a layoff.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 5.05**
DOCKET/DATE	**ABR85003/1-20-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Voluntary Leaving**
SUBTITLE	**Day-to-Day or As-Needed Work**
CROSS-REFERENCE	**None**

The claimant worked as a laborer for a newspaper's circulation department. Each day, he would report to the circulation department's labor pool, from which he might or might not be selected to work. He would be paid a day's wages only if he was selected to work. After three months, he decided to stop reporting, because he was being selected to work only one or two days per week.

HELD: Section 601A provides, in pertinent part, that an individual will be ineligible if he has "left work ..." When an individual is hired and paid for work on a daily basis, and that day's work is completed, there is no more work, and, therefore, no work for him to leave. Here, there was no work for the claimant to leave. He could not be denied benefits under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 5.05**
DOCKET/DATE	**83-BRD-11723/10-20-83**
AUTHORITY	**l./S-601A**
TITLE	**Voluntary Leaving**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 135. 1, Absence From Work under Discharge Or Leaving**

On February 20, 1983, the claimant requested and was granted a month's leave of absence to visit her sick father in Mexico. She did not report to work on the scheduled return date, March 20, 1983. She wrote the employer on March 28, 1983, from Mexico, to request her job when she returned. She did not advise her employer prior to her leave' s expiration, and she made no attempt to extend the leave. She had been removed from the payroll.

HELD: The claimant's failure to return to work on schedule at the end of her leave of absence constituted a voluntary leaving. If she had a compelling reason for failing to return from her leave as scheduled, she failed to provide timely notification of it. Her voluntary leaving was without good cause attributable to her employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 5.05**
DOCKET/DATE **84-BRD-2756/2-28-84**
AUTHORITY **Section-601B1. and S-602A**
TITLE **Voluntary Leaving**
SUBTITLE **General**
CROSS-REFERENCE **MC 5.05, Distinguishing The Issue under Misconduct**

The claimant was given an indefinite leave of absence to care for her mother who was seriously ill. Four months later, the claimant's sister became available to care for the mother, and she notified the employer that she could return to work. The company told her work was slow and asked her to check back with them in a month. She was subsequently placed on layoff without returning to work.

HELD: The claimant's separation was neither a voluntary leaving nor a discharge but was due to lack of work. Therefore, the claimant cannot be subject to a disqualification for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 5.05**
DOCKET/DATE **84-BRD-3089/3-2-84**
AUTHORITY **Section-601A**
TITLE **Voluntary Leaving**
SUBTITLE **General**
CROSS-REFERENCE **VL 450.4, Part-time Or Full-time under Time**

The claimant was on a disability leave of absence for a period of fourteen months. When she applied for work with her last employer, she was offered a job but was told that the hours of work for all employees were being reduced. The claimant refused the job because she did not like the part-time work, and she then retired on social security.

HELD: Part-time work is not unsuitable per se, and a leaving because the work is less than full-time hours is generally without good cause attributable to the employing unit if the hours of work or reporting requirements do not prevent the claimant from seeking full-time work. The claimant could have looked for work, in this case, while working part-time. It must be concluded that she voluntarily left her job without good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 5.05**
DOCKET/DATE **ABR-85-5408/12-27-85**
AUTHORITY **Sections 601 and 603 of the Act**
TITLE **Voluntary Leaving**
SUBTITLE **vs. Refusal of Work**
CROSS-REFERENCE **VL 315.05, New Work; RW 5.05, Refusal of Work**

The claimant was working as a Secretary when her employer notified her that her job would be abolished, and that, at the same time, a job as a Riveter would be made available to her. The claimant feared that, if she took a job as a Riveter, her secretarial skills would decline, so she rejected the Riveter position, telling her employer she would rather quit.

The issue presented was whether the claimant's separation from work was a Voluntary Leaving cognizable under Section 601 or a Refusal of Work under Section 603.

HELD: Unless there is an interruption in the employment relationship, resulting in a worker becoming an unemployed individual prior to an offer of new work, a Refusal of Work issue under Section 603 cannot arise. In the instant case, the claimant was employed when her employer approached her about changing jobs. Therefore, Section 603 was inapplicable.

(See VL 315.05, New Work, for disposition of this case.)

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 5.05**
DOCKET/DATE	**ABR-88-338/3-25-88**
AUTHORITY	**Sections 601 and 603 of the Act**
TITLE	**Voluntary Leaving**
SUBTITLE	**vs. Refusal of Work**
CROSS-REFERENCE	**RW 5.05, Refusal of Work; RW 330.05, Offer of Work**

The claimant obtained work as a machinist through a temporary employment service (his employer) which would refer him to its clients. The employment service's policy was that workers, upon completion of assignments, should contact the service and apply for other assignments. Upon completion of an assignment which had run from February 13 through March 25, the claimant chose not to contact the employer's service.

The threshold issue was whether the claimant's actions were to be considered under Section 601A, Voluntary Leaving, or Section 603, Refusal of Work.

HELD: Whether a worker has quit a job or refused a job is determined by whether the worker was employed or unemployed at the time of a purported offer of new work. In this case, the claimant completed an assignment and was unemployed at the time new work was purportedly made available. Therefore, the issue was Refusal of Work, cognizable under Section 603 of the Act.

Attendance VL 40
General VL 40.05
No Decisions

Attributable to or Connected with Employment VL 50
General VL 50.05

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	***Grant v. Board of Review*, 558 N.E. 2d 438 (1990)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Failure to Return after Maternity Leave**
CROSS-REFERENCE	**VL 385.05, Relation of Alleged Cause to Leaving**

After her child was born and her maternity leave had expired, the claimant informed her employer that she wished to stay at home with her baby. She asked if the employer would hold her job open. The employer responded that the job could not be held open indefinitely, but that every effort would be made to help her if, eventually, she was ready to return to work. When the claimant eventually decided to return to work, the employer informed her that there was a hiring freeze.

HELD: Whether a leaving is attributable to the employer depends upon the employer's conduct. Here, the employer did nothing to cause the work separation. The work separation occurred when the claimant did not return immediately from her maternity leave. The hiring freeze occurred after the work separation. The claimant was ineligible for benefits because she left work voluntarily for personal reasons unrelated to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**ABR06487/3-9-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Personal Matters that Carry Over into Work Place**
CROSS-REFERENCE	**VL 515.4, Working Conditions, Fellow Employee**

The claimant helped her son get a job with her employer. Over the next three years, she loaned her son several thousand dollars, which he did not repay. As time went by, her son would demand more money, and, if she hesitated to pay it, he would threaten her. The son began making demands and threats at work. The claimant asked her supervisor to talk to her son about harassing her at work. The supervisor did, but the son continued to seek her out at work. Finally, the claimant quit.

HELD: The term "attributable to the employer" includes a failure to act where some action should be taken. However, an employer does not have a duty to act in a parental capacity and cannot be expected to resolve every family problem that carries over into the workplace. Here, there was a family problem. The claimant left work because of the family problem, not because the employer failed to take action. The leaving was not attributable to the employer. Benefits were denied.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**ABR-86-9166/7-15-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Early Retirement**
CROSS-REFERENCE	**VL 210.05, Good Cause; VL 495.05, Voluntary**

The employer's witness testified that the employer intended to reduce its work force. This was to be accomplished in 2 parts: the first part was an early retirement program; the second part was conditional upon the success of the first part - that is, if not enough workers took advantage of the retirement program, there would have to be layoffs.

The claimant, an Assistant Mine Manager, had heard a rumor that his position was to be eliminated. Then he was offered the early retirement package, which included financial incentives. Fearing that, if he did not accept the package, he would be demoted, which would have resulted in a financial loss, the claimant accepted the early retirement package.

HELD: The Unemployment Insurance Act provides that benefits shall be paid to individuals who are out of work due to the lack of suitable work and through no fault of their own. Accordingly, there can be no separation disqualification when a worker has been laid off, since no action taken by the worker, but, rather a unilateral action by the employer, has caused the work separation.

In this case, the employer decided the number of positions it wanted eliminated. Had the requisite number of workers not resigned, the employer would have laid off the number necessary to meet its goal. The same number of people would have been unemployed, whether they quit or were laid off. This work separation, therefore, had the same effect as a lay off.

Further, the employer, on one hand, offered financial incentives to those workers who left; on the other hand, the employer did not interpose any safeguards or job protection for those who did not resign - those who stayed, even if they were not laid off, faced the prospect of loss of wages through demotions. It was clear then that the employer was the moving party, desirous of having workers accept an early retirement package; and those who, like the claimant, did the employer's bidding, acted as reasonable persons would have under the same or similar circumstances.

The claimant became involuntarily unemployed due to economic conditions beyond his control. This was a leaving with good cause attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 50.05**
DOCKET/DATE	**85-BRD-06063/8-21-85**
AUTHORITY	**Section 601A the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked as a Clerk for 1 year until September 28, 1984, at which time she was approximately 8 months pregnant and was to begin her maternity leave. The maternity leave, per the employer's standard policy, was to expire 6 weeks after the birth of the claimant's child, or depending upon a doctor's determination and release. Prior to taking her leave, the claimant requested instead that she be given an extended leave of absence of 2 to 6 months, because she wished to nurse her child. The employer refused the request.

The claimant's baby was born on November 5, 1984. The claimant's doctor released the claimant to work as of December 17, 1984. The claimant did not contact her employer until January 4, 1985, by which time her position had been filled.

HELD: The question of attributability arises when an employer either fails to meet legal or implied obligations to maintain conditions of employment, or when an employer changes conditions or commits acts which create a substantially less favorable

work situation for the claimant. A threshold requirement is that the conditions or acts be something that the employer has the ability to control.

In the instant case, the employer met its contractual obligations by offering the claimant a standard maternity leave, the expiration of which was determined by a medical release. It was not the employer's action, but the claimant's action which resulted in the work separation. The claimant's desire to nurse her child beyond the duration of her maternity leave was not a factor which could be deemed attributable to the employer because that was not something which the employer had the ability to control.
The claimant was disqualified for benefits because she left work voluntarily without good cause attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 50.5**
DOCKET/DATE	**ABR-20-16071/11-5-20**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**General**
CROSS REFERENCE	**VL 160, Efforts To Retain Employment**

The claimant was employed as a dietary supervisor, and worked for the employer for more than twenty-three years. After the onset of the COVID-19 pandemic, the employer directed her to refrain from wearing a mask or other personal protective equipment around residents, to avoid scaring them, although she had an underlying medical condition. At the same time, the employer added to her duties by requiring her to take residents' temperatures and otherwise physically assist them when needed while she delivered menus to them. These additional duties increased her interaction with residents at a time when there were positive COVID-19 cases in the facility. Furthermore, the employer recently took over the operation of the facility from a previous owner, and the claimant clashed with her new supervisor, who removed some supervisory duties from her. When she complained to upper management and other administrative personnel about her concerns, she was encouraged to resign. The claimant quit her job without notice on April 11, 2020, and was denied benefits under Section 601A of the Act. The Referee set aside that determination and allowed benefits pursuant to a hearing, and the employer appealed to the Board.

HELD: The Board found that the employer created a substantially less favorable work situation for the claimant by requiring her to interact with residents without allowing her to use personal protective equipment when COVID-19 protocols should have been in place. The claimant attempted to resolve this issue with the employer prior to her separation, but was instead told she should resign. The Board held that the claimant exhausted reasonable alternatives to quitting, and that she left work to protect her health and safety. She had good cause for leaving work that was attributable to employer, which had the ability to control the conditions of her work.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**ABR-83-12308/8-9-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Change in Hours**
CROSS-REFERENCE	**VL 155.1, Domestic Circumstances**

The claimant worked as a Station Clerk on the 11 p.m. to 7 a.m. shift for 2-1/2 years. In May, 1983, she was informed that due to staff shortages she was being temporarily assigned to the 3 p.m. to 11 p.m. shift. Upon being informed, the claimant immediately complained that she had no one to watch her children during that shift, explaining that her brother normally took care of her children but was unavailable on a permanent basis for those hours. The claimant also explained that she wished to continue to supervise her young children's activities after school. An employer's memorandum, dated May 2, 1983, acknowledged that the claimant had expressed concern about working the 3 p.m. to 11 p.m. shift, and stated that the change would exist only for 2 months, until the regular employees on that shift returned from their vacations.

In June, 1983, the claimant received a memorandum informing her that she would be permanently assigned to the 3 p.m. to 11 p.m. shift, beginning in July, 1983. The claimant again informed her employer that she could not work that shift. The employer did not offer the claimant any alternative. When the claimant did not report to work as scheduled in July, she was deemed to have resigned.

HELD: Generally, it is the responsibility of a worker to arrange her family and domestic affairs so as to permit her to be gainfully employed. However, it should be noted that there is sometimes misunderstanding as to whether or not a voluntary leaving is due to domestic circumstances or a change in working conditions. If there are any significant changes in working conditions which affect domestic circumstances, then the voluntary leaving may be due to the change in working conditions and attributable to the employer.

In the instant case, it was the employer's action which precipitated the claimant's separation from work. The claimant left work not because of domestic circumstances alone, but because of a change in working conditions brought about by the employer. The evidence established that the claimant would have continued working, but for the employer's action. The fact that the claimant could not accept the change because of her domestic circumstances did not mean that the separation was not attributable to the employer, but, rather, that the claimant had good cause for separating from employment. The claimant left work with good cause attributable to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**84-BRD-1005/1-24-84**
AUTHORITY	**Section-601A**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was employed by a credit union as an assistant manager, performing a variety of duties. She hoped to eventually become the manager. When her employer merged with another credit union, she felt that she no longer had the chance of becoming manager so she accepted a counter job when given a choice of positions. After two months in this job, she quit because she felt she was not fully using all of her skills.

HELD: Attributability may arise when the employer changes conditions or when it commits acts which affect the employment and cause the claimant to quit. The record, however, must show immediate and continuing non-acceptance of the conditions or acts. If the worker agrees to work despite the conditions or acts and then decides at some later date to leave, she has not shown good cause.

The claimant's acceptance and continuation of the employment after the merger indicated that she considered the work suitable despite the changes. Therefore, her leaving was not good cause attributable to the employer, and she is disqualified.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	***Davis v. Board of Review*, 465 N.E.2d (576 Ill. App. 1 Dist. 1984)**
AUTHORITY	**Section 601A of Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Fault**
CROSS-REFERENCE	**VL 210.05, Good Cause; VL 160.05, Efforts to Retain Employment**

The claimant was hired as School Child Development Coordinator, whose duties were primarily administrative and consisted of hiring and supervising teachers, working with parents, and recruiting children - ages three to five. Subsequently, the claimant was required to incorporate into her program emotionally disturbed teen - ages referred from an agency. Due to diminished funding, the claimant, in addition to performing her administrative duties, was required to teach the emotionally disturbed teenagers. The claimant was not qualified to teach emotionally disturbed teenagers, encountered numerous problems, and resigned.

The Referee and the Board of Review concluded that the claimant had left work without good cause attributable to her employer. Upon judicial review, it was decided that the claimant had left work with good cause attributable to her employer.

Upon further appeal, it was argued that (even if the claimant was determined to have had good cause for leaving) the work separation was not attributable to the employer: The employer's actions had been the reasonable consequence of economic considerations, and the employer had acted reasonably in modifying the claimant's tasks and assigning her additional duties.

HELD: Section 601A does not require that the employer's actions be unreasonable before the employee is determined to be eligible for benefits, but focuses, instead, upon the issue of "...attributable to the employing unit." The statute does not require that the employer be at fault. A substantial, unilateral change in the employment may, in conjunction with good cause, entitle

a worker to benefits. In the instant case, the claimant's uncontradicted testimony established that a substantial change in her working conditions took place, significantly changing her duties. Her leaving was attributable to the employing unit within the meaning of the statute.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 50.05**
DOCKET/DATE	***Laurie A. Pagliarella v. IDES* et al, 18 L 50395 (2018)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable to or Connected With Employment;**
SUBTITLE	**Reasonable Effort**
CROSS REFERENCE	**VL 160.05 General, VL 210.05, Good Cause**

Claimant worked for Employer in a strategic sales position from 4/26/2007 to 12/29/2017 when she resigned. Claimant reported to Employer in May of 2016 that her supervisor verbally assaulted her and bullied her at work which caused her to seek medical treatment. Claimant then reported that her supervisor's conduct worsened thereafter, culminating in a one-on-one meeting on July 20, 2017 to discuss her performance in which the supervisor mocked her, engaged in aggressive body language, and issued ambiguous threats to "take action". After this meeting, Claimant filed a complaint with Employer and requested that she be assigned to a different manager. Claimant had subsequent visits with her doctor and therapist in which she was diagnosed with Post Traumatic Stress Disorder and anxiety; after which she was placed on temporary disability for more than two months. Employer investigated claimant's allegations and offered to transfer her to a different team in the Chicagoland area. Claimant refused because she would still have to see her supervisor at regional meetings and did not want to transfer to a different region. After her medical leave was completed, Claimant never returned to work and resigned. At a hearing, Claimant's supervisor testified that he acted appropriately and "take action" referred only to corrective action if Claimant failed to meet the requirements of the Performance Improvement Plan and he did not know of Claimant's anxiety and other health issues until Employer investigation was conducted. Claimant turned down Referee's offer to call additional witnesses to rebut Employer's testimony. Following the hearing the Referee affirmed the Local Office determination which disqualified Claimant from receiving benefits. Claimant appealed the decision and the Board affirmed the Referee's decision, stating that Claimant should make a reasonable effort to resolve the conflict before voluntarily resigning and seeking unemployment. As such, while Claimant left for compelling personal reasons, her leaving was not attributable to Employer. The Claimant appealed.

HELD: The Circuit Court affirmed the Board of Review decision that Claimant was disqualified from receiving Benefits under Section 601A. The Court stated that it found Claimant "entirely credible." However, there was no evidence in the record which refuted the supervisor's testimony that an investigation was performed in compliance with Employer's normal policies, and Claimant rejected the Referee's offer to continue the hearing to allow Claimant to present evidence on the issue. More importantly, the Court stated that Claimant refused Employer's proposed accommodation of transfer to another team in the area or relocate to another area. The Court cited *Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist. 1984), as did the Board in that Claimant failed to make a reasonable effort to resolve the conflict by attempting to make the proposed solution by the Employer work before resigning.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 50.05**
DOCKET/DATE	**85-BRD-05033/7-8-85**
AUTHORITY	**Section 601A of Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Case Compared with *Davis v. Board of Review*, 465 N.E.2d 576 (Ill. App. 1 Dist. 1984)**
CROSS-REFERENCE	**VL 210.05, Good Cause; VL 160.05, Efforts to Retain Employment**

The claimant was employed by a day-care facility. Her duties included caring for kindergarten-age children at times when they were not in school. There were two other kindergarten-age units on the premises, operating under similar circumstances, so that the day-care workers and their assistants could work with each other, or cover for one another during breaks or absences.

After eight years, due to economic circumstances, the day-care facility's preschool and school-age programs merged, to the extent that one Director now administered to both programs. The claimant still worked in a distinct, kindergarten-age unit. However, after working ten months under the newly formed administration, the claimant resigned.

The claimant explained to the adjudicator: "(There was) too much stress dealing with the kids." The Referee asked the claimant to elaborate. She stated that most importantly she was no longer working exclusively with kindergarten-age children,

four-and-one-half to five years old: On those occasions when another worker was on break or absent, she might have to cover in a unit which included children as young as three-and-one-half years old.
The Director of the facility testified that the claimant's job description made reference to flexibility. She added that the claimant's fill-in duties usually occurred during times when her own kindergarten-age children were in fact off the premises, attending kindergarten, so that the claimant would have had no other responsibilities. Also, there always would have been another teacher or assistant on duty, so that the claimant would not have been solely responsible for the pre-school-age children.

In closing, counsel for the claimant cited *Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist. 1984), and contended that even if the employer did not behave unreasonably, the leaving was still attributable to the employer on account of the changes which had been made.

HELD: In *Davis*, the court held that a "substantial" change, one which significantly affected the claimant's duties, might result in a finding of attributability. In *Davis*, an administrator in a school which served children ages three to five was required to incorporate into her program, and teach, emotionally disturbed teenagers who presented aggressive and destructive behavior disorders. That was a substantial departure from the working agreement. In the instant case, the only change was that the claimant might occasionally fill-in to care for three-and-one-half year olds instead of four-and-one-half year olds. This was not a substantial departure from the working agreement. Therefore, this leaving was not attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**85-BRD-05041/7-8-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Fault**
CROSS-REFERENCE	**VL 210.05, Good Cause**

The claimant, a forty-seven year old woman, was employed as a Driver for one-and-one-half years, until her promotion to Transportation Manager, a position she held for two years. The claimant quit her job upon being demoted back to Driver (though at her managerial rate of pay).

There was no competent evidence to suggest that the claimant had not performed her work satisfactorily. However, the employer was contemplating expansion, and told the claimant it was not felt that she would be able to handle the managerial position in light of expansion. Subsequently, during the latter part of the claimant's tenure as Transportation Manager, her relationships with supervisor personnel began to deteriorate, through no fault of her own.

HELD: Attributability does not require "fault" on the employer's part. Notwithstanding that the changes in question might have been justified because of business conditions, they substantially changed the terms of the working agreement. Therefore, the leaving was attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**ABR-85-2581/12-24-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Change in Hours**
CROSS-REFERENCE	**VL 135.05: VL 155.1, Domestic Circumstances; MC 135.05**

The claimant was employed by a hospital as a Respiratory Therapy Technician. The claimant was regularly scheduled to work the day shift, but was also scheduled - as were other Therapists - to work the night shift. After 2 years of such employment, the claimant told his employer that he would not be able to work the night shift; but the employer demanded that he make a commitment to his work and agree to work at any time the employer might schedule him, or be discharged. The employer's Chief Therapist stated:

> I told (the claimant) it was unfair that other staff had to work another shift occasionally if he did not. I told him it was not very often that this would be required. He asked if I could guarantee that (it would not be often) and I said no...I told (the claimant) that everyone is expected to work a different shift if needed and that if he was not willing to accept that job responsibility he would have to be terminated...

The claimant, who was divorced and had custody of his children, ages 5 and 3, had had regular day care arrangements for them. He testified that he refused to work an occasional night shift because he could not afford to pay a baby-sitter for nights, and because he wished to spend more time with his children.

Following his refusal to work a night shift, the claimant was taken off the employer's schedule.

HELD: Generally, it is the responsibility of workers to arrange their family and domestic affairs so as to permit them to be gainfully employed. A worker who leaves work voluntarily, in order to devote time to family or domestic affairs, does so for reasons not attributable to his employer, and is subject to a disqualification - unless the employer has substantially changed the work requirements, thereby placing an undue burden upon the claimant's family or domestic affairs.

In the instant case, the employer made no substantial change in the work requirements; the claimant did. From the onset, the nature of the claimant's work, that of a Respiratory Therapist, was manifestly such that the claimant might - from time-to-time, or even often, with little or no advance notice - have been needed in emergency, life-threatening situations. This necessity, whether it was express or implied, was one of the conditions under which the claimant had been hired. It was common in the health care field. The claimant had been well aware of the requirements of such work when he accepted the job. Under those circumstances, his decision to devote more time to his family, at the expense of his job, constituted a voluntary leaving not attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**ABR-87-5552/4-7-88**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Risk of Illness or Injury**
CROSS-REFERENCE	**VL 235.45 Health; VL 515.65, Working Conditions**

The claimant worked in a hospital as a Registered Pediatric Nurse whose duties included providing nursing care to children with various diseases - including Acquired Immune Deficiency Syndrome (AIDS).

The hospital informed nurses as to how AIDS could be transmitted. The hospital formally instructed nurses concerning the treatment of AIDS patients. On the doors of patients who had been exposed to the AIDS virus were notices reminding nurses about blood and secretion precautions to be taken. In addition, the hospital followed established procedures that were taken for other infectious diseases transmitted through the blood, such as hepatitis, which involved precautions against contact with patients' blood and secretions.

The claimant became separated from employment because she refused to provide care for an infant who had been exposed to the AIDS virus.

HELD: Dangers inherent in a job are not necessarily attributable to the employer. Only where the risks of a job are disproportionately high, because the employer either acts or fails to act, will such a risk result in a finding of attributability.

Nursing, as an occupation, involves contact with patients who might have contracted contagious diseases. The claimant, as a nurse, assumed this risk as the ordinary risk of the nursing occupation. The evidence in this matter did not establish that the risk of the claimant's contraction of the AIDS virus was disproportionately high. This was because of the precautions taken by the employer.

The claimant did not make herself available for work despite the employer's reasonable precautions. As such, she did not have good cause attributable to the employer for leaving her job.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 50.05**
DOCKET/DATE	***Hawkins v. IDES*, 268 Ill.App.3d 927, 206 Ill. Dec. 423, 645 N.E.2d 428 (1994)**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Attributable To Or Connected With Employment**
SUBTITLE	**Licensing Requirement**
CROSS-REFERENCE	**VL 135.15; MC 135.3; MC 165.05**

The claimant was a bus driver. In March, 1990, he was informed that he had to obtain a commercial driver's license (CDL) by April 1, 1992. The employer made training and study materials available to him. He was advised that he would have three opportunities to pass. The claimant did not attend any training sessions and first took the CDL examination on March 23, 1992, and failed. By the time he passed, on April 28, 1992, the employer had already replaced him. The claimant contended that he was entitled to benefits because the work separation was attributable to the employer.

HELD: The term "attributable" in Section 601A means a substantial, unilateral change in working conditions. Here, there was no unilateral action that changed the nature of the work. The claimant's lack of qualification for continued employment resulted from his own inaction in failing to obtain a CDL rather than from any action of the employer. The leaving was not attributable to the employer. Benefits were denied.

Citizenship or Residence Requirements VL 70
General VL 70.05

Conscientious Objection VL 90
General VL 90.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 90.05**
DOCKET/DATE	**ABR-87-1354/4-14-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Conscientious Objection**
SUBTITLE	**Religion**
CROSS-REFERENCE	**VL 385.05, Cause of Leaving; VL 515.5, Morals**

The claimant worked as a supervisor in a medical center's kitchen. His schedule was such that he was able to attend either a Jehovah's Witness church meeting on Tuesday evening or a ministers' training session on Thursday evening.

Then the employer decided to institute a new 1 a.m. to 3 a.m. shift. The employer asked the claimant to supervise this shift, in addition to his regular shift. These additional responsibilities would have lasted 1 month. The claimant refused to work the additional hours.

In order to begin operations on its new shift, and as a result of the claimant's refusal, the employer was compelled to rearrange other supervisors' schedules. This, in turn, impacted upon the claimant. The claimant was told that his work schedule would have to be changed, temporarily, regardless. He was offered a variety of schedules, before he accepted a part-time position as a relief cook.

The relief cook job had 2 weeks left to run - after which the claimant would be returned to his regular supervisory position and shift - when the claimant observed that he would be scheduled to work both Tuesday and Thursday evenings. He promptly gave the employer 2-weeks' notice of his intention to resign.

The claimant stated that he quit because he wished to attend either the Tuesday or the Thursday church meeting - or, preferably, both. He acknowledged that he was not required by the church to attend such meetings, but that it was his personal decision to do so.

HELD: Unemployment insurance is designed to guarantee benefits to employees who are out of work through no fault of their own. The determination of fault is to be made in light of the First Amendment freedom of religion provision - and not solely on the basis of the language of a statute defining eligibility. Accordingly, if there is a true religious conviction present, benefits cannot be withheld.

In this case, the claimant was not compelled to leave work on account of a true religious conviction. His attendance at church meetings was, by his admission and by his prior attendance at only 1 of 2 meeting, per week, non-obligatory. He had refused temporary work which would not have conflicted with his desire to attend 1 meeting per week. Finally, at the time he quit, the reason for his quit no longer existed - when his 2-week notice of quit expired, so did his temporary assignment. Neither the employer nor the state conditioned the claimant's receipt of benefits upon conduct proscribed by his faith. There was no burden upon religion. The claimant was disqualified for benefits under Section 601A.

Discharge or Leaving VL 135
General 135.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	**ABR-85-2581/12-24-85**
AUTHORITY	**Section 601A and Section 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**VL 50.05, Attributability; VL 155.1; MC 135.05**

The claimant was employed by a hospital as a Respiratory Therapy Technician. The claimant was regularly scheduled to work the day shift, but was also scheduled -- as were other Therapists -- to work the night shift. After 2 years of such employment, the claimant told his employer that he would not be able to work the night shift; but the employer demanded that he make a commitment to his work and agree to work at any time the employer might schedule him, or be discharged. The employer's Chief Therapist stated:

> I told (the claimant) it was unfair that other staff had to work another shift occasionally if he did not. I told him it was not very often that this would be required. He asked if I could guarantee that (it would not be often) and I said no...I told (the claimant) that everyone is expected to work a different shift if needed and that if he was not willing to accept that job responsibility he would have to be terminated...

The claimant, who was divorced and had custody of his children, ages 5 and 3, had had regular day care arrangements for them. He testified that he refused to work an occasional night shift because he could not afford to pay a baby-sitter for nights, and because he wished to spend more time with his children.

Following his refusal to work a night shift, the claimant was taken off the employer's schedule.

HELD: An individual is discharged when the employer takes the action which results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when he takes the action which results in his unemployment and he has a choice of remaining at work at the time that he ceases working.

In the instant case, the claimant could have remained employed, but he refused to comply with a condition of work made at the time of hire. In effect, the claimant quit rather than agree to this condition. This then was a case of a voluntary leaving, and not a discharge.
(See also, VL 155.1, Domestic Circumstances, Children, Care of.)

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 135.05**
DOCKET/DATE	***Randell D. Ivy v. Board of Review*, 88 L 50532**
AUTHORITY	**Section 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**MC 135.05, Discharge or Leaving**

The claimant found a new job. He gave his employer 2 weeks' notice that he was leaving. The employer told him to leave immediately. The claimant filed a claim for benefits for the 2 weeks until his new job began.

HELD: An individual is discharged when the employer takes the action that results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when he takes the action that results in his unemployment and he has a choice of remaining at work at the time that he ceases working.

In this case, the claimant did not intend to leave on the date he gave notice, but was willing to work until the effective date of his resignation. He did not have the choice of remaining at work at the time that he ceased working.
This was a discharge.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	**ABR92416/8-21-89**
AUTHORITY	**Section 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**MC 135.05, Discharge or Leaving**

The claimant, a maintenance worker, was taking typing classes. Her employer was aware that, when she completed the classes, she would seek secretarial work. On October 24, the employer asked when the claimant's last class was and when she would begin looking for other work. The claimant responded that her last class was December 9, after which she would seek other work, and that she would give the employer appropriate notice. On December 7, the employer asked her when she was leaving; The claimant responded that she did not intend to leave until she obtained other work. On December 10, the employer hired a replacement for the claimant.

HELD: An individual is discharged when the employer takes the action that results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when she takes the action that results in her unemployment and she has a choice of remaining at work at the time that she ceases working.

In this case, at no time did the claimant disclose a definite or ascertainable date upon which she intended to leave work or that she was unwilling to continue working for the employer during any interim. All she did was assure the employer - in response to its questions - that she would provide notice at the appropriate time (when she obtained a job). The employer initiated the claimant's separation from work by replacing her, at which time she no longer had the choice or remaining in employment. Therefore, this was a discharge, not a leaving.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	***Jones v. IDES*/11-15-95**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Approved Leave of Absence**
CROSS-REFERENCE	**MC 135.05, Discharge or Leaving**

The claimant was granted a five-months leave of absence. She was not told that, by taking a leave, she was in any way jeopardizing her position or that her return was conditional upon the employer finding a permanent replacement. Nonetheless, when her leave ended, she was told that the employer had restructured itself, and, further, that it had decided to keep the temporary replacement who had been sitting in for her, because that person was working for less money. The claimant then filed a claim for benefits.

HELD: The leaving was involuntary because the employer, not the claimant, severed the relationship. Had the leave of absence been in any way disapproved or made conditional, there would have been a voluntary leaving, but this was not the case. Therefore, the disqualifying provisions of Section 601A do not apply.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	***Arroyo v. IDES*, 695 N.E. 2d 1350 (1998)**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**DISCHARGE OR LEAVING**
SUBTITLE	**Option to Remain Employed**
CROSS REFERENCE	**MC 135.05, Discharge or Leaving; PR 195.05, Notice**

On June 14, approximately eight months into her pregnancy, the claimant experienced complications and was admitted to the hospital, where she gave birth to a still-born child. The claimant was released from the hospital on June 18, with orders to refrain from work for six weeks. The employer learned of her circumstances, but, on July 23, when the claimant advised her employer she could resume work, the employer would not take her back, contending she had terminated voluntarily because she hadn't shown up for work for more than a month. The Board of Review considered this a Voluntary Leaving.

HELD: Whether an employee voluntarily discontinues her employment is a question of intent and is to be determined from the totality of the evidence presented. Here, there is no evidence to prove the claimant intended to leave her job. The employer discharged her.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	**ABR-97-12111 / 5-18-97**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**DISCHARGE OR LEAVING**
SUBTITLE	**Option to Remain Employed**
CROSS REFERENCE	**MC 135.05, Discharge or Leaving**

On July 23, the claimant tendered his resignation, to become effective July 28. The employer told him to leave immediately.

HELD: Generally, if a claimant gives at least two weeks' notice, and is told to separate from work before the expiration of the notice period, without wages for what would have been the remaining weeks of his employment, the separation is a discharge.

However, where the claimant has given less than two weeks' notice, we are reluctant to hold that the claimant was discharged. In those instances, the claimant's voluntary leaving is merely accelerated.

This was a voluntary leaving.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	**ABR-97-1665 / 4-14-97**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS REFERENCE	**MC 135.05, Discharge or Leaving**

The claimant was absent for several days due to a physical condition and her employer called her at home, requesting that, if she intended to return to work, she should bring in a doctor's statement, showing she had been released to work. Instead, the claimant said she was quitting, adding: I will give you my two weeks notice. The employer told her not to return to work at all.

HELD: Generally, if a claimant gives two weeks' notice, and is told to separate from work before the expiration of the notice period, the separation is a discharge. However, there are exceptions to that general rule, including where it appears the notice period is merely a formality and there is no real intent to continue working. Here, the claimant's conduct (her abrupt resignation and intent not to obtain a doctor's release which would have allowed her to work the next two weeks anyway) indicated the notice period was simply a formality. This was a voluntary leaving.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	**White v. Department of Employment Security, 376 Ill.App.3d 668, 314 Ill.Dec. 867, 875 N.E.2d 1154 (1st Dist., 2007)**
AUTHORITY	**Section 601(A) of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**General**
CROSS-REFERENCE	**PR-25.05/Appearance-General; PR-380.1/Rehearing or Review-Additional Proof**

The claimant worked for the employer's roofing company as a foreman. The claimant believed working conditions were dangerous because of a recent blizzard. He testified that he contacted the manager who told him he could come to work if he wanted to. At some point thereafter, according to his testimony, he again called the manager who told him he was too busy to talk just then but would call him back. When the manager did not call back, the claimant left a voice message, which the manager also failed to return. The claimant testified that he never did hear from the manager. The manager testified that he had issued the claimant a warning on December 21, 2005 with regard to his rude treatment of a customer and told him that another such incident would result in his discharge. The following day the claimant came into work and stated that I can't deal with this; I quit but did not mention the warning. There was work available for the claimant on December 22, 2005. The Referee held that the claimant quit his job without good cause attributable to the employer and was disqualified from receiving benefits pursuant to Section 601(A) of the Act. The claimant appealed the Referee's decision to the Board of Review, attaching to his appeal telephone records which he believed substantiated his testimony that he had called the manager several times.

Declining to consider the claimant's telephone records because he failed to show that he was not at fault for not submitting them at the hearing, the Board of Review affirmed the Referee's decision.

HELD: Noting that a reviewing court may not judge the witnesses' credibility, resolve conflicts in testimony or re-weigh evidence, the court found that there was sufficient evidence to support the Board of Review's decision that the claimant voluntarily quit his job without good cause attributable to the employer where (1) two employer witnesses testified that there was continuing work available to the claimant when he decided to quit because he couldn't take this and (2) the claims adjudicator's report indicated that the claimant had told her that he had left his job for personal reasons without informing the employer.

In its opinion, the court rejected the claimant's contention on appeal that the employer should not have been allowed to testify at the hearing before the Referee because it had not filed a timely protest in accordance with the agency's benefit rules, noting that those rules provide that an employer filing a late protest is only prohibited from appealing an adverse decision by a Referee and not from testifying at the hearing.

The court also rejected the claimant's contention on appeal that the Board of Review erred in not considering his telephone records. The court found that the claimant did not adhere to the agency's rules regarding the filing of additional evidence where he did not submit such evidence within 20 days of filing his appeal and did not provide an explanation of why he was not at fault for not submitting such evidence at the time of the hearing.

Absence from Work VL 135.1

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.1**
DOCKET/DATE	**84-BRD-3118/3-5-84**
AUTHORITY	**Section-601A and S-601B1**
TITLE	**Discharge or Leaving**
SUBTITLE	**Absence From Work**
CROSS-REFERENCE	**None**

The employer gave the claimant a three-month medical leave of absence on recommendation of the company doctor and her own doctor. She also followed the advice of the doctors and moved to a warm climate to recuperate. Both doctors certified that the claimant was unable to return to work when the leave period expired so the employer changed it to an indefinite leave until such time as her doctor released her to return to work.
After an additional six months, the claimant's doctor released her to return to work either in Chicago or in Florida where she had been recuperating. The claimant never notified the employer of the release, and, a month later, the employer notified the claimant that her job was to be eliminated the first of the year (a month and a half later). She had, however, previously requested a change to another position which was still available to her. When the claimant filed for benefits, she stated that no work was available for her with the employer.

HELD: When the claimant failed to return to work after her doctor released her, the condition which occasioned the leave no longer existed. At this point, she voluntary quit her job without good cause, and the subsequent elimination of her job was not relevant since other suitable work was available.

The claimant was on an approved medical leave of absence of indefinite duration until she was released by her physician to return to work. When she was released by her physician, she failed to notify the employer and did not return to available, suitable work. These facts indicate a voluntary leaving rather than a discharge, and it is concluded that the leaving was without good cause attributable to the employer. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.1**
DOCKET/DATE **83-BRD-10105/8-31-83**
AUTHORITY **Section-601A**
TITLE **Discharge or Leaving**
SUBTITLE **Absence From Work**
CROSS-REFERENCE **None**

On October 19, the claimant was granted a two-week leave for personal reasons and was scheduled to return to work on November 8. She requested an extension of the leave, but this request was denied. She did not return to work on November 8 because she was still occupied with personal problems.

HELD: The employment relationship ended when the claimant did not return to work on November 8. A failure to return to available work at the expiration of a leave of absence is a voluntary quitting.

The claimant's reasons for leaving were personal and were not attributable to the employer. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.1**
DOCKET/DATE **83-BRD-11723/10-20-83**
AUTHORITY **Section-601A**
TITLE **Discharge or Leaving**
SUBTITLE **Absence From Work**
CROSS-REFERENCE **VL 5.05, General under Voluntary Leaving**

On February 20, 1983, the claimant requested and was granted a month's leave of absence to visit her sick father in Mexico. She did not report to work on the scheduled return date, March 20, 1983. She wrote the employer on March 28, 1983, from Mexico, to request her job when she returned. She did not advise her employer prior to her leave's expiration, and she made no attempt to extend the leave. She had been removed from the payroll.

HELD: The claimant's failure to return to work on schedule at the end of her leave of absence constituted a voluntary leaving. If she had a compelling reason for failing to return from her leave as scheduled, she failed to provide timely notification of it. Her voluntary leaving was without good cause attributable to her employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.1**
DOCKET/DATE **83-BRD-12269/10-31-83**
AUTHORITY **Section-601A and S-602A**
TITLE **Discharge or Leaving**
SUBTITLE **Absence From Work**
CROSS-REFERENCE **None**

The claimant was suspended for two days. At the end of his suspension, the claimant did not return to his job.

HELD: The claimant's failure to return to work at the end of the two-day suspension constitutes an abandonment of his job and is not a discharge. The claimant's actions constitute a voluntary leaving without good cause attributable to her employer, and, therefore, he is ineligible to receive benefits.

Constructive Quit VL 135.15

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.15**
DOCKET/DATE ***Kane v. Dep't of Emp. Sec*., 2024 IL App (1st) 231176-U**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Constructive Quit**
CROSS-REFERENCE **VL 190.15 Weight and Sufficiency**

Claimant was employed as a part-time special education teacher. On the last day of work, claimant met with the employer's executive director and supervisor to discuss a remediation plan written by claimant's supervisor. At the conclusion of the

meeting the claimant left the office and filed for benefits alleging that she'd been fired. The employer protested the claim indicating that the claimant had resigned. In their protest the employer attached the remediation plan, the claimant's performance review, and the claimant's severance letter. Claimant alleged that she'd been fired. The employer contended the claimant resigned. The employer sent the adjudicator a letter from the claimant's supervisor detailing the events of the last meeting, which stated that the employer met with the claimant to discuss the remediation plan. Claimant told them that she'd not looked at the plan, had not been happy there for months, and stated, "if the point of this meeting is to fire me, I will save you the effort." Claimant left the office stating: "this is the happiest day of my life." In the severance letter, the employer stated that, "[u]pon explaining that you failed to meet the expectations within the remediation plan you stated that you have not been 'happy here in months and would happily resign.' I am in complete agreement with that decision." The adjudicator issued a determination stating that the claimant left work voluntarily and was ineligible for benefits. The claimant appealed. At the scheduled hearing the claimant appeared, and the employer did not participate. At the hearing the claimant testified that when the executive director met with her to discuss her evaluation, claimant told her, "I haven't given it a second thought. I thought we had put this behind us." Claimant maintained that she told the employer she would never quit.

The referee issued a decision affirming the determination. The referee found that claimant voluntarily left her position and was "the moving party in her separation." The referee found no evidence that the employer met with claimant to discharge her. The employer met with claimant to discuss the remediation plan and see if claimant had made any changes in her conduct. The evidence showed claimant refused to discuss the matter and stopped the conversation by challenging the employer to discharge her. The referee further found that claimant asked to be discharged by soliciting her separation, and the employer accepted claimant's resignation. The referee explicitly found the claimant's testimony not credible. The claimant appealed to the Board of Review. The Board affirmed the referee. The claimant appealed to the circuit court which affirmed the Board's decision. The claimant appealed.

HELD: The appellate court noted that the Board's finding that there was no evidence that the employer met with claimant to discharge her was supported by the record. The remedial plan explicitly stated, "[w]e want you to remain employed at this program." The appellate court's review of the record confirmed that the evidence therein supported the Board's finding that claimant acted with the intent to compel the employer to discharge her, which constituted a constructive voluntary leaving without good cause attributable to the employer.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.15**
DOCKET/DATE	**ABR12059/3-14-91**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Quit**
CROSS-REFERENCE	**MC 135.3, Discharge/Leaving; MC 165.05, Requirements**

The claimant was a bus driver. He was required to have a valid driver's license. His driver's license was revoked due to an off-duty accident. His employer could no longer retain his services.

HELD: When an occupational license, a tool of an individual's trade, is within his control to obtain and maintain, a work separation that occurs as a result of not obtaining or maintaining that license is a voluntary leaving (constructive quit), not a discharge.

Here, the claimant constructively quit his job when he lost his license.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.15**
DOCKET/DATE	**83-BRD-3789/4-5-83**
AUTHORITY	**Section-601A and S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Quit**
CROSS-REFERENCE	**None**

The claimant worked as a teller. The employer talked with the claimant on the date of separation about his attitude toward his co-workers and about being discourteous with the customers and asked him to improve in these respects. The claimant responded by stating that he was unhappy with his job. He added that he had no intention of improving his attitude toward the customers or his co-workers and that he wished to be discharged so that he would be eligible to collect unemployment benefits. The claimant was then discharged.

HELD: The claimant solicited his separation from work when he challenged the employer to discharge him. This amounts to a constructive quit or leaving; and, since the reasons for leaving were neither attributable to the employer nor for good cause, the claimant is ineligible for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.15**
DOCKET/DATE	**ABR-85-9614/7-10-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Quit**
CROSS-REFERENCE	**None**

During his 2 years of employment, the claimant, a 61-year-old Meat Cutter in a grocery, had worked 40 hours per week. Due to a lack of business, coupled with the claimant's low seniority work status, his hours were reduced to 24 and then to 16 per week, whereupon he expressed his desire to retire by age 62 anyway.

His separation from work -- at age 61 -- came about because, after his hours were cut, he said to the employer, "Why don't you lay me off?" and, subsequently, he refused to service customers and in other ways stopped working up to his capabilities. According to the employer's witnesses, he began "dogging it" so that he could collect unemployment benefits and "coast into his retirement."

Finally, the claimant was told, "O.K., you are laid off, but not fired. you get your wish."

HELD: Whether or not an employer characterizes a work separation as a discharge or a layoff, circumstances may dictate that the issue be more accurately defined as a constructive quit. A constructive voluntary leaving differs from a discharge depending upon the worker's intent. In a discharge, it is understood that the worker may have been at fault for his action, but it is presumed that, despite his actions, he intended to preserve his employment. In a constructive voluntary leaving, the worker's behavior is premeditated, designed with the intention to compel the employer to discharge him or lay him off.

In the instant case, the claimant acted with the intent to compel the employer to discharge him or lay him off. This was a constructive voluntary leaving, for which the claimant was disqualified.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.15**
DOCKET/DATE	**ABR-85-6626/1-16-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Quit**
CROSS-REFERENCE	**VL 475.75, Union Relations**

Pursuant to the terms of the employer's collective bargaining agreement with the union, the payment of union dues was a mandatory condition of employment. The claimant had been aware of this unchanging condition. He also acknowledged receiving letters from his employer concerning his non-payment of union dues; the employer had given him a deadline by which to pay his dues. When the deadline passed, and the claimant had still failed to pay his union dues, he was discharged.

HELD: When there is a union shop and a worker is aware that maintaining membership in the union is a requisite to continued employment, a separation which results from the worker's failure to meet this requisite constitutes a voluntary leaving, even if the employer "discharges" the worker at the union's insistence, since the worker has the choice of remaining employed. Generally, such a voluntary leaving is without good cause attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.15**
DOCKET/DATE	***Hawkins v. IDES*, 268 Ill.App.3d 927, 206 Ill. Dec. 423, 645 N.E.2d 428 (1994)**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Quit**
CROSS-REFERENCE	**VL 50.05; MC 135.3; MC 165.05**

The claimant was a bus driver. In March 1990, he was informed that he had to obtain a commercial driver's license (CDL) by April 1, 1992. The employer made training and study materials available to him. He was advised that he would have three opportunities to pass. The claimant did not attend any training sessions and first took the CDL examination on March 23, 1992, and failed. By the time he passed, on April 28, 1992, the employer had already replaced him.

HELD: When an occupational license is within an individual's control to obtain, a work separation that occurs as a result of not obtaining that license is a voluntary leaving (constructive quit), not a discharge. Here, it was within the claimant's control to obtain his license. The claimant constructively quit by not making a reasonable effort to take the test in time to meet the licensing requirement. He left work without good cause attributable to his employer and benefits were denied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL-135.15**
DOCKET/DATE	***Horton v. IDES*, 781 N.E.2d 545, 335 Ill.App.3d 537, 269 Ill.Dec. 748 (1st Dist., 11/26/02)**
AUTHORITY	**Sections 601(A) and 602(A) of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Quit**
CROSS-REFERENCE	**MC-135.15; Discharge or Leaving, Constructive Discharge**

The claimant was employed as a service agent for a car rental agency. A requirement of the job was that the claimant maintain a current, valid driver's license. Any suspension of the license had to be immediately reported to the employer. Failure to do so would result in the claimant's immediate termination. Employees who do so inform the company are given a 30-day leave of absence to secure a valid driver's license. Notice of the suspension of the claimant's license, effective July 25, 2000, was mailed to the claimant's last address known by the Illinois Secretary of State. On September 13, 2000, the claimant was discharged by the employer for failing to notify the employer of the suspension. At the hearing, the claimant testified that he could not have deliberately and wilfully failed to inform his employer of the suspension because he had never received notice of the suspension. According to the claimant, he had moved from the address listed on his driver's license prior to the date the suspension was mailed. He had not informed the Secretary of State of his change of address but had obtained a State identification card with the new address on September 16, 1999 and had filed a change of address form with the local U.S. Post Office in January, 2000.

HELD: The Appellate Court held that the claimant was disqualified from receiving benefits pursuant to Section 601(A) of the Act. Relying on *Hawkins v. IDES*, 268 Ill.App.3d 927, 206 Ill. Dec., 423, 645 N.E.2d 428 (1994), the court found that the claimant's A failure to maintain a valid driver's license rendered him unable to meet a necessary condition of his employment. As plaintiff voluntarily left his job without good cause attributable to the employer, he is ineligible for unemployment insurance benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving VL 135.15**
DOCKET/DATE	***Ricky R. Dortch*, 18 L 50637 (2018)**
AUTHORITY	**Section 602A(2) of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Quit**
CROSS REFERENCE	**MC 135.3 Involuntary Separation MC 165.05, Employer Requirements**

The Claimant was employed as a maintenance man at several buildings. As a condition of his employment, Claimant was required to maintain a valid driver's license. The Police gave Claimant a ticket for failure to stop at a stop sign. In lieu of bail, Claimant posted his driver's license. Claimant was legally permitted to drive on the ticket. Employer discharged Claimant, as it maintained that Claimant could not work until he regained possession of the physical driver's license. Following a hearing the Referee set aside the determination which denied benefits. The Board of Review set aside the Referee's decision, strictly construing Section 602A(2) to require Claimant to maintain the actual physical driver's license. A similar result would occur under a Section 601A constructive quit analysis.

HELD: In reversing the Board, the circuit court held that the Board's decision was contrary to law, to statute, to rule, and to the vehicle code. Illinois Supreme Court Rule 526 allows an individual to post his driver's license for a traffic offense, in lieu of bail. 92 Ill. Adm. Code 1040.1 defines "driver's license" as, among other things, a traffic ticket.

Interpretation of Remark or Action of Employer or Employee VL 135.2

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.2**
DOCKET/DATE	**ABR-84-12229/10-4-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation of Remark or Action**
CROSS-REFERENCE	**VL 160.05, Efforts To Retain Employment; MC 135.2**

The claimant worked as a Jewelry Salesman, and enjoyed a familiar relationship with the store's owner, for whom he had worked for 25 years. From May, 1983, through September 2, 1983, the claimant had been absent from work due to illness. On September 3, he returned to work, unannounced, and was preparing to open the store, when the owner told him that he had hired a new employee. Upon hearing this, the claimant handed the owner his keys and left.

At a hearing, the employer testified that the new employee had not been hired as a replacement for the claimant. The claimant testified that he had assumed that he had been replaced by the new employee.

HELD: There are some situations in which it is difficult to determine whether a separation is a discharge or a voluntary leaving, as both the employer and worker have made some remark or have taken some action which has contributed to the initiation of a separation. Generally, if an employer makes a remark or takes some action which initiates the separation, then a discharge has occurred. However, if the employee is given a choice of remaining at work, it is a voluntary leaving. In either case, the reasonableness of the parties' actions must be considered.

Even though an employer's remark might generally give rise to a discharge, in the instant case, the claimant's belief that he had been discharged was not reasonable. Considering his many years of employment, and his familiar relationship with the owner, the claimant should have taken steps to ascertain his status. His failure to do so by departing abruptly constituted a voluntary leaving without good cause attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.2**
DOCKET/DATE	**84-BRD-742/1-19-84**
AUTHORITY	**l./S-601A and S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation Of Remark Or Action Of Employer Or Employee**
CROSS-REFERENCE	**None**

On October 19th, the claimant informed his supervisor that he had arranged for a job interview on October 21st in New York, and he asked for permission to take the day off. The supervisor refused permission because the claimant was working on an assignment that could not be completed before October 25th. In an interview with the adjudicator, the claimant stated, "I was told by my supervisor that if I left, I no longer needed to come back." The claimant went to the interview and was then terminated.

HELD: The employer made it clear that if the claimant took the time off he would no longer be employed. By remaining at work, the claimant could have continued the employment. However, by electing to make the trip, he took the action which severed the relationship. The separation was a voluntary leaving for a personal reason which was not attributable to the employer. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.2**
DOCKET/DATE	**ABR-85-9144/7-14-86**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation Of Remark Or Action**
CROSS-REFERENCE	**MC 45.05, Attitude Toward Employer; MC 135.2**

The claimant, an Automobile Service Manager, did not receive the wage increase he had anticipated. Subsequently, during his lunch hour, he pored over job advertisements in a newspaper. He was observed doing this by a superior, who questioned the claimant's intentions. The claimant stated that, as a result of the lack of a wage increase, he felt compelled to seek other work. He informed his superior that, when he found other work, he would give the employer appropriate (2 or 3 week) notice. The claimant worked the rest of his shift that day, after which he was again questioned about his intentions. He repeated what he had said earlier, whereupon he was instructed to leave work immediately.

HELD: At some point in time, either the employer no longer has the option of continuing the worker in employment or the worker no longer has the option of remaining at work. The separation occurs at such point in time. If the employer has made a remark or committed an action which prevents the worker from remaining in employment, the separation is a discharge; if the worker has made a remark or committed an action which prevents the employer from retaining him in employment, the separation is a voluntary leaving.

In the instant case, the claimant's statements did not indicate that he would be leaving his job at any ascertainable time, nor did his actions indicate that he had ceased, or would imminently cease, performing his duties under the terms of hire. The employer had the option of continuing the claimant in employment, but chose not to do so. This, then, was a discharge, not a voluntary leaving.

(This was a discharge not for misconduct -- See MC 45.2 & .3.)

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.2**
DOCKET/DATE	***Dunn v. Director*, 476 N.E. 2d 77 (1985)**
AUTHORITY	**Sections 601A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation of Remark or Action of Employee**
CROSS-REFERENCE	**VL 500.4, Wages, Increase Refused**

The claimant worked for 3 years as a retail clerk and was earning $5.25 per hour. There was no evidence that this was an unsuitable wage. On a Friday, he wrote his employer a note: "Starting Monday...I must have $7.60 per hour, or please send [me] my pink-slip." On Monday, the claimant did not report to work or notify the employer of the reasons for his absence. That evening, the employer responded: "You are considered to have self-terminated yourself from employment." The claimant asked whether his claim for unemployment benefits would be contested. The employer informed him that it would. On Tuesday, the claimant attempted to report to work but was escorted from the premises by security guards.

The claimant contended that, because his note gave the employer a choice (give him a 46% pay raise or a pink-slip), this was not a voluntary leaving.

HELD: Generally, if a worker has a choice of remaining employed, his work separation is a voluntary leaving, but, if the employer is unwilling to allow the worker to continue working, the separation is a discharge.

In any case, in order to determine whether a party is exercising a choice, it is necessary to determine his intent. Intent is to be garnered from the totality of the evidence presented, including an examination of a party's words and actions.

In this case, the claimant contended that the employer chose to discharge him. However, the claimant's use of the term "pink-slip," which ordinarily means discharge by the employer, was not dispositive of the issue of intent. The claimant's words (the note) and his actions (an absence without notice and the fact that he would not report again if unemployment benefits were uncontested) indicated that it was his intent, and he chose, to discontinue the employment relationship.

This was a voluntary leaving. Because there was no showing that the claimant's current wage was unsuitable, the leaving was without good cause attributable to the employer.

Leaving Prior to Effective Date of Discharge VL 135.25
No Decision

Leaving in Anticipation of Discharge VL 135.35

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.35**
DOCKET/DATE	**83-BRD-10405/9-8-83**
AUTHORITY	**Section-601A and S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Leaving In Anticipation Of Discharge**
CROSS-REFERENCE	**None**

The claimant was questioned about his possible involvement in some thefts committed by employees. He was asked to take a polygraph test in connection with this investigation, but he quit rather than take the test. He denied committing any thefts. The claimant had no prospect of other employment at the time he resigned.

HELD: At the time that the claimant resigned, he had no definite knowledge that he would be discharged if he refused to take a polygraph test. The claimant voluntarily left work without good cause since he has not established that a discharge was imminent. The claimant is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.35**
DOCKET/DATE	**83-BRD-11134/9-30-83**
AUTHORITY	**Section-601A and S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Leaving In Anticipation Of Discharge**
CROSS-REFERENCE	**None**

The claimant quit her job because she felt that she might be discharged because of her poor attendance record. She had been taking time off due to illness. She was not informed by the employer that she was going to be discharged for any reason, prior to her leaving.

HELD: The claimant voluntarily left work in anticipation of being discharged; however, she was never told by her employer that her discharge was imminent. The claimant's separation was a voluntary leaving which was not attributable to the employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.35**
DOCKET/DATE	**ABR-85-7421/4-7-86**
AUTHORITY	**Sections 601A and 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Leaving in Anticipation of Discharge**
CROSS-REFERENCE	**VL 138.05, Disciplinary Action; MC 135.35**

The claimant was employed by the Department of Transportation, which had undertaken an investigation to see whether the claimant had misused vehicles assigned to him and/or whether he had kept improper time records. The claimant volunteered to resign if the employer would not pursue its investigation, the outcome of which was as yet unknown (to the employer); no formal charges had been filed against the claimant. The employer did not object to the claimant's suggestion. The claimant resigned.

HELD: A worker who leaves work in anticipation of a discharge for misconduct cannot evade the attendant disqualification by leaving. In cases where a discharge is imminent, the separation is considered a discharge and the claim is adjudicated accordingly.

In cases where the claimant suspects that he will be discharged, but is under no threat of imminent discharge, the separation is considered a voluntary leaving and the claim is adjudicated accordingly.

In the instant case, the claimant left work voluntarily. He did not show that the work had become unsuitable, so as to affect his well being, only that the employer was exercising its prerogative to conduct, in a reasonable fashion, an investigation into its business affairs. The claimant left work without good cause attributable to his employer and was subject to the disqualifying provisions of Section 601A.

ISSUE/DIGEST CODE	**VOLUNTARY LEAVING / VL 135.35**
DOCKET/DATE	**ABR-93-10137 / 4-20-94**
AUTHORITY	**Section 601A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Leaving in Anticipation of Discharge**
CROSS-REFERENCE	**MC 135.35, Discharge or Leaving**

The claimant's employer was served with a court order to withhold payments to the claimant, for child support. The employer wanted "nothing to do with it" and told the claimant to "take a walk" unless he intended to catch up with a lump sum payment to his wife by the end of the week. There was nothing the claimant could do, because he had no money and needed the job in order to continue to pay child support, so he left.

HELD: A discharge occurs when an employer gives an individual no genuine option to remain employed. Leaving work to avoid a definite and imminent discharge does not change a discharge to a voluntary leaving. In the instant case, the claimant did not have any option to continue working, inasmuch as he would be unable to comply with the employer's directive within the time provided. This was a discharge.

Resignation Intended VL 135.4

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.4**
DOCKET/DATE	**ABR-90-7139/10-15-90**
AUTHORITY	**Sections 601A and 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Resignation Intended**
CROSS-REFERENCE	**None**

During a discussion with the employer's manager about pay, the claimant gave two weeks' notice that he would quit. Following the discussion, the claimant engaged in behavior that disrupted the workplace. The manager informed the claimant that the employer would forego the two week notice period and that he should leave immediately.

HELD: A discharge occurs when a worker is given no option to remain employed. A voluntary leaving occurs when the worker chooses not to remain employed. Whether a worker has an option to remain employed or chooses not to remain employed is determined by examining his and the employer's words and actions.

Here, the claimant gave two weeks' notice that he would quit. But the two weeks was a formality and not an expression that the claimant actually intended to work two more weeks, as evidenced by his disruptive behavior. This was a voluntary leaving.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.4**
DOCKET/DATE	**BR91921/9-20-89**
AUTHORITY	**Sections 601A and 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Resignation Intended**
CROSS-REFERENCE	**MC 135.1, Discharge or Leaving**

The claimant, an administrative assistant, worked from 9 to 5, then requested a change to part-time hours, noon to 5, because she wanted to work mornings as a trader at the Board of Trade. Her supervisor agreed to a 30-day trial period. After 30 days, on February 9, the supervisor told her that he really needed a full-time administrative assistant.

At that February 9 meeting, both the claimant and her supervisor became upset. The supervisor told her that she had until February 11 to make up her mind. After the claimant left for the day, the supervisor removed the claimant's work from her desk and cleaned off the desk-top, including removing her computer. On February 10, the claimant called in sick. When the claimant reported to work on February 11, she saw that her desk had been cleaned out. A secretary told her she was fired.

HELD: An individual is discharged when the employer takes the action that results in her unemployment and she does not have a choice of remaining employed. An individual leaves work when she has a choice of remaining at work, but takes the action that results in unemployment.

Here, the claimant's desire to try part-time hours was not the cause of her unemployment. The employer took the action that resulted in her unemployment. When the supervisor cleaned out the claimant's desk, the claimant no longer had any choice. This occurred on February 9, pre-dating the claimant calling in sick on February 10, as well as the February 11 ultimatum date, so whatever the claimant might have intended on those subsequent days was irrelevant.

This was a discharge, not an intended resignation.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.4**
DOCKET/DATE	**83-BRD-7837/6-30-83**
AUTHORITY	**Section-601A and S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Resignation Intended**
CROSS-REFERENCE	**None**

The claimant notified the employer on April 6th that April 16th would be her last day of work because she was going to get married and move out of town. She called in sick the next two working days, and, when the employer telephoned her home, her mother stated that she was out shopping. She did not report or telephone on the third day, and she was told her services were no longer required. The employer filled her position.

HELD: The claimant gave notice to quit her job because she was getting married and moving to another area. Her actions subsequent to giving the notice were consistent with the abandonment of her job, and the employer rightfully accelerated her date of leaving. The claimant's decision to quit her job for reasons of marriage and relocation was a matter of personal choice and is not attributable to the employer. She is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.4**
DOCKET/DATE	**83-BRD-9680/8-23-83**
AUTHORITY	**Section-601A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Resignation Intended**
CROSS-REFERENCE	**None**

In December, the claimant announced her resignation effective the end of January. Her husband had accepted a new job, and they would be relocating to another state. Her replacement was hired on January 8 and was to begin work on January 20. The claimant and her husband reconsidered their decision to move, and, on January 10, she attempted to rescind her resignation, but the employer refused her request.

HELD: The claimant initiated the separation by informing the employer that she intended to resign because she was moving out of state. The employer's refusal to accept the claimant's later attempt to withdraw her resignation did not change the separation from a voluntary leaving to a discharge. Therefore, the claimant voluntarily left work without good cause attributable to the employer and is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.4**
DOCKET/DATE	**ABR-18-1828570/12-14-18**
AUTHORITY	**Section 601Aof the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Resignation Intended / Later Attempt to Revoke Resignation**
CROSS REFERENCE	**None**

Claimant became frustrated with her shift manager because Claimant felt that the shift manager was not doing her work and was on the telephone. Out of frustration, Claimant told her shift manager that she quit. Claimant claimed that she did not mean to quit and had said that she quit only out of frustration. Claimant reported to work the next day as scheduled but was told that she could no longer work for Employer, as Employer had accepted her resignation.

HELD: Claimant quit her employment without good cause attributable to Employer, as an employee's resignation is effective upon its acceptance by the employer and may not be revoked unilaterally by the employee, even if the effective date of the resignation has not yet passed. The Board cited *Gras v. Clark* 46 Ill.App.3d 803, 361 N.E.2d 316, 5 Ill.Dec. 177 (1977).

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.4**
DOCKET/DATE **83-BRD-14515/12-7-83**
AUTHORITY **Section-601A and S-602A**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **VL 150.15, Removal From Locality under Distance To Work**

The claimant relocated to a community a considerable distance away from the employer and notified the employer that she intended to quit work in two weeks. She called in sick two days before she was scheduled to quit, and the employer told her not to report after that date.

HELD: The evidence established that the claimant quit work because of her relocation and that the employer merely accelerated her last day of work. The claimant's reason for leaving work was personal and did not constitute good cause attributable to the employer. She is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.4**
DOCKET/DATE **ABR-85-1566/6-20-85**
AUTHORITY **Section 601A and Section 602A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **VL 365.25, Prospect of Other Work, Uncertain**

The claimant had been employed for 5 years as a Machine Operator and Laborer. In announcing, 2 weeks prior to his departure, that he would be relocating to Texas where he hoped to obtain a higher paying job, he did not request a leave of absence, and withdrew what was due him from the employer's retirement fund. When, 8 weeks later, the claimant returned from Texas, after the job he had hoped to obtain did not materialize, he attempted to return to work for his former employer.

At an appeal hearing, the employer testified that the claimant had not been rehired due to a "hiring and firing freeze." The claimant testified that he had been told that if he returned from Texas he would be able to get his prior job back.

HELD: Whether an individual leaves work voluntarily or is discharged is determined from an examination of the intentions of the parties as evidenced by their words and actions. A voluntary leaving occurs when the worker takes the action which results in his unemployment and the worker has a choice of remaining in employment at the time he ceases to work. In the instant case, not only did the claimant announce his intention to leave during a period when continuing work was available, he forewent a leave of absence, withdrew his retirement money, and did in fact relocate to Texas. To that extent, the claimant's actions constituted a voluntary leaving.

When a worker's attempt to withdraw a previously submitted resignation is refused by his employer, the refusal does not generally make the employer the moving party, resulting in a discharge instead of a voluntary leaving, unless it has been established that there existed an ongoing job tenure. Although, in the instant case, the claimant may have been told that he would be able to get his old job back, the evidence did not establish that there existed an ongoing job tenure supported by any contractual obligation, binding reciprocity, or consideration. Therefore, the employer's refusal to rehire the claimant did not result in a discharge instead of a voluntary leaving.

(See also VL 365.25.)

ISSUE/DIGEST CODE **Voluntary Leaving/VL135.4**
DOCKET/DATE ***Champaign-Urbana Public Health District v. The Board of Review of the Department of Employment Security, et al,*** **395 Ill. App. 3d 182, 338 Ill.Dec. 536, 924 N.E. 2d 1062 (4th Dist., 2009)**
AUTHORITY **Section 601(A) of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **None**

In early May, 2007, the plaintiff's Finance Director anonymously reported to the plaintiff that her supervisor had engaged in financial impropriety with plaintiff's funds. On May 4, 2007, she removed all personal items from her office and submitted an unsolicited letter of resignation to the plaintiff's Chairperson citing her difficulty with her supervisor as the reason for her

departure, which she noted was "effective immediately". After receiving the letter of resignation, the Chairperson asked the Finance Director if she would be willing to stay at her job if her supervisor was no longer employed, to which the Finance Director responded affirmatively. In their testimony before the Referee, the Chairperson stated that her question to the Finance Director was merely hypothetical, while the Finance Director interpreted the question as an offer of continued employment which she accepted.

The Finance Director returned to her office on May 7, 2007, and began working on the plaintiff's budget. She went home sick on May 8th and on May 9th sent a letter to the Chairperson, attempting to negotiate a severance package. She again went home sick on May 10th. On Friday, May 11, 2007, the plaintiff's legal counsel informed the Finance Director's Acting Supervisor that the letter of resignation of May 4, 2007 was final as of that date. The Acting Supervisor immediately informed the Finance Director in writing that her resignation had become final on May 4, 2007. The Finance Director filed for, and was granted, unemployment benefits, a decision that was eventually appealed by the plaintiff to the Appellate Court.

HELD: The Appellate Court found that the Finance Director's unsolicited resignation was final and irrevocable at the time she hand-delivered the resignation letter, which stated it was "effective immediately", to the Chairperson on May 4, 2007. According to the Appellate Court, public policy requires that there be certainty as to who are or are not public officers or employees, and, thus, in Illinois, it has long been the law that, when a public officer or employee tenders his or her resignation, the resignation is an unalterable fact that cannot be withdrawn and cannot be negated by the resignee's continued performance of his or her job duties. Because the Finance Director's resignation became effective on May 4, 2007, her part-time work on the plaintiff's budget after that date was irrelevant as to her employment status. Since the Finance Director's resignation was voluntary and without good cause attributable to the plaintiff, she was disqualified for benefits pursuant to Section 601(A) of the Act. The court remanded the matter to the Department to determine if the Finance Director was eligible for benefits pursuant to the other provisions of Section 601.

Disciplinary Action VL 138
General VL 138.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 138.05**
DOCKET/DATE	**83-BRD-10166/8-31-83**
AUTHORITY	**Section-601**
TITLE	**Disciplinary Action**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

When the claimant was placed on a five day suspension for poor attendance, she walked off the job before the end of her shift. The claimant had received three prior warnings and two suspensions because of absenteeism.

HELD: The right of an employer to reprimand his employees is recognized, and a reasonable reprimand is not good cause for voluntary leaving. If the imposition of a penalty is warranted and not severe in relation to the offense, the worker who leaves because of such penalty voluntarily leaves work without good cause. The receipt of previous warnings regarding the same offense is a factor in deciding whether the penalty is unduly severe. In this instance, the claimant's prior warnings and suspensions for the same offense justified the last suspension which was neither too severe nor unwarranted. The claimant's reason for leaving, although attributable to the employer, was not for good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 138.05**
DOCKET/DATE	**83-BRD-11419/10-7-83**
AUTHORITY	**Section-601**
TITLE	**Disciplinary Action**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked as a computer operator. Her principal duty was the scheduling of the maids. She had received written warnings for improper scheduling, the last one on March 2, 1983, and she was told on that date that the next infraction would result in further disciplinary action up to and including a 3-day suspension. She quit on March 4, 1983, without notice, because of the last written warning.

HELD: The right of an employer to reprimand his employees is recognized, and a reasonable reprimand is not a good cause for voluntary leaving. If the imposition of a penalty is warranted and not severe in relation to the offense, the worker who leaves because of such penalty voluntarily leaves without good cause. The fact that the claimant had received prior warnings regarding the offense is a factor in deciding whether the penalty is too severe.

In this instance, the claimant had received prior warnings for the same offense; so the threat of more severe disciplinary action in the future is not unreasonable. The claimant's voluntary leaving, while attributable to the employer, was not for good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 138.05**
DOCKET/DATE	**83-BRD-12269/10--31-83**
AUTHORITY	**Section-601A and S-602A**
TITLE	**Disciplinary Action**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was suspended for two days for an unsatisfactory attendance record. He previously had received a written warning regarding his attendance. When he reported late to work, he was suspended. At the expiration of the suspension, the claimant did not return to his job because he believed the suspension was unjustified.

HELD: When the claimant decided not to return to work at the expiration of the two-day suspension, he voluntarily left work. The reason for his leaving is attributable to his employer but was not for good cause. The suspension was justified since the claimant had received a prior written warning for the same offense. The claimant voluntarily left work without good cause and is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 138.05**
DOCKET/DATE	**ABR-86-141/4-7-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Disciplinary Action**
SUBTITLE	**Probation**
CROSS-REFERENCE	**VL 235.45, Health or Physical Condition**

The claimant's supervisor told her that her work needed improvement. There was a possibility that the claimant might be placed on 30 day probation, after which, if her work did not improve, she might be discharged. Following the conversation with her supervisor, the claimant did not avail herself of the employer's grievance procedure; instead, she submitted her resignation, stating that she found it too stressful to return to her work environment.

HELD: A disciplinary action which is unwarranted, unduly harsh, or which subjects a worker to undue embarrassment may afford that worker good cause for a voluntary leaving. However, a claimant who leaves work because she considers a disciplinary act, or the manner in which it is applied, to be unjustified or unduly harsh, but does not pursue a reasonable opportunity to remedy the situation, leaves work without good cause. In the instant case, the claimant failed to demonstrate that she would in fact have been subject to discipline, or that such possible discipline would have been unwarranted or unduly harsh, or that she had pursued a reasonable opportunity to remedy the situation. Therefore, she left work without good cause attributable to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 138.05**
DOCKET/DATE	**ABR-85-7421/4-7-86**
AUTHORITY	**Sections 601A and 602A of the Act**
TITLE	**Disciplinary Action**
SUBTITLE	**Leaving in Anticipation of Discharge**
CROSS-REFERENCE	**VL 135.35, Discharge or Leaving; MC 135.35**

The claimant was employed by the Department of Transportation, which had undertaken an investigation to see whether the claimant had misused vehicles assigned to him and/or whether he had kept improper time records. The claimant volunteered to resign if the employer would not pursue its investigation, the outcome of which was as yet unknown (to the employer); no formal charges had been filed against the claimant. The employer did not object to the claimant's suggestion. The claimant resigned.

HELD: A worker who leaves work in anticipation of a discharge for misconduct cannot evade the attendant disqualification by leaving. In cases where a discharge is imminent, the separation is considered a discharge and the claim is adjudicated accordingly. In cases where the claimant suspects that he will be discharged, but is under no threat of imminent discharge, the separation is considered a voluntary leaving and the claim is adjudicated accordingly.
In the instant case, the claimant left work voluntarily. He did not show that the work had become unsuitable, so as to affect his well being, only that the employer was exercising its prerogative to conduct, in a reasonable fashion, an investigation into its business affairs. The claimant left work without good cause attributable to his employer and was subject to the disqualifying provisions of Section 601A.

Discrimination VL 139
General VL 139.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 139.05**
DOCKET/DATE	**ABR-85-3377/9-24-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Discrimination**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 385.05, Relation of Alleged Cause of Leaving**

The claimant, who had been employed as a Secretary, gave a number of reasons for quitting her job; among them, discrimination. The claimant was of Mexican origin. She testified without contradiction that, from the time she became employed until the day she quit, her employer made disparaging remarks in her presence about Mexicans and belittled her by name-calling in front of her co-workers.

HELD: When multiple reasons are presented for leaving work, good cause is found if one genuine reason constitutes good cause attributable to the employing unit. Discrimination on account of race is an unjustifiable business practice with respect to unemployment insurance eligibility, and good cause will be found in a voluntary leaving based upon such discrimination.

In the instant case, although the claimant cited a number of reasons for quitting, the Board of Review considered it necessary to discuss only one. The record established that the employer was responsible for a work environment which the claimant reasonably perceived to be unfair and abusive. The voluntary leaving was, therefore, on that basis alone, with good cause attributable to the employer. The claimant was not subject to a disqualification under Section 601A of the Act.

Distance to Work VL 150
General VL 150.05
No decision

Removal from Locality VL 150.15

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 150.15**
DOCKET/DATE	**83-BRD-14515/12-7-83**
AUTHORITY	**Section 601A and S-602A**
TITLE	**Distance To work**
SUBTITLE	**Removal From Locality**
CROSS-REFERENCE	**VL 135.4 Resignation Intended under Discharge Or Leaving**

The claimant relocated to a community a considerable distance away from the employer and notified the employer that she intended to quit work in two weeks. She called in sick two days before she was scheduled to quit, and the employer told her not to report after that date.

HELD: The evidence established that the claimant quit work because of her relocation and that the employer merely accelerated her last day of work. The claimant's reason for leaving work was personal and did not constitute good cause attributable to the employer. She is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 150.15**
DOCKET/DATE	**83-BRD-14716/12-9-83**
AUTHORITY	**Section-601A**

TITLE **Distance To work**
SUBTITLE **Removal From Locality**
CROSS-REFERENCE **VL 150.2, Transportation And Travel under Distance To Work**

The claimant left work to move to a more distant community when her son sold the building in which she formerly resided. She did not have an automobile, and her new community did not have public transportation on Saturdays and Sundays, days on which she worked. The claimant left work because of the lack of transportation on weekends.

HELD: The claimant relocated to a new community where she no longer had public transportation to work. The claimant's transportation problems are not attributable, in this instance, to the employer. The claimant voluntarily left work without good cause attributable to the employer and is disqualified for benefits.

Transportation and Travel VL 150.2

ISSUE/DIGEST CODE **Voluntary Leaving/VL 150.2**
DOCKET/DATE **83-BRD-7270/6-28-83**
AUTHORITY **Section-601A**
TITLE **Distance To work**
SUBTITLE **Transportation And Travel**
CROSS-REFERENCE **None**

The claimant worked as a medical assistant for approximately four months. She was having difficulty learning how to draw blood from patients. As a result the employer transferred her to a facility approximately one hour's driving time from the claimant's home, where she could learn the procedure. The employer has numerous facilities in the area, and the claimant knew when she was hired that her job site could change, based upon a monthly posting. The claimant refused the transfer and thereby quit her job. She shared an automobile with her husband, and public transportation to the new job site would be difficult.

HELD: Inconvenient transportation does not constitute good cause for voluntarily leaving work attributable to the employer unless the employer violates the conditions of employment agreed to at the time of hire, which is not the case here. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 150.2**
DOCKET/DATE **83-BRD-10817/9-22-83**
AUTHORITY **Section-601A**
TITLE **Distance To work**
SUBTITLE **Transportation And Travel**
CROSS-REFERENCE **None**

The claimant's automobile was wrecked in an accident. He requested and was given a one-month leave of absence in order to find new transportation. He was unable to make suitable transportation arrangements and quit his job when he was due to return to work.

HELD: While the claimant quit his job for a compelling personal reason, it was not attributable to his employer. The claimant voluntarily left work without good cause attributable to the employer and is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 150.2**
DOCKET/DATE **83-BRD-14716/12-9-83**
AUTHORITY **Section-601A**
TITLE **Distance To work**
SUBTITLE **Transportation And Travel**
CROSS-REFERENCE **VL 150.15, Removal From Locality under Distance To Work**

The claimant left work to move to a more distant community when her son sold the building in which she formerly resided. She did not have an automobile, and her new community did not have public transportation on Saturdays and Sundays, days on which she worked. The claimant left work because of the lack of transportation on weekends.

HELD: The claimant left work voluntarily because she was without a means of transportation to and from work following her relocation. The claimant's transportation difficulties are not attribute to the employer. Therefore, she is ineligible for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 150.2**
DOCKET/DATE	**ABR-86-1747/7-31-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Distance to Work**
SUBTITLE	**Transportation and Travel**
CROSS-REFERENCE	**VL 450.153, Time, Hours; VL 500.752**

The claimant traveled 68 miles each way to his work, as a Heavy Equipment Operator, which he performed 5 days per week, 9 to 10 hours per day. Then his work schedule was changed: He was assigned 2 days of work per week, and sometimes those were half days. The claimant testified that, due to his reduced work schedule, he was compelled to quit; he could no longer afford to travel the 68 miles to and from work.

HELD: A reduction in wages - which occurs only as a result of a reduction in hours - does not constitute good cause attributable to the employing unit for leaving, unless the time or costs of transportation become disproportionate to the earnings. In the instant case, the time and money spent by the claimant in order to travel to and from his work had become disproportionate to his earnings. He left work with good cause attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL-150.2**
DOCKET/DATE	***Jamie v. IDES*, 301 Ill.App.3d 930, 235 Ill.Dec. 148, 704 N.E.2d 721 (1st Dist., 11/25/98)**
AUTHORITY	**Section 601A**
TITLE	**Distance to Work**
SUBTITLE	**Transportation and Travel**
CROSS-REFERENCE	**None**

The claimant had worked for 10 years at the employer's location on Chicago's south side when the employer decided to move its facility 16 miles further south into the suburbs. For a period of between six weeks to two months, the claimant was able to commute to work by riding with a fellow employee. However, when that employee quit, the claimant also quit, asserting to the claims adjudicator that she quit due to a lack of transportation.

HELD: The employer's unilateral decision to move its plant 16 miles away from its former location constituted a good cause attributable to the employer with respect to the claimant's leaving work. The claimant's testimony at the hearing demonstrated that she made a reasonable attempt to maintain her job of 10 years by riding with a co-worker for approximately six weeks. She should not be penalized for making an attempt to keep her job. While an employee's transportation to and from work is generally not the responsibility of the employer, this claimant's inability to keep her job was the direct result of the employer's decision to move its plant, which significantly changed the conditions of the claimant's employment.

Domestic Circumstances VL 155
General VL 155.05
No decision

Children, Care of VL 155.1

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.1**
DOCKET/DATE	**83-BRD-3122/3-24-83**
AUTHORITY	**Section-601A**
TITLE	**Domestic Circumstances**
SUBTITLE	**Children, Care Of**
CROSS-REFERENCE	**None**

The claimant's mother usually took care of the claimant's minor children while she worked but could no longer do so due to illness. The claimant's inability to find alternative suitable child supervision forced her to leave her job.

HELD: Although the claimant's reason for leaving work was due to a compelling personal circumstance, it was not attributable to the employer. Therefore, the claimant is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.1**
DOCKET/DATE	**ABR-83-12308/8-9-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Children, Care Of**
CROSS-REFERENCE	**VL 50.05, Attributable To or Connected With Employment**

The claimant worked as a Station Clerk on the 11 p.m. to 7 a.m. shift for 2-1/2 years. In May, 1983, she was informed that due to staff shortages she was being temporarily assigned to the 3 p.m. to 11 p.m. shift. Upon being informed, the claimant immediately complained that she had no one to watch her children during that shift, explaining that her brother normally took care of her children but was unavailable on a permanent basis for those hours. The claimant also explained that she wished to continue to supervise her young children's activities after school. An employer's memorandum, dated May 2, 1983, acknowledged that the claimant had expressed concern about working the 3 p.m. to 11 p.m. shift, and stated that the change would exist only for 2 months, until the regular employees on that shift returned from their vacations
In June, 1983, the claimant received a memorandum informing her that she would be permanently assigned to the 3 p.m. to 11 p.m. shift, beginning in July, 1983. The claimant again informed her employer that she could not work that shift. The employer did not offer the claimant any alternative. When the claimant did not report to work as scheduled in July, she was deemed to have resigned.

HELD: Generally, it is the responsibility of a worker to arrange her family and domestic affairs so as to permit her to be gainfully employed. However, it should be noted that there is sometimes misunderstanding as to whether or not a voluntary leaving is due to domestic circumstances or a change in working conditions. If there are any significant changes in working conditions which affect domestic circumstances, then the voluntary leaving may be due to the change in working conditions and attributable to the employer.

In the instant case, it was the employer's action which precipitated the claimant's separation from work. The claimant left work not because of domestic circumstances alone, but because of a change in working conditions brought about by the employer. The evidence established that the claimant would have continued working, but for the employer's action. The fact that the claimant could not accept the change because of her domestic circumstances did not mean that the separation was not attributable to the employer, but, rather, that the claimant had good cause for separating from employment. The claimant left work with good cause attributable to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.1DOCKET/DATE ABR-85-2581/12-24-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Children, Care Of**
CROSS-REFERENCE	**VL 50.05, Attributability; VL 135.05; MC 135.05**

The claimant was employed by a hospital as a Respiratory Technician. The claimant was regularly scheduled to work the day shift, but was also scheduled - as were other Therapists - to work the night shift. After 2 years of such employment, the claimant told his employer that he would not be able to work the night shift; but the employer demanded that he make a commitment to his work and agree to work at any time the employer might schedule him, or be discharged. The employer's Chief Therapist stated:

> I told (the claimant) it was unfair that other staff had to work another shift occasionally if he did not. I told him it was not very often that this would be required. He asked if I could guarantee that (it would not be often) and I said no...I told (the claimant) that everyone is expected to work a different shift if needed and that if he was not willing to accept that job responsibility he would have to be terminated...

The claimant, who was divorced and had custody of his children, ages 5 and 3, had had regular day care arrangements for them. He testified that had regular day care arrangements for them. He testified that he refused to work an occasional night shift because he could not afford to pay a baby-sitter for nights, and because he wished to spend more time with his children.

Following his refusal to work a night shift, the claimant was taken off the employer's schedule.

HELD: Generally, it is the responsibility of workers to arrange their family and domestic affairs so as to permit them to be gainfully employed. A worker who leaves work voluntarily, in order to devote time to family or domestic affairs, does so for reasons not attributable to his employer, and is subject to a disqualification - unless the employer has substantially changed the work requirements, thereby placing an undue burden upon the claimant's family or domestic affairs.

In the instant case, the employer made no substantial change in the work requirements; the claimant did. From the onset, the nature of the claimant's work, that of a Respiratory Therapist, was manifestly such that the claimant might -- from time-to-time, or even often, with little or no advance notice -- have been needed in emergency, life-threatening situations. This necessity, whether it was express or implied, was one of the conditions under which the claimant had been hired. It was common in the health care field. The claimant had been well aware of the requirements of such work when he accepted the job.

Under those circumstances, his decision to devote more time to his family, at the expense of his job, constituted a voluntary leaving not attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.1**
DOCKET/DATE	**ABR-88-3688/7-14-88**
AUTHORITY	**Section 601A of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Children, Care Of**
CROSS-REFERENCE	**VL 160.05, Efforts to Retain Employment**

The employer was about to transfer the claimant to work at a different location with different hours. The change in hours would affect her childcare situation. She explained this to the employer. The employer offered to delay her transfer to give her time to resolve the childcare problem. Instead, she quit.

HELD: When an individual leaves work in order to care for her children, the factor that determines whether she leaves with good cause is the necessity that exists at the time of leaving.

In this case, the employer was willing to make a reasonable accommodation, in terms of time, so that a childcare problem might be resolved. Whether or not the problem would be resolved eventually, no necessity to leave existed at the time the claimant left. Therefore, she left work without good cause and was subject to disqualification under Section 601A.

Home or Spouse in Another Locality VL 155.2

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.2**
DOCKET/DATE	**83-BRD-14150/6-28-83**
AUTHORITY	**Section-601A**
TITLE	**Domestic Circumstances**
SUBTITLE	**Home or Spouse In Another Locality**
CROSS-REFERENCE	**None**

When the claimant was separated from her husband and found that she was unable to support her family, she decided to quit her job and move to Alabama, where she has relatives.

HELD: While the claimant may have left work for valid personal reasons, they were not attributable to her employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.2**
DOCKET/DATE **83-BRD-7398/6-15-83**
AUTHORITY **Section-601A**
TITLE **Domestic Circumstances**
SUBTITLE **Home Or Spouse In Another Locality**
CROSS-REFERENCE **None**

The claimant worked as an iron worker out of state for fifteen months at a wage of $16.25 per hour. He quit his job because he felt his absence was a strain on his family. He also believed that he had a fairly good chance of finding work through his union affiliations near his home.
HELD: The claimant's decision to quit his job to obtain work near his home was a matter of choice and not a factor which can be deemed attributable to the employer. The claimant voluntarily left work without good cause attributable to the employer and is disqualified for benefits.

Housing VL 155.3
No decision

Illness or Death of others VL 155.35

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.35**
DOCKET/DATE **ABR-85-9787/8-20-86**
AUTHORITY **Section 601 of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Illness or Death of Others**
CROSS-REFERENCE **None**

The Referee found that the claimant left her job to relocate to Arkansas to tend to her terminally ill mother; her mother had falling spasms and was unable to get up by herself. In making that finding, the Referee relied upon a doctor's statement, which read, in pertinent part:
(The claimant's mother) does have some post-stroke hemiparesis along with poorly controlled diabetes. She does have considerable disability as far as taking care of her home and her needs.

The Referee then concluded that, because the claimant was not specifically advised by a doctor to leave her work to minister to her mother, she did not meet the conditions for a Section 601B(1) exception to the disqualifying provisions of Section 601A.

HELD: Section 601B(1) of the Act provides, in pertinent part, that a disqualification for Voluntary Leaving, under Section 601A, shall not apply, if an individual has left work -

> upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for...a parent who is in poor physical health and such assistance will not allow (the claimant) to perform the usual and customary duties of...employment...

Section 601B(1) does not state that a doctor must tell a worker to leave her job.

In this case, it was immaterial that the doctor did not tell the claimant to leave her job. What was decisive was that the claimant's mother, according to her doctor, could not take care of herself, and that the doctor advised the claimant that care was necessary for her mother.

The claimant was not subject to a disqualification for benefits by reason of having left work, because of the exemption set forth under Section 601B(1) of the Act.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.35**
DOCKET/DATE **83-BRD-3343/3-31-83**
AUTHORITY **Section-601A and 601B1**
TITLE **Domestic Circumstances**
SUBTITLE **Illness or Death of Others**
CROSS-REFERENCE **None**

The claimant worked for the employer as a clerk for eleven years. She began her vacation, and, before she was scheduled to return to work, her husband suffered a heart attack. The claimant notified her supervisor she would be unable to return to work as planned. She did not request a leave of absence, nor did she understand that she had been granted one, Her supervisor told her that he understood the problem and that she should keep the employer informed of her intentions.

The husband's doctor had not advised the claimant that it was necessary for her to be with her husband full time, but she felt that this was the proper thing to do.
Although the claimant contacted co-workers on several occasions, she did not contact her supervisor again and did not respond to a letter which inquired as to when she planned to return to work. The employer assumed that the claimant had quit. The claimant stated that she had not received the employer's letter because it was sent to her old address.

HELD: The claimant voluntarily quit her employment when she did not return to available work at the end of her vacation. She might have avoided this consequence if she had requested and been granted a leave of absence, but she did not do so. This result was confirmed in the mind of the employer when the claimant made no further effort to contact him and when she did not reply to his letter of inquiry.

While the claimant quit her job for a compelling domestic reason, it was not a cause which was attributable to the employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.35**
DOCKET/DATE	**83-BRD-10482/3-31-83**
AUTHORITY	**Section-601B1.**
TITLE	**Domestic Circumstances**
SUBTITLE	**Illness or Death of Others**
CROSS-REFERENCE	**None**

The claimant was granted a two-month leave of absence to care for her mother, who was seriously ill. Prior to the expiration of her leave, the claimant telephoned the employer and stated that her mother's doctor advised her that she was needed to care for her mother. The claimant indicated she could not return to work in the foreseeable future. The doctor's statement indicated that the claimant "must be accessible to assist with the full body care her mother required."

HELD: The claimant left work on the advice of a licensed and practicing physician to provide necessary assistance in the care of her mother. Such assistance would not allow her to perform her usual and customary duties, and she notified the employer of the reasons for her absence from work. Under these circumstances, the claimant would not be subject to any disqualification of benefits for voluntarily leaving her work without good cause attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.35**
DOCKET/DATE	***Flex v. Board of Review*, 466 N.E. 2d 1050 (1984)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Illness or Death of Others (and Section 601B(1)**
CROSS-REFERENCE	**VL 235-25, Health or Physical Condition; MS 95.4**

The claimant was employed as a Stenographer until July, 1981, when she went on maternity leave, which was to expire in September, 1981. During that time, the claimant gave birth to a son whose spinal cord was damaged. The claimant was granted an extended leave of absence until January, 1982, because of the child's condition. No further extension was granted. On January 15, 1982, the claimant's supervisor informed her that if she did not return to work as scheduled, the employer would have to hire someone to replace her. The claimant explained that she needed more time off in order to provide care for her child. When the claimant did not report to work as scheduled, she was replaced.

The claimant then filed a claim for unemployment benefits. The Claims Adjudicator determined that the claimant was ineligible for benefits pursuant to Section 601A of the Act, because she had left work voluntarily without good cause attributable to her employer. A Referee affirmed the Claims Adjudicator's determination.

In support of her appeal to the Board of Review, the claimant presented a letter from her son's pediatrician. The letter stated that the claimant's son suffered from "a right Erb's palsy, spinal cord lesion and hypospadias" and that he needed "physical therapy and infant stimulation." In addition, the letter stated:

> It is important that his mother spend as much time with the child as possible. She is a very good mother and the child shows the results of her time.

The claimant contended that based upon the doctor's letter she was entitled to a medical exception to the disqualifying provisions of Section 601A, in that she had left work upon the advice of a licensed and practicing physician, who had determined that the claimant's assistance was necessary for the purpose of caring for her child who was in poor physical health, and such assistance would not have allowed the claimant to perform the usual and customary duties of her employment.

The Agency's position was that the doctor's letter did not specifically state that caring for her child made it impossible for the claimant to continue her employment: The statement "It is important that his mother spend as much time...as possible" was insufficient to show that she could not have continued working.

HELD: Section 601B(1) provides an exception to the disqualifying provisions of Section 601A, provided that an individual shows that she left work:

> ...upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for her child who is in poor physical health...

In the instant case, the doctor's letter clearly indicated that the claimant's child suffered severe and disabling injuries at birth. The doctor was an expert on the type of assistance necessary to care for an ill child. Accordingly, the first provision of Section 601B(1) was satisfied.

> ...and such assistance will not allow the claimant to perform the usual and customary duties of her employment...

Although a physician is an expert on the type of assistance necessary to care for an ill child, her opinion on how such assistance will affect the parent's job duties is wholly outside her area of expertise and should not be required as a predicate for the award of benefits. A physician cannot be expected to know the implications of her advice for the receipt of unemployment insurance. Therefore, it would be unreasonable to require that a physician employ the exact wording of Section 601B(1). In the instant case, independent of the doctor's express language, the advice "spend as much time as possible" could properly have been interpreted to have precluded the continuation of full-time employment. Accordingly, the second provision of section 601B(1) was satisfied. The claimant was entitled to an exception under Section 601B(1) of the Act.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.35**
DOCKET/DATE	**ABR-85-4487/2-6-86**
AUTHORITY	**Section 601 of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Illness or Death of Others (Brother)**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes**

The claimant quit his job to move to California, where his brother, who suffered from a cardiac condition, resided. The claimant testified that, because of the cardiac condition, his brother could not live alone and needed someone with him in case of an emergency. The claimant testified that he had notified the employer that he was quitting work because of his brother's illness and because of the necessity of providing care for him.

HELD: Section 601B(1) of the Act provides an exception to the disqualifying provisions of Section 601A, provided that a licensed and practicing physician has determined that -

> assistance is necessary for the purpose of caring for a spouse, child, or parent who is in poor physical health...

Because the statute has delineated certain classes of individuals concerning whom an exception might be made, and "brother" does not fall within any classification, the claimant's reason for leaving work did not fall within the purview of Section 601B(1). Accordingly, he was not entitled to an exemption.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.35**
DOCKET/DATE	***Jenkins v. IDES*, 805 N.E.2d 363 (1st Dist., 2/27/04)**

AUTHORITY **Section 601(B)(1) of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Illness or Death of Others**
CROSS-REFERENCE

The claimant gave her employer two-week notice that she was quitting her job to relocate to Chicago to take care of her ailing father. In response to the Referee's inquiry at the hearing, the claimant testified that she was not advised by a doctor to leave her job in order to care for her father. The claimant submitted to the Board of Review an affidavit and a letter from the doctor who was treating her father. The letter stated, in part, that A[Plaintiff] is the daughter of my patient...She has moved home to help assist her father who does have multiple medical problems. Because of his dementia and inability to carry out all household tasks, she does need to assist him in these activities.

HELD: The Appellate Court held that the claimant was not disqualified from receiving benefits, relying on Section 601(B)(1) of the Act, which provides, in part, that an individual will not be disqualified under Section 601(A) of the Act for leaving work without good cause attributable to the employer where the individual has left work voluntarily upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for his spouse, child, or parent who is in poor physical health and such assistance will not allow him to perform the usual and customary duties of his employment, and he has notified the employing unit of the reasons for his absence. The court found that the Board of Review improperly construed Section 601(B)(1) to mean that the doctor must have specifically advised the claimant to leave her job in order to care for her father. According to the court, Section 601(B)(1) only requires the doctor to advise that the parent, child, or spouse is in need of assistance. The issue of whether an employee must leave her job to tend to an ailing family member is independent of whether that family member is in need of assistance. In the instant case, the claimant met the requirements of Section 601(B)(1) by showing that a doctor had advised her that her father was suffering from multiple medical problems and needed assistance carrying out household tasks and that she had adequately informed her employer that she was leaving her job to take care of her father.

Marriage VL 155.4

Efforts to Retain Employment VL 160
General VL 160.05

ISSUE/DIGEST CODE **Voluntary Leaving/VL-160.05**
DOCKET/DATE ***Henderson v. IDES*, 230 Ill.App.3d 536, 172 Ill.Dec. 33, 595 N.E.2d 96 (1st Dist., 5/26/92)**
AUTHORITY **Section 601(A)**
TITLE **Efforts to Retain Employment**
SUBTITLE **General**
CROSS-REFERENCE **VL-500.75; Wages, Reduction**

The claimant worked as a janitor for a school district. On February 6, 1989, after a hearing conducted by his employer, he was demoted for illegally entering the school and attempting to steal school property. His demotion resulted in a $10,000 loss of pay per year. From that date until August 4, 1989, when he informed the employer that he was resigning, the claimant was off of work due to injury, vacation or leave of absence, except for the period July 3 through July 17, 1989. The claimant testified that he did not file a grievance contesting the demotion because the union steward first told him to wait until the criminal charges were resolved and then told him it would do no good. He also testified that his employer told him on August 4th to put off the effective of his resignation until September 17, 1989.

HELD: The court held that the claimant was disqualified under Section 601(A) based on the facts in the record showing that he did not file a grievance or take any other action to resolve the situation and did not resign until seven months after his demotion and pay cut went into effect. Since the claimant took no action, the court found that he acquiesced in his demotion, and when he quit the job seven months later, it was not due to good cause attributable to the employer. Because the claimant failed to contest his demotion and take steps to resolve that conflict, the court did not deem it necessary to address the issue of whether the reduction in wages would have constituted good cause under Section 601(A).

ISSUE/DIGEST CODE **Voluntary Leaving/VL 160**
DOCKET/DATE **ABR-20-16071/11-5-20**
AUTHORITY **Section 601A of the Act**

TITLE **Efforts To Retain Employment**
SUBTITLE **General**
CROSS REFERENCE **VL 50.5, Attributable To or Connected With Employment**

The claimant was employed as a dietary supervisor and worked for the employer for more than twenty-three years. After the onset of the COVID-19 pandemic, the employer directed her to refrain from wearing a mask or other personal protective equipment around residents, to avoid scaring them, although she had an underlying medical condition. At the same time, the employer added to her duties by requiring her to take residents' temperatures and otherwise physically assist them when needed while she delivered menus to them. These additional duties increased her interaction with residents at a time when there were positive COVID-19 cases in the facility. Furthermore, the employer recently took over the operation of the facility from a previous owner, and the claimant clashed with her new supervisor, who removed some supervisory duties from her. When she complained to upper management and other administrative personnel about her concerns, she was encouraged to resign. The claimant quit her job without notice on April 11, 2020, and was denied benefits under Section 601A of the Act. The Referee set aside that determination and allowed benefits pursuant to a hearing, and the employer appealed to the Board.

HELD: The Board found that the employer created a substantially less favorable work situation for the claimant by requiring her to interact with residents without allowing her to use personal protective equipment when COVID-19 protocols should have been in place. The claimant attempted to resolve this issue with the employer prior to her separation, but was instead told she should resign. The Board held that the claimant exhausted reasonable alternatives to quitting, and that she left work to protect her health and safety. She had good cause for leaving work that was attributable to employer, which had the ability to control the conditions

ISSUE/DIGEST **Voluntary Leaving/VL 160.05**
DOCKET/DATE **Pearson v. Board of Review, 551 N.E. 2d 1021 (1990)**
AUTHORITY **Section 601A of the Act**
TITLE **Efforts to Retain Employment**
SUBTITLE **When Employer Limits Alternatives**
CROSS-REFERENCE **VL 475.75, Union Relations**

The claimant's union dues were automatically deducted from her paycheck, until she was transferred, at a reduced wage, to another job location. There, her paycheck reflected a wage reduction, but, under a different union local, dues were not automatically deducted. For three months, the claimant was unaware of this and accumulated $80 in back dues. When she was informed, she signed an authorization that directed the employer to "deduct membership dues from pay." She asked if the $80 in back dues, in addition to future dues, would be deducted. She was told no; instead, she had to pay the $80 up front or lose her job. The claimant had no money and was already heavily in debt. She refused her supervisor's offer of a loan because she know she would be unable to pay him back. So she lost her job. The Board of Review denied benefits, finding that the claimant failed to exhaust reasonable means of remaining employed (e.g., borrowing from her supervisor).

HELD: Section 601A demands that the employer not be even *one* causal factor in the work separation. (Court's emphasis).
In light of this, whether a worker makes a reasonable effort to retain employment must be considered in light of what the employer has or has not done.
Here, it was erroneous to consider the claimant's effort or lack of effort to retain employment (e.g., not borrowing from her supervisor) without also considering the employer's lack of effort. The employer failed to inform the claimant of the need for a new authorization and failed to offer her an alternative payment plan, which would have been permissible according to the language of the new authorization. In short, the reasonable means of repaying the debt and retaining employment were those that the employer did not make available; therefore, it was not relevant what steps the claimant pursued.

Benefits were allowed.

ISSUE/DIGEST **Voluntary Leaving/VL 160.05**
DOCKET/DATE **83-BRD-10304/9-7-83**
AUTHORITY **Section-601A**
TITLE **Efforts to Retain Employment**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked for the employer in Joliet as an assistant manager and head cook. He requested a transfer to the Springfield office and accepted it when it became available two months later. After another individual was hired to train for his job in Joliet, the claimant began to doubt whether he could afford to make the move. At the suggestion of the manager, the claimant went to discuss it with his wife and never returned. The employer testified that the claimant could have remained employed at his former location had he asked to stay. The claimant was subsequently rehired after the period under review.

HELD: The claimant caused his own separation from work. He was subsequently rehired as head chef, which position would have been open to him if he had decided to stay in Joliet.

Accordingly, the claimant voluntarily left work without good cause attributable to the employer and, therefore, is disqualified for benefits.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**83-BRD-12659/11-9-83**
AUTHORITY	**Section-601A**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked as a sales representative for two months and quit her work. The claimant stated that she took the job with the employer on a two-month trial basis. She met with the employer after the trial period and was told that she needed to put in more concentrated time on the work. The employer offered to provide additional training. The claimant was neither willing to put in the extra time nor to take the training. The claimant contends that the work was not suitable for her and that she decided to quit.

HELD: When the claimant left work because she was unwilling to take the opportunity to be trained, she did not demonstrate a genuine interest in remaining employed. The evidence is sufficient to support a finding that the claimant left work voluntarily without good cause attributable to the employer, and she is disqualified for benefits.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	***Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist. 1984)**
AUTHORITY	**Sect. 601A of Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 50.05, Attributable to Employment; VL 210.05, Good Cause**

The claimant was hired as School Child Development Coordinator, whose duties were primarily administrative and consisted of hiring and supervising teachers, working with parents, and recruiting children -- ages three to five. Subsequently, the claimant was required to incorporate into her program emotionally disturbed teenagers referred from an agency. Due to diminished funding, the claimant, in addition to performing her administrative duties, was required to teach the emotionally disturbed teenagers.

The claimant explained to her Director that the emotionally disturbed children presented behavior disorders, involving aggressive and destructive behavior, and she maintained that she was not trained, qualified, or experienced in teaching emotionally disturbed children. But when she explained that she did not feel qualified and asked for assistance, she received none.

Then the employer hired a second Director. The claimant found herself reporting to two Directors, with no means of resolving her own conflicts or conflicts between them. She asked for some resolution of the problem, but without results.

Finally, the claimant began to suffer headaches, and became very upset, causing her to consult a professional psychotherapist, who advised her that the job was causing her stress which would continue for as long as she remained employed in her current position. She explained this to her superiors, but, again, was offered no assistance. Subsequently, the claimant resigned.

HELD: An individual should make reasonable efforts to resolve conflicts arising from employment before voluntarily terminating such employment and seeking unemployment benefits. In the instant case, the record was uncontradicted that the claimant made numerous and substantial attempts to resolve the situation with her superiors, but her efforts were unsuccessful.

Having made such reasonable efforts and having established that she left work with good cause attributable to her employer, the claimant was eligible for benefits.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**85-BRD-05033/7-8-85 (84-C-16062/10-31-84)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**Case Compared with *Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist. 1984)**
CROSS-REFERENCE	**VL 50.05, Attributable to Employment; VL 210.05, Good Cause**

The claimant was employed by a day-care facility. Her duties included caring for kindergarten-age children at times when they were not in school. There were two other kindergarten-age units on the premises, operating under similar circumstances, so that the day-care workers and their assistants could work with each other, or cover for one another during breaks or absences.

After eight years, due to economic circumstances, the day-care facility's preschool and school-age programs merged, to the extent that one Director now administered to both programs. The claimant still worked in a distinct, kindergarten-age unit. However, after working ten months under the newly formed administration, the claimant resigned.

The claimant explained to the adjudicator: "(There was) too much stress dealing with the kids." The Referee asked the claimant to elaborate. She stated that most importantly she was no longer working exclusively with kindergarten-age children, four-and-one-half to five years old: On those occasions when another worker was on break or absent, she might have to cover in a unit which included children as young as three-and-one-half years old.

However, at the time the claimant separated from employment, she did not mention to her employer that she was suffering from "stress." She told her employer that she was resigning in order to return to school. The Director of the facility testified that the claimant's work was highly regarded, and that her resignation was a complete surprise: The claimant had never even hinted that she was uncomfortable.

In closing, counsel for the claimant cited *Davis v. Board of Review*, 465 N.E.2d 576 (Ill. App. 1 Dist. 1984), and contended that the fact situations were nearly identical.

HELD: In *Davis*, the court re-affirmed the principle that an individual should make reasonable efforts to resolve conflicts arising from employment before voluntarily terminating such employment and seeking unemployment benefits. In Davis, the claimant "made numerous and substantial attempts to resolve the situation with her superiors." In the instant case, the claimant made no attempts. Because unemployment benefits are payable to persons who have exhausted all reasonable means of remaining employed, as an alternative to collecting unemployment benefits, and the claimant did not fall within that category of persons, she was not eligible for benefits.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**ABR-85-2898/9-20-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**Efforts Made Prior to a Final Incident**
CROSS-REFERENCE	**None**

The claimant was employed as a Laborer for 7 years, until December 31, 1984, when, at about 1:30 p.m., he was cleaning his work bench as a part of his regular duties. The claimant's foreman told him to "stop that!" because the noise was giving him a headache. The claimant asked the foreman if he wanted an aspirin. The foreman (construing the claimant's remark as sarcasm) said that he was tired of seeing the claimant's face, ordered him to leave the work site, and added that he would see to it that the claimant would lose pay for the remainder of the holiday and for the ensuing New Year's holiday. Complying with the foreman's demand that he leave, the claimant was waiting in the employer's "break room," when the foreman, seeing him there, told him to go outside and wait in the rain for his "f-ing wife." After the New Year's holiday, the claimant informed his foreman that he "did not need the harassment and was not coming back."

At an appeal hearing before a Referee, the claimant testified that the foreman had been mistreating him for quite some time, causing the claimant to several times appeal to the foreman's superior (the employer's assistant to the president) for relief.

Finally, in November, 1984, the claimant told the foreman's superior that if the foreman persisted in mistreating him, he would leave. The superior promised to do something about it, but nothing was ever done.

As to the specifics of the earlier mistreatment, the claimant, and a witness on his behalf, attempted to testify as to "violent" tendencies on the foreman's part. The claimant's witness began by saying that the foreman had been "picking on other people" in addition to the claimant, and that the foreman had tried to "choke me to death." The Referee stated that such testimony was not relevant to the issue, and, subsequently, the Referee issued a decision disqualifying the claimant for benefits. The Referee based his decision on the fact that, no matter what had transpired earlier, the claimant, after the final incident on December 31, should have appealed once again to a higher employer authority; because he did not do so, he did not make a "reasonable effort" to remain employed.

HELD: A worker's efforts to remain employed need not be made subsequent to, or simultaneous with, the final incident that results in the work separation in order to constitute the "reasonable efforts to remain employed" contemplated by the Act. Events occurring prior to the final incident may constitute such reasonable efforts.

In the instant case, the Referee erred by discouraging and disregarding testimony as to matters occurring prior to the final incident and by applying the "reasonable efforts" standard as he did. The evidence established that the employer's foreman had, with apparent impunity, mistreated employees over a long period of time. The claimant feared the foreman's propensity for violence. The employer had promised that something would be done, but nothing was, and the foreman's mean and vindictive actions culminated in his ordering the claimant off the job at a time calculated to deprive the claimant of holiday pay, and using vulgar and provocative language toward the claimant, including a reference to the claimant's wife. In view of the foregoing, the claimant could not have had any reason to expect that further efforts to ameliorate the conditions of his job would have been any more effective than his previous efforts. Under the circumstances, he had already exhausted reasonable means of remaining employed. He left work with good cause attributable to his employer.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**ABR-85-756/6-25-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**Obtaining a License**
CROSS-REFERENCE	**MC 135.3, Discharge or Leaving; MC 165.05**

In October 1979, the claimant was hired as a Nurse's Assistant. Pursuant to a statute passed in 1980, Nurse's Assistants were required to be licensed by the State. The claimant's certificate that had been issued in 1968 was not recognized by the 1980 statute, and, moreover, the claimant had not had sufficient work experience prior to the passage of the statute to take advantage of that portion of the statute which allowed licensing based upon work experience. Subsequent to the passage of the 1980 statute, the claimant was notified that her employer could not continue to employ her because of her lack of the requisite license.

HELD: There are instances in which an employer cannot retain a worker in its employ because the worker has failed to meet a legal requirement for continued employment. Even though the employer does not have the option to retain the worker, the resulting separation is generally considered a discharge as opposed to a voluntary leaving, unless it is established that was contemplated in the working agreement and was within the control of the affected worker to satisfy the legal condition for continued employment. In the instant case, the requirement for State certification was mandated at some time after the claimant's hire and there was no assurance that the claimant had within her control the ability to obtain the requisite certification. Therefore, the claimant's work separation was a discharge (not for misconduct) and not a voluntary leaving.

(The Board of Review compared the instant case to its previous decision, ABR-84-237, dated October 17, 1984: In that case, the claimant was hired with the understanding that, within a relatively brief time after hire, she would be required to attend a training course in order to become certified. The claimant chose not to attend the training course, and, thereby, precluded any opportunity to maintain the certification required to keep her job. The distinguishing feature of that case, as opposed to the instant case, was that the claimant was aware of, and accepted the responsibility for, obtaining the proper State certification, which was within her control to obtain.)

ISSUE/DIGEST **Voluntary Leaving/VL 160.05**
DOCKET/DATE **ABR-84-12229/10-4-85**
AUTHORITY **Section 601A of the Act**
TITLE **Efforts to Retain Employment**
SUBTITLE **Interpretation of Remark or Action**
CROSS-REFERENCE **VL 135.2, Discharge or Leaving; MC 135.2**

The claimant worked as a Jewelry Salesman, and enjoyed a familiar relationship with the store's owner, for whom he had worked for 25 years. From May, 1983, through September 2, 1983, the claimant had been absent from work due to illness. On September 3, he returned to work, unannounced, and was preparing to open the store, when the owner told him that he had hired a new employee. Upon hearing this, the claimant handed the owner his keys and left.

At a hearing, the employer testified that the new employee had not been hired as a replacement for the claimant. The claimant testified that he had assumed that he had been replaced by the new employee.

HELD: There are some situations in which it is difficult to determine whether a separation is a discharge or a voluntary leaving, as both the employer and worker have made some remark or have taken some action which has contributed to the initiation of a separation. Generally, if an employer makes a remark or takes some action which initiates the separation, then a discharge has occurred. However, if the employee is given a choice of remaining at work, it is a voluntary leaving. In either case, the reasonableness of the parties' actions must be considered.

Even though an employer's remark might generally give rise to a discharge, in the instant case, the claimant's belief that he had been discharged was not reasonable. Considering his many years of employment, and his familiar relationship with the owner, the claimant should have taken steps to ascertain his status. His failure to do so by departing abruptly constituted a voluntary leaving without good cause attributable to his employer.

ISSUE/DIGEST **Voluntary Leaving/VL 160.05**
DOCKET/DATE **ABR-85-5358/11-27-85**
AUTHORITY **Section 601 of the Act**
TITLE **Efforts to Retain Employment**
SUBTITLE **Reasonable Accommodation**
CROSS-REFERENCE **VL 235.25, Health or Physical Condition**

The employer had a policy of placing employees - who had verified medical problems - on light duty work.

The claimant had been employed as an Assembler for 19 years. She was absent 1 week, reportedly due to a backache. When she returned to work, she asked her foreman to place her on light duty work. The foreman declined to do so. The claimant then went to the employer's personnel office, but, instead of requesting, in a proper fashion, light duty work, she applied for retirement.

At an appeal hearing, the claimant acknowledged that she had been aware of the employer's formal procedures concerning medical verification in order to obtain light duty work, that she had not been advised by a physician to restrict her work, and that she had not presented the employer with any verification of an injury.

HELD: The disqualifying provisions of Section 601A do not apply when, pursuant to Section 601B(1), a worker has been deemed unable to work by a licensed and practicing physician, provided that the worker has notified the employing unit of the reason(s) for his or her inability to work.

The purpose of the notice requirement is to afford the employer an opportunity to make a reasonable accommodation. Where the employer would do so, and would make available work which would be suitable in light of the worker's special circumstances, a worker who forgoes such a reasonable accommodation and quits is not unemployed for lack of suitable work. Because the purpose of the Unemployment Insurance Act is to provide benefits to individuals who are involuntarily unemployed due to the lack of suitable work and for no other reason, an individual who does not avail himself or herself of a reasonable accommodation will be disqualified.

In the instant case, the claimant made no effort to utilize the known procedures established by her employer for obtaining light duty work, when such work would have been made available. Rather than make a reasonable effort to remain employed, she

chose to quit. She left work without good cause attributable to her employer and the disqualifying provisions of Section 601A were applicable.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	***Alfonso Barron v. Ward*, No. 86-1630 (1987)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Secure Employment**
SUBTITLE	**Failure to File a Union Grievance**
CROSS-REFERENCE	**VL 515.4, Working Conditions, Fellow Employee**

The claimant, who was Mexican, worked with an employee who made repeated derogatory remarks about Mexicans in general and the claimant in particular. Finally, the claimant and the co-worker were engaged in an altercation, during which the co-worker struck the claimant in the face, injuring him.

The co-worker was transferred to another department. After the transfer, the co-worker threatened to kill the claimant and would laugh at him whenever he would see him in the plant.

For business reasons, the employer decided to transfer the co-worker back to the claimant's department. When the claimant learned of this, he told superiors and the union steward he could not and would not work with the co-worker, but they insisted that the transfer was a business necessity and that the claimant should just stay on and work.

The claimant quit without filing a union grievance.

HELD: In order to have good cause to quit, an employee must indicate an effort to work out problems - unless he can show that such effort would be futile.

There is no per se rule that an employee must follow established union grievance procedures before he may be found to have quit with good cause. A failure to file a union grievance, standing alone, does not require a finding that a claimant lacked good cause for quitting. A failure to file a union grievance is but one factor in determining whether an individual quits with or without good cause.

In this case, the employer had indicated that it was going to transfer the co-worker back into the claimant's department, regardless of the claimant's misgivings and complaints. It would have been futile for the claimant to pursue the matter with his employer. Since the union steward was also present, the claimant could reasonably have concluded that a union grievance would have been futile as well.

In this case, the claimant exhausted reasonable alternatives before quitting his job. He quit with good cause.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**ABR-88-3688/7-14-88**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 155.1, Domestic Circumstances, Children**

The employer was about to transfer the claimant to work at a different location with different hours. The change in hours would affect her childcare situation. She explained this to the employer. The employer offered to delay the transfer to give her time to resolve the childcare problem. Instead, she quit.

HELD: A worker has good cause for leaving when there are no reasonable alternatives at the time she leaves.

In this case, the employer was willing to make an accommodation, in terms of time, so that a childcare problem might be resolved. Whether or not the problem would be resolved eventually, the claimant could have continued to work under unchanged conditions while exploring childcare arrangements. This was a reasonable alternative to leaving at the time she did. Therefore, she left work without good cause and was subject to disqualification under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL-160.05**
DOCKET/DATE	***Lojek v. Department of Employment Security*, 984 N.E.2d 118, 368 Ill.Dec. 393 (1st Dist., 2013)**
AUTHORITY	**Sections 601A and 602A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**MC 485.45, Violation of Company Rule, Intoxicants**

The claimant worked as a janitorial supervisor for an employer that provided janitorial services. The claimant was assigned to supervise a crew that cleaned Roosevelt University. A university employee complained to the employer that the claimant was observed smoking and drinking alcohol in the Dean's office. The claimant admitted that she smoked one time in the Dean's office but denied drinking alcohol in the Dean's office. The employer testified that the claimant agreed to be demoted and transferred to another location in lieu of being discharged. The claimant worked one day at the new location; thereafter, the claimant informed her union representative that she would not be returning to the new location.

The claimant asserted that the new location aggravated her existing health problems. In addition, the claimant argued that she was not prepared to discuss her medical problems during the hearing because she believed she was discharged.
The Board found that the claimant was ineligible under Section 601(A) because she left work without good cause attributable to the employer. The circuit court reversed the Board's decision and the Department appealed.

HELD: A substantial and unilateral change in employment may render employment unsuitable so that good cause for termination is established. In this case, the claimant agreed to the change and failed to show that the alleged medical problems at the new location rendered the location unsuitable so that good cause is established. Further, the claimant should have been prepared to discuss her medical problem because the hearing notice indicated that the subject of the hearing would be whether the claimant was discharged or voluntarily left her employment. The Appellate Court reversed the circuit court's decision and reinstated the decision of the Board.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	***Laurie A. Pagliarella v. IDES* et al, 18 L 50395 (2018)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS REFERENCE	**VL 50.05, Attributable to or Connected With Employment; VL 210.05, Good Cause**

Claimant worked for Employer in a strategic sales position from 4/26/2007 to 12/29/2017 when she resigned. Claimant reported to Employer in May of 2016 that her supervisor verbally assaulted her and bullied her at work which caused her to seek medical treatment. Claimant then reported that her supervisor's conduct worsened thereafter, culminating in a one-on-one meeting on July 20, 2017 to discuss her performance in which the supervisor mocked her, engaged in aggressive body language, and issued ambiguous threats to "take action". After this meeting, Claimant filed a complaint with Employer and requested that she be assigned to a different manager. Claimant had subsequent visits with her doctor and therapist in which she was diagnosed with Post Traumatic Stress Disorder and anxiety; after which she was placed on temporary disability for more than two months. Employer investigated claimant's allegations and offered to transfer her to a different team in the Chicagoland area. Claimant refused because she would still have to see her supervisor at regional meetings and did not want to transfer to a different region. After her medical leave was completed, Claimant never returned to work and resigned. At a hearing, Claimant's supervisor testified that he acted appropriately and "take action" referred only to corrective action if Claimant failed to meet the requirements of the Performance Improvement Plan and he did not know of Claimant's anxiety and other health issues until Employer investigation was conducted. Claimant turned down Referee's offer to call additional witnesses to rebut Employer's testimony. Following the hearing the Referee affirmed the Local Office determination which disqualified Claimant from receiving benefits. Claimant appealed the decision and the Board affirmed the Referee's decision, stating that Claimant should make a reasonable effort to resolve the conflict before voluntarily resigning and seeking unemployment. As such, while Claimant left for compelling personal reasons, her leaving was not attributable to Employer. The Claimant appealed.

HELD: The Circuit Court affirmed the Board of Review decision that Claimant was disqualified from receiving Benefits under Section 601A. The Court stated that it found Claimant "entirely credible." However, there was no evidence in the record which refuted the supervisor's testimony that an investigation was performed in compliance with Employer's normal policies, and Claimant rejected the Referee's offer to continue the hearing to allow Claimant to present evidence on the issue. More importantly, the Court stated that Claimant refused Employer's proposed accommodation of transfer to another team in the

area or relocate to another area. The Court cited *Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist. 1984), as did the Board in that Claimant failed to make a reasonable effort to resolve the conflict by attempting to make the proposed solution by the Employer work before resigning.

Equipment VL 180
General VL 180.05
No decision

Evidence VL 190
General VL 190.05
No decision

Burden of Proof and Presumptions VL 190.1
No decision

Weight and Sufficiency VL 190.15

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 190.15**
DOCKET/DATE	***Kane v. Dep't of Emp. Sec*., 2024 IL App (1st) 231176-U**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**VL 135.15 Constructive Quit**

Claimant was employed as a part-time special education teacher. On the last day of work, claimant met with the employer's executive director and supervisor to discuss a remediation plan written by claimant's supervisor. At the conclusion of the meeting the claimant left the office and filed for benefits alleging that she'd been fired. The employer protested the claim indicating that the claimant had resigned. In their protest the employer attached the remediation plan, the claimant's performance review, and the claimant's severance letter. Claimant alleged that she'd been fired. The employer contended the claimant resigned. The employer sent the adjudicator a letter from the claimant's supervisor detailing the events of the last meeting, which stated that the employer met with the claimant to discuss the remediation plan. Claimant told them that she'd not looked at the plan, had not been happy there for months, and stated, "if the point of this meeting is to fire me, I will save you the effort." Claimant left the office stating: "this is the happiest day of my life." In the severance letter, the employer stated that, "[u]pon explaining that you failed to meet the expectations within the remediation plan you stated that you have not been 'happy here in months and would happily resign.' I am in complete agreement with that decision." The adjudicator issued a determination stating that the claimant left work voluntarily and was ineligible for benefits. The claimant appealed. At the scheduled hearing the claimant appeared, and the employer did not participate. At the hearing the claimant testified that when the executive director met with her to discuss her evaluation, claimant told her, "I haven't given it a second thought. I thought we had put this behind us." Claimant maintained that she told the employer she would never quit.

The referee issued a decision affirming the determination. The referee found that claimant voluntarily left her position and was "the moving party in her separation." The referee found no evidence that the employer met with claimant to discharge her. The employer met with claimant to discuss the remediation plan and see if claimant had made any changes in her conduct. The evidence showed claimant refused to discuss the matter and stopped the conversation by challenging the employer to discharge her. The referee further found that claimant asked to be discharged by soliciting her separation, and the employer accepted claimant's resignation. The referee explicitly found the claimant's testimony not credible. The claimant appealed to the Board of Review. The Board affirmed the referee. The claimant appealed to the circuit court which affirmed the Board's decision. The claimant appealed.

HELD: The appellate court noted that the Board's finding that there was no evidence that the employer met with claimant to discharge her was supported by the record. The remedial plan explicitly stated, "[w]e want you to remain employed at this program." The appellate court's review of the record confirmed that the evidence therein supported the Board's finding that claimant acted with the intent to compel the employer to discharge her, which constituted a constructive voluntary leaving without good cause attributable to the employer.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended

Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

Experience or Training VL 195
General VL 195.05
No decision

Good Cause VL 210
General VL 210.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**ABR-86-9166/7-15-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Early Retirement**
CROSS-REFERENCE	**VL 50.05, Attributable; VL 495.05, Voluntary**

The employer's witness testified that the employer intended to reduce its work force. This was to be accomplished in 2 parts: the first part was an early retirement program; the second part was conditional upon the success of the first part - that is, if not enough workers took advantage of the retirement program, there would have to be layoffs.

The claimant, an Assistant Mine Manager, had heard a rumor that his position was to be eliminated. Then he was offered the early retirement package, which included financial incentives. Fearing that, if he did not accept the package, he would be demoted, which would have resulted in a financial lost, the claimant accepted the early retirement package.

HELD: The Unemployment Insurance Act provides that benefits shall be paid to individuals who are out of work due to the lack of suitable work and through no fault of their own. Accordingly, there can be no separation disqualification when a worker has been laid off, since no action taken by the worker, but, rather, a unilateral action by the employer, has caused the work separation.

In this case, the employer decided the number of positions it wanted eliminated. Had the requisite number of workers not resigned, the employer would have laid off the number necessary to meet its goal. The same number of people would have been unemployed, whether they quit or were laid off. This work separation, therefore, had the same effect as a lay off.

Further, the employer, on one hand, offered financial incentives to those workers who left; on the other hand, the employer did not interpose any safeguards or job protection for those who did not resign - those who stayed, even if they were not laid off, faced the prospect of loss of wages through demotions. It was clear then that the employer was the moving party, desirous of having workers accept an early retirement package; and those who, like the claimant, did the employer's bidding, acted as reasonable persons would have under the same or similar circumstances.

The claimant became involuntarily unemployed due to economic conditions beyond his control. This was a leaving with good cause attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	***Prospect Heights Fire Prot. Dist. v. Dep't of Employment Sec.*, 2021 IL App (1st) 182525**
AUTHORITY	**Section 601A of the Act**
TITLE	**General**
SUBTITLE	**Mandatory Retirement**
CROSS REFERENCE	**Voluntary Leaving/VL 495.05, End of an Assignment**

Claimant was employed by Prospect Heights Fire Protection District (District), from June 2005 until his retirement in October 2017. Claimant's retirement was predicated on his reaching the age of 65, the mandatory retirement age for active firefighters, according to the Fire Protection District Act. The following month he filed for unemployment benefits. The employer protested and the local office allowed benefits, finding no misconduct. The employer appealed. Following a hearing the Referee affirmed the local office determination. The employer appealed. The Board examined the issue of voluntary leaving as well as misconduct and concluded that claimant's separation was neither voluntary nor the result of misconduct. The employer

appealed. The circuit court focused on the issue of voluntary leaving, set aside the Board's decision, and denied benefits.

Noting that there were no Illinois cases examining the effect of statutory mandated retirement on claims for unemployment benefits, the court examined cases from other jurisdictions that have found that employees who reach the mandatory retirement age set forth in their collective bargaining agreements are not entitled to unemployment benefits because their separations from their places of employment when they reach the bargained-for retirement age are considered voluntary. Although the circuit court acknowledged that the mandatory retirement age at issue was set by statute and not included in a collective bargaining agreement, it found the analysis of those cases to be nonetheless "persuasive." The court stated that the claimant's acceptance of employment with the statutorily prescribed mandatory retirement age amounted to a voluntary leaving. Claimant appealed.

HELD: The appellate court affirmed the circuit court's decision, focusing on the issue of voluntary leaving. The court stated that the relevant question is whether claimant's statutorily mandated retirement can be considered a voluntary act without good cause attributable to his employer within the meaning of the Unemployment Act. The court addressed the fact that court had previously examined whether an individual's statutorily mandated retirement constitutes a "voluntary act without good cause attributable to his employer" pursuant to the Unemployment Act. The court noted that there is no dispute that Illinois fire departments are bound by the terms of the Fire Protection Act and the mandatory retirement provision contained therein. The mandatory retirement provision is not a policy set by individual fire departments; rather, it is set by statute and is applicable to Illinois fire departments and firefighters. The claimant and all other firefighters thus know that their careers as firefighters are finite and will terminate when they reach the mandatory retirement age of 65. By accepting employment at the District, claimant accepted and agreed to abide by that employment term. Therefore, when claimant left his employ with the District, in accordance with the terms of his employment that he accepted when he commenced his career as a firefighter, he did so voluntarily. Moreover, given that the mandatory retirement policy at issue was set by statute and not by the District, claimant's separation from his place of employ cannot be considered good cause attributable to his employer.

The court distinguished *Chicago Transit Authority v. Didrickson*, 276 Ill.App.3d 773 (1995), where the same court reached a different conclusion. In that case the claimant worked in a summer-only program administered by the CTA, and at the expiration of the program, applied for unemployment benefits. In that case the court rejected the CTA's argument that an employee's acceptance of employment for a finite period of time necessarily results in a "voluntary" leaving at the end of that agreed upon time period. The court reasoned that the statute does not disqualify all workers who leave their employment voluntarily, but only those who do so without good cause attributable to the employer. This provision was intended to apply only to those situations where the decision of whether to continue working rests solely with the worker. The court held that the Act does not disqualify workers whose separation from work was compulsory under the terms of their employment contract or as a result of mandated policy adopted by the employer. Where the employment terms imposed by the employer allow the employee no alternative but to relinquish her position, the separation is not voluntary under section 601A of the Act. Unlike the situation in *Didrickson*, the reason for this claimant's separation from his employment was not due to a policy or employment term set by his employer; rather, both claimant and the District were bound to abide by the mandatory retirement age set forth in the Fire Protection Act. Neither claimant nor the District had the ability to disregard the statutorily mandated retirement age. Accordingly, unlike the student in *Didrickson*, there was no possibility that claimant could continue to work for the District without violating the law.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**85-BRD-05041/7-8-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Demotion**
CROSS-REFERENCE	**VL 50.05, Attributable To or Connected With Employment**

The claimant, a forty-seven-year-old woman, was employed as a Driver for one-and-one-half years, until her promotion to Transportation Manager, a position she held for two years. The claimant quit her job upon being demoted back to Driver (though at her managerial rate of pay).

There was no competent evidence to suggest that the claimant had not performed her work satisfactorily. However, during the latter part of the claimant's tenure as Transportation Manager, her relationships with supervisory personnel had deteriorated to the point where she was being screamed at frequently. This coincided with the employer contemplating expansion, telling the claimant it was not felt that she would be able to handle the managerial position in light of expansion. A supervisor added that the claimant "did not deserve the job anymore."

HELD: An individual who leaves work does not do so for good cause unless the evidence establishes that she quit her job because the conditions of her work had become so incompatible with her well-being as to compel her to quit. Whether an individual has good cause for voluntarily leaving her work must be measured by what the ordinary prudent person would have done under similar circumstances.

In the instant case, the claimant left work for compelling reasons The changed terms of the working agreement were to the detriment of the claimant. Although she had not suffered a loss of pay as a result of her demotion, she did sustain a substantial lowering of status and authority in a demeaning fashion. The ordinary prudent person would have quit under similar circumstances. Accordingly, the claimant was not subject to a disqualification for voluntarily leaving her job.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	***Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist.1984)**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Evidence of, Distinguished from Requirements of Section 601B(1)**
CROSS-REFERENCE	**VL 50.05, Attributable to Employment; VL 160.05, Efforts Retain Employment**

The claimant was hired as School Child Development Coordinator, whose duties were primarily administrative and consisted of hiring and supervising teachers, working with parents, and recruiting children - ages three to five. Subsequently, the claimant was required to incorporate into her program emotionally disturbed teenagers referred from an agency. Due to diminished funding, the claimant, in addition to performing her administrative duties, was required to teach the emotionally disturbed teenagers.

The emotionally disturbed teenagers presented behavior disorders involving aggressive and destructive behavior. The claimant had not been trained, qualified, or experienced in teaching emotionally disturbed persons. She received no assistance. As a result of her increased duties, she was required to work late, and, occasionally, on weekends to keep up with her work. She began developing headaches and became very upset. She consulted a professional psychotherapist, who was not a physician, who advised her that her job was causing her stress which would continue for a long as she remained employed in her current position. The claimant resigned.

The Referee and the Board of Review concluded that the claimant had not presented medical evidence to show that she was physically unable to perform her work, and was, therefore, not exempt under the provisions of Section 601B(1) from the disqualifying provisions of Section 601A. However, upon judicial review, it was decided that the claimant left work with good cause attributable to her employer.

Upon further appeal, it was argued that "stress" did not constitute "good cause" within the meaning of Section 601A, and that the claimant was required to produce evidence from a licensed, practicing physician that she was physically unable to perform her work in order to satisfy the evidentiary requirements of Section 601B(1).

HELD: Evidence which might support a finding of work-related "good cause" under Section 601A is distinguishable from evidence which would establish an existing, not necessarily work-related disability under Section 601B(1): A reasonable, subjective fear of harm to an employee's health, even absent the advice of a physician, should be considered "some evidence" of good cause under Section 601A. In the instant case, the claimant did present evidence that the work was causing her stress which would continue for as long as she remained employed in her position, and it would have been proper to consider this as "some evidence," which, along with her lack of training and assistance, increased duties and hours, supported a finding that the claimant left work with good cause.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**85-BRD-05033/7-8-85 (84-C-16062/10-31-84)**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Case Compared with *Davis v. Board of Review*, 465 N.E.2d 576 (Ill. App. 1 Dist. 1984)**
CROSS-REFERENCE	**VL 50.05, Attributable to Employment; VL 160.05, Efforts Retain Employment**

The claimant was employed by a day-care facility. Her duties included caring for kindergarten-age children at times when they were not in school. There were two other kindergarten-age units on the premises, operating under similar circumstances, so that the day-care workers and their assistants could work with each other, or cover for one another during breaks or absences.

After eight years, due to economic circumstances, the day-care facility's preschool and school-age programs merged, to the extent that one Director now administered to both programs. The claimant still worked in a distinct, kindergarten-age unit. However, after working ten months under the newly formed administration, the claimant resigned.

The claimant explained to the adjudicator: "(There was) too much stress dealing with the kids." The Referee asked the claimant to elaborate. She stated that most importantly she was no longer working exclusively with kindergarten-age children, four-and-one-half to five years old: On those occasions when another worker was on break or absent, she might have to cover in a unit which included children as young as three-and-one-half years old.

The Director of the facility testified that the claimant's job description made reference to flexibility. She added that the claimant's fill-in duties usually occurred during times when her own kindergarten-age children were in fact off the premises, attending kindergarten, so that the claimant would have had no other responsibilities. Also, there always would have been another teacher or assistant on duty, so that the claimant would not have been solely responsible for the children.

The claimant presented no tangible evidence of any medical condition, related or unrelated to her work, nor had she consulted a physician or any other professional regarding "stress."

In closing, counsel for the claimant cited *Davis v. Board of Review*, 465 N.E.2d 576 (Ill. App. 1 Dist. 1984), and contended that the claimant had cited reasons sufficient to constitute "good cause" within the meaning of Section 601A.

HELD: In *Davis*, the court held that a reasonable, subjective fear of harm to an employee's health, even absent the advice of a physician, should be considered "some evidence" of good cause. In *Davis*, the reasonableness of the claimant's fear was in part determined by advice she had received from a professional psychotherapist that her work was causing her stress and would continue to do so. In addition to that ("some") evidence, the claimant established that she was not qualified to teach emotionally disturbed teenagers who had been incorporated into her program for three- to five-year-olds, that she did not receive any assistance, and that she was working increased hours - including weekends, which resulted in the headaches and emotional state which lead her to consult the psychotherapist. In contrast, in the instant case, the evidence established that the claimant was capable of working at brief intervals with normal three-and-one-half year olds, that she did receive assistance, that she was working her usual hours, and that she did not feel constrained by any physical or emotional condition to seek professional advice. The qualitative difference between the evidence presented in these cases was striking. In the instant case, the claimant's subjective fear was unreasonable and the totality of the evidence established that she did not have good cause for leaving her job.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	***Laurie A. Pagliarella v. IDES* et al, 18 L 50395 (2018)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable to or Connected With Employment;**
SUBTITLE	**Reasonable Effort**
CROSS REFERENCE	**VL 50.05 General, VL 160.05 Effort to Retain Employment**

Claimant worked for Employer in a strategic sales position from 4/26/2007 to 12/29/2017 when she resigned. Claimant reported to Employer in May of 2016 that her supervisor verbally assaulted her and bullied her at work which caused her to seek medical treatment. Claimant then reported that her supervisor's conduct worsened thereafter, culminating in a one-on-one meeting on July 20, 2017 to discuss her performance in which the supervisor mocked her, engaged in aggressive body language, and issued ambiguous threats to "take action". After this meeting, Claimant filed a complaint with Employer and requested that she be assigned to a different manager. Claimant had subsequent visits with her doctor and therapist in which she was diagnosed with Post Traumatic Stress Disorder and anxiety; after which she was placed on temporary disability for more than two months. Employer investigated claimant's allegations and offered to transfer her to a different team in the Chicagoland area. Claimant refused because she would still have to see her supervisor at regional meetings and did not want to transfer to a different region. After her medical leave was completed, Claimant never returned to work and resigned. At a hearing, Claimant's supervisor testified that he acted appropriately and "take action" referred only to corrective action if Claimant failed to meet the requirements of the Performance Improvement Plan and he did not know of Claimant's anxiety and other health issues until Employer investigation was conducted. Claimant turned down Referee's offer to call additional witnesses to rebut Employer's testimony. Following the hearing the Referee affirmed the Local Office determination which disqualified Claimant from receiving benefits. Claimant appealed the decision and the Board affirmed the Referee's decision, stating that Claimant should make a reasonable effort to resolve the conflict before voluntarily resigning and seeking unemployment. As such, while Claimant left for compelling personal reasons, her leaving was not attributable to Employer. The Claimant appealed.

HELD: The Circuit Court affirmed the Board of Review decision that Claimant was disqualified from receiving Benefits under Section 601A. The Court stated that it found Claimant "entirely credible." However, there was no evidence in the record which refuted the supervisor's testimony that an investigation was performed in compliance with Employer's normal policies, and Claimant rejected the Referee's offer to continue the hearing to allow Claimant to present evidence on the issue. More importantly, the Court stated that Claimant refused Employer's proposed accommodation of transfer to another team in the area or relocate to another area. The Court cited *Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist. 1984), as did the Board in that Claimant failed to make a reasonable effort to resolve the conflict by attempting to make the proposed solution by the Employer work before resigning.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**ABR-85-3276/9-18-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Demotion**
CROSS-REFERENCE	**None**

The claimant worked for a fast-food franchise which employed a Manager and an Assistant Manager. The claimant worked as a Shift Manager, meaning that he performed the same work as non-supervisory crew-members, except that he was in charge when the Manager and the Assistant Manager were not on the premises.

The employer's Manager believed the claimant to be a good crew-member, but also felt that the claimant lacked leadership qualities necessary to be a good Shift Manager. On February 9, 1985, the Manager notified the claimant that he was about to be demoted from Shift Manager to crew-member, though continuing at his previous (Shift Manager) rate of pay. The claimant decided to quit.

HELD: An individual who leaves work does not do so for good cause unless the evidence establishes that he quit his job because the conditions of his work had become so incompatible with his well-being as to compel him to quit. Whether an individual has good cause for voluntarily leaving his work must be measured by what the ordinary prudent person would have done under similar circumstances.

In the instant case, the claimant left work for non-compelling reasons. Although he was about to be demoted, his demotion from Shift Manager to crew-member was not so drastic - either in the manner in which it was accomplished or in terms of the substance of the claimant's duties - as to render the work unsuitable. The claimant would have continued to receive his same wage, for performing essentially the same work which had not proven harmful to his health or beyond his physical capabilities in the past. The ordinary prudent person, under those circumstances, would not have created his own unemployment. The claimant left work without good cause.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**ABR-85-8546/6-10-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Apportionment of Work**
CROSS-REFERENCE	**VL 515.2, Working Conditions, Appointment of Work**

The claimant worked as a Sales Clerk in a health food store. Her work shift would run from 6 to 8 hours during which time she would be the only employee in the store. The employer had a rule which forbade eating at one's work station, except during rest periods or lunch breaks. The claimant testified that because there were no workers to provide her relief, she could not take a lunch break. Also, she could not take a break to go to the washroom, since that would mean leaving her work station unattended. She complained to her supervisor (whose testimony corroborated the claimant's) to no avail.

HELD: A leaving of work because of objection to the distribution of work will be without good cause attributable to the employing unit unless the distribution of work causes undue hardship for the claimant.

In the instant case, the employer's rule clearly demonstrated that workers were entitled to relief. Because the claimant was afforded no relief, she not only found herself as the only employee in the store, with full responsibility for its operation, but in

a position where she either forewent lunch and rest periods to which she was entitled or was compelled to violate the employer's rule and subject herself to possible disciplinary action.

The claimant established that the employer, by not providing her any relief, distributed work in such a fashion as to cause her undue hardship. The average reasonable person subjected to the same conditions would in all likelihood have reacted as the claimant did. She left work with good cause attributable to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 210.05**
DOCKET/DATE	***Childress v. Department of Employment Security*, 940 N.E.2d 90, 346 Ill.Dec. 90 (1st Dist. 2010)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Acceptance of Severance Package**
CROSS-REFERENCE	**VL 160.05, Efforts to Retain Employment, General**

The claimant was employed as an advanced buyer for a Park District until she accepted the Park District's voluntary severance package. Other employees in the same position did not accept the Park District's buyout package. The claimant filed for UI benefits and the Park District filed a protest on the ground that the claimant was ineligible because she voluntarily accepted the severance package, along with monetary compensation.
The Board affirmed the Referee's decision that the claimant was ineligible under Section 601(A) of the Act because the record does not show that the claimant was in imminent danger of losing her job; rather the claimant decision to accept the severance package was due to her dissatisfaction with her work; which is not good cause attributable to her employer. The circuit court reversed the Board's decision and the Department appealed.

HELD: When an employee accepts the employer's buyout package good cause does not exist and the employee is ineligible under section 601 of the Act; unless at the time the employee accepts the buyout: "(1) the employee knows or reasonably believes that her employment will be terminated by the employer within the proximate future under terms substantially less favorable than the terms of the buyout offer; (2) the employee knows or reasonably believes that her employment will continue in the proximate future, but under terms substantially less favorable than the terms of her employment immediately prior to the buyout offer; or (3) the employee knows that a layoff will follow if a sufficient number of employees do not accept the buyout offer and the employee accepts the offer to avoid the layoff of another employee." In this case, the claimant failed to prove good cause attributable to her employer that caused her to accept the buyout package. Therefore, the claimant was ineligible for benefits under Section 601(A) because she voluntarily left work without good cause attributable to her employer when she accepted employer's buyout package.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	***Palacios v. Dep't of Empl. Sec*., 2021 IL App (1st) 191889-U**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Job Dissatisfaction**
CROSS-REFERENCE	**PR 380.1 Rehearing or Review, Additional Proof, 56 Ill. Adm. Code 2720.315(c)**

Claimant was employed by Kovach Eye Institute (Employer) from April 2017 to April 2018 when Claimant sent Employer an email giving notice that her last day of employment would be April 24, 2018. The claims adjudicator denied Claimant's claim, finding her ineligible for benefits because she voluntarily left employment. Claimant appealed and following a hearing the referee affirmed. The Claimant appealed to the Board. The Board found Claimant had sought and been granted part-time hours due to personal issues. Claimant then decided to leave Employer because she felt that she was stressed, Employer was making work hard for her, Employer did not want to help her with performing her job duties, she was overworked, and Employer was "pushing her out." The Board further found Claimant was not instructed by a doctor that she needed to leave her employment. The Board concluded that the evidence showed Claimant was not subjected to such conditions as would have rendered the job unsuitable for her. As such, the Board found Claimant voluntarily left employment with Employer for personal reasons not attributable to the Employer and was disqualified for benefits under section 601(A) of the Act. The Board noted that Claimant had submitted a "written argument" as an accompaniment to her appeal. However, because Claimant had not certified in writing that she mailed or served the written argument upon the opposing party, as required by IDES regulation (56 Ill. Adm. Code 2720.315(b) (2018)), the Board indicated it had not considered it in connection with the appeal. Claimant appealed the Board's decision. The circuit court affirmed the Board and the Claimant appealed.

HELD: The appellate court noted that the record supports the Board's determination that Claimant voluntarily left work without good cause attributable to Employer and was thus ineligible for unemployment benefits under section 601(A) of the Act. Good cause for leaving employment exists when the circumstances produce real and substantial pressure to compel a reasonable person under those circumstances to leave. *Childress v. Department of Employment Security*, 405 Ill. App.3d 939, 943 (2010). Leaving employment is not attributable to the employer unless the employee's cause for leaving is within the employer's control. *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679. Thus, when determining whether good cause exists, the focus is on the employer's conduct, not the employee's. *Matlock v. Illinois Department of Employment Security*, 2019 IL App (1st) 180645. However, when possible, the employee must make a reasonable effort to resolve the cause of her leaving. *Lojek*, 2013 IL App (1st) 120679. "A substantial and unilateral change in employment may render employment unsuitable so that good cause for voluntary termination is established." *Acevedo v. Department of Employment Security*, 324 Ill. App. 3d 768, 772 (2001). But changes in pay, duties, and hours alone are generally insufficient to show good cause attributable to the employer for purposes of receiving benefits. Nor does workplace stress typically constitute good cause, absent medical documentation that was submitted to the employer and not accommodated. See *Eggleston v. Illinois Department of Employment Security*, 199 Ill. App. 3d 743, 745-46 (1990).

Although Claimant stated in her resignation email that her pay had been cut and she was experiencing stress at work, the court noted above that these issues are not generally deemed sufficient to constitute good cause. See id. at 745-46; *Acevedo*, 324 Ill. App. 3d at 772. In addition, while Claimant referenced inadequate training at the telephone hearing, she did not testify to any specific, substantial changes in her job duties that required such training. See *Lojek*, 2013 IL App (1st) 120679, (record reflected no evidence that changes in employment were substantial where employee did not explain how her job duties changed). In addition, the court noted that the Board may not consider "any written argument, response, or reply unless the submitting party has certified that it served a copy of the written argument on the opposing party." 56 Ill. Adm. Code 2720.315(b) (2018). Here, Claimant did not certify in writing that she mailed or served her written argument upon Employer. As such, the Board did not abuse its discretion by refusing to consider the document, and the court did not consider it in determining whether Claimant is ineligible for unemployment benefits because she left work voluntarily. Here, Claimant presented no evidence of a substantial and unilateral change in employment, initiated by Employer, that rendered her employment unsuitable.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

Health or Physical Condition VL 235
General VL 235.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.05**
DOCKET/DATE	**83-BRD-11574/10-18-83**
AUTHORITY	**Section 601B(1)**
TITLE	**Health Or Physical Condition**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a clerk until February 14, 1983. The claimant had surgery on February 16, 1983, and she was too weak to return to work. She did not obtain a medical leave of absence.

The claimant was under doctor's care and, according to her medical certification on record, she was unable to work from February 14, 1983, through April 4, 1983. This information was given to the employer.

HELD: The claimant was deemed physically unable to perform her work by a licensed and practicing physician from February 14, 1983, through April 4, 1983, and she notified the employer of her reasons for leaving work. She was not disqualified from receiving benefits.

Age VL 235.1
No decision

Hearing, Speech, or Vision VL 235.2
No decision

Illness or Injury VL 235.25

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	**83-BRD-12990/11-15-83**
AUTHORITY	**Section 601A of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness Or Injury**
CROSS-REFERENCE	**None**

The claimant, who is 65 years of age, was employed as a security guard. The claimant worked from 4 p.m. to midnight and was stationed in a trailer in a large parking lot. When the claimant started work in the summer, there was light and air conditioning in the trailer. As the weather changed in the fall, there was neither light nor heat in the trailer. The claimant complained about the lack of heat to her supervisor on several occasions. The claimant asked to be transferred but was told that there was no other job available for a woman. The claimant contended that the lack of heat was affecting her health, and, after several repeated requests for heat, the claimant voluntarily quit her job.

HELD: The conditions of the claimant's work changed substantially and adversely due to seasonal changes. The working conditions adversely affected the claimant's health, and she has a compelling reason to leave the job when the employer failed to correct the situation. She voluntarily left her employment with good cause attributable to the employer and is not subject to any disqualification.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	***Flex v. Board of Review*, 466 N.E. 2d 1050 (1984)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Illness or Injury (and Section 601B(1))**
CROSS-REFERENCE	**VL 155.35, Domestic Circumstances; MS 95.4**

The claimant was employed as a Stenographer until July, 1981, when she went on maternity leave, which was to expire in September, 1981. During that time, the claimant gave birth to a son whose spinal cord was damaged. The claimant was granted an extended leave of absence until January, 1982, because of the child's condition. No further extension was granted. On January 15, 1982, the claimant's supervisor informed her that if she did not return to work as scheduled, the employer would have to hire someone to replace her. The claimant explained that she needed more time off in order to provide care for her child. When the claimant did not report work as scheduled, she was replaced.

The claimant then filed a claim for unemployment benefits. The Claims Adjudicator determined that the claimant was ineligible for benefits pursuant to Section 601A of the Act, because she had left work voluntarily without good cause attributable to her employer. A Referee affirmed the Claims Adjudicator's determination.

In support of her appeal to the Board of Review, the claimant presented a letter from her son's pediatrician. The letter stated that the claimant's son suffered from "a right Erb's palsy, spinal cord lesion and hypospadias" and that he needed "physical therapy and infant stimulation." In addition, the letter stated:

> It is important that his mother spend as much time with the child as possible. She is a very good mother and the child shows the results of her time.

The claimant contended that based upon the doctor's letter she was entitled to a medical exception to the disqualifying provisions of Section 601A, in that she had left work upon the advice of a licensed and practicing physician, who had determined that the claimant's assistance was necessary for the purpose of caring for her child who was in poor physical health, and such assistance would not have allowed the claimant to perform the usual and customary duties of her employment.

The Agency's position was that the doctor's letter did not specifically state that caring for her child made it impossible for the claimant to continue her employment: The statement "It is important that his mother spend as much time...as possible" was insufficient to show that she could not have continued working.

HELD: Section 601B(1) provides an exception to the disqualifying provisions of Section 601A, provided that an individual shows that she left work:

> ...upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for her child who is in poor physical health...

In the instant case, the doctor's letter clearly indicated that the claimant's child suffered severe and disabling injuries at birth. The doctor was an expert on the type of assistance necessary to care for an ill child. Accordingly, the first provision of Section 601B(1) was satisfied.

> ...and such assistance will not allow the claimant to perform the usual and customary duties of her employment...

Although a physician is an expert on the type of assistance necessary to care for an ill child, her opinion on how such assistance will affect the parent's job duties is wholly outside her area of expertise and should not be required as a predicate for the award of benefits. A physician cannot be expected to know the implications of her advice for the receipt of unemployment insurance. Therefore, it would be unreasonable to require that a physician employ the exact wording of Section 601B(1). In the instant case, independent of the doctor's express language, the advice "spend as much time as possible" could properly have been interpreted to have precluded the continuation of full-time employment. Accordingly, the second provision of Section 601B(1) was satisfied. The claimant was entitled to an exception under Section 601B(1) of the Act.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	***Dubinin v. Ward*, et al., 484 N.E. 2d 870 (1985)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Illness or Injury (and Section 601B(1))**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes; (Compare with *Flex*)**

In 1981, the claimant was hired as a Tool Grinder. Between 1981 and 1983, his job duties were increased to include the tasks of an Equipment Washer and Tool Room Attendant. His work load was further increased when his apprentice left the company in March, 1983. Two months later, the claimant quit, citing concerns for his health, among other reasons. The claimant was disqualified for benefits under Section 601A.

At an appeal hearing, the claimant explained that the employer's actions in increasing his job duties adversely affected his health. He presented a medical report from the Veterans Administration, indicating that he had very high blood pressure. When asked about his doctor's advice, the claimant stated:

> All doctor told me was that I was mainly, it was mainly up to me. That I am working there and that I should know if I should continue to work or should not work. If I can handle the pressure or not.

Upon further appeal, the claimant cited *Flex v. Board of Review* (See VL 155.35, VL 235.25, and MS 95.4). The claimant argued that his physician's statement should have been interpreted as an indication that he was physically unable to perform his work, thereby entitling the claimant to an exemption under Section 601B(1).

HELD: Section 601B(1) provides, in pertinent part, that the provisions of Section 601A shall not apply to an individual who has left work because "he is deemed physically unable to perform his work by a licensed and practicing physician..."

In *Flex v. Board of Review*, it was held that "(s)ince a physician cannot be expected to know the implications of his advice for the receipt of unemployment insurance, it is unreasonable to require that he employ the exact wording of the statute." Therefore, such advice is subject to interpretation in the context of whether a claimant is entitled to unemployment benefits. However, *Flex* does not stand for the proposition that any statement by a physician, no matter how ambiguous or equivocal, will satisfy the statutory requirement.

In the instant case, the doctor's statement was ambiguous and equivocal and was insufficient to establish that the claimant left work upon the advice of a physician. Accordingly, the claimant was not entitled to an exemption under Section 601B(1).

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.25**
DOCKET/DATE **ABR-85-46-FE/9-3-85**
AUTHORITY **Section 601 of the Act**
TITLE **Health or Physical Condition**
SUBTITLE **Illness or Injury (Quit vs. Leave of Absence)**
CROSS-REFERENCE **None**

The claimant became employed in 1981. In August 1982, he was promoted into an accounting position as a Voucher Examiner. The claimant had had no experience in the area of accounting, and the demands of his job, both in terms of the volume of work and the accuracy required, caused him to suffer from stress, which manifested itself in physical symptoms. In April, 1983, the claimant was compelled to seek medical treatment. In May 1983, the claimant's physician advised him to change his job situation, but not necessarily leave work altogether, in view of his age and financial status. The claimant made his employer aware of the doctor's recommendation. The employer was unable to arrange an immediate transfer but suggested that the claimant apply for positions as they became available. The claimant did apply but was never selected for other positions. In March 1984, the claimant was again compelled to seek medical treatment. It was necessary for him to be treated again on June 1, 1984. On June 12, the claimant's physician contacted the employer directly, requesting a medical leave of absence for his patient, and the claimant began his leave of absence that day. On June 23, 1984, the claimant resigned from his job as a Voucher Examiner.

The issue presented was whether the claimant had left work voluntarily without good cause attributable to his employer, since a leave of absence had been available.

HELD: Section 601B(1) provides, in pertinent part, that the disqualifying provisions of Section 601A shall not apply to an individual who has left work voluntarily:

> Because he is deemed physically unable to perform his work by a licensed and practicing physician...and he has notified the employing unit of the reasons for his absence.

In the instant case, the claimant had been advised by his physician, as early as 1983, that he should change his job situation because of health problems. The claimant continued to experience ill health, until June 12, 1984, when he began a medical leave of absence -- at his doctor's insistence, which established that the doctor had determined that the claimant was physically unable to perform his work. The employer had at all times been aware of the claimant's ill health and had been unable to remedy the work situation; there was no prospect that the work situation would have been remedied. In light of that consideration, it was not material that a leave of absence had been made available. With or without the leave of absence, the claimant would have quit, for medical reasons, within the purview of Section 601B(1).

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.25**
DOCKET/DATE **ABR-85-5358/11-27-85**
AUTHORITY **Section 601 of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Illness Or Injury (Reasonable Accommodation)**
CROSS-REFERENCE **VL 160.05, Efforts to Retain Employment**

The employer had a policy of placing employees -- who had verified medical problems -- on light duty work.

The claimant had been employed as an Assembler for 19 years. She was absent 1 week, reportedly due to a backache. When she returned to work, she asked her foreman to place her on light duty work. The foreman declined to do so. The claimant then went to the employer's personnel office, but, instead of requesting, in a proper fashion, light duty work, she applied for retirement.

At an appeal hearing, the claimant acknowledged that she had been aware of the employer's formal procedures concerning medical verification in order to obtain light duty work, that she had not been advised by a physician to restrict her work, and that she had not presented the employer with any verification of an injury.

HELD: The disqualifying provisions of Section 601A do not apply when, pursuant to Section 601B(1), a worker has been deemed unable to work by a licensed and practicing physician, provided that the worker has notified the employing unit of the reason(s) for his or her inability to work.

The purpose of the notice requirement is to afford the employer an opportunity to make a reasonable accommodation. Where the employer would do so, and would make available work which would be suitable in light of the worker's special circumstances, a worker who forgoes such a reasonable accommodation and quits is not unemployed for lack of suitable work. Because the purpose of the Unemployment Insurance Act is to provide benefits to individuals who are involuntarily unemployed due to the lack of suitable work and for no other reason, an individual who does not avail himself or herself of a reasonable accommodation will be disqualified.

In the instant case, the claimant made no effort to utilize the known procedures established by her employer for obtaining light duty work, when such work would have been made available. Rather than make a reasonable effort to remain employed, she chose to quit. She left work without good cause attributable to her employer and the disqualifying provisions of Section 601A were applicable.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	**ABR-86-9-FE/7-16-86**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness Or Injury**
CROSS-REFERENCE	**VL 385.05, Relation of Alleged Cause of Leaving**

The claimant worked for the United States Postal Service for 36 years.

The claimant testified that, for the last 5 or 6 years, his job had caused him stress, and that his employer was aware that he had been under the care of a physician for hypertension and migraine headaches. The claimant added that, in March, 1985, his physician had advised him to seek a less stressful job.

Nonetheless, the claimant forewent a disability leave and decided to continue working for 8 more months, until November, 1985, so that he would become eligible to receive his retirement pension.

HELD: Section 601B-1 provides an exception to the disqualifying provisions of Section 601A, provided that an individual leaves work as a result of a physician's determination that he is unable to continue working in his customary occupation.

In the instant case, the claimant did not leave his job as a result of his physician's determination that he was unable to work, but, rather, upon becoming eligible to collect his retirement pension. Retirement, not health, was the genuine reason for the work separation, and, therefore, the claimant was not entitled to an exception under Section 601B(1).

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	**ABR-89-2689/6-7-89**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness Or Injury**
CROSS-REFERENCE	**None**

The claimant worked as a delivery driver-laborer. The job involved frequent heavy lifting.

The claimant was required to undergo a medical examination. The company doctor determined that the claimant should not perform such work, due to a bad back. The claimant wished to continue working, so he received permission to obtain a second opinion. The second doctor stated that the claimant could attempt to do the job, as long as he did not experience serious back pain.

The claimant went back to work, then began to experience pain. He again consulted the second doctor, who prescribed an exercise program, but instructed the claimant that, if the pain did not subside, he should discontinue the work.
The claimant went back to work, then the pain increased, until he gave notice that he had to leave work.

HELD: Section 601B(1) provides a medical exception to the disqualifying provisions of Section 601A. The exception applies if a physician has deemed a worker unable to work.

The fact that a worker wants to work and that a doctor might give him a conditional go-ahead to work does not necessarily mean that the worker is, in fact, able to work.

Here, the claimant was deemed unable to work by not only the company doctor, but the second doctor as well.

The exception applied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	**ABR-94-11626/2-8-95**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Illness or Injury**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes**

The claimant took a leave of absence, then resigned, saying it was at the recommendation of his therapist, a licensed clinical psychologist. The psychologist had said that the claimant needed time off to deal with anxiety and stress management issues.

HELD: Section 601B(1) of the Act provides an exception to the disqualifying provisions of Section 601A. However, the exception only applies if the leaving is predicated upon the statements of a "licensed and practicing physician." Psychologists may be licensed professionals, but they are not physicians. Accordingly, the claimant's leaving was not within the purview of Section 601B(1) and he was not entitled to an exception from disqualification under Section 601A.

Physical Examination Requirement VL 235.35
No decision

Pregnancy VL 235.4

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.4**
DOCKET/DATE	**85-BRD-04365/6-11-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant was employed as a Receptionist. In February, she told her employer that she was pregnant. Then the claimant became increasingly ill as her pregnancy progressed. It was obvious to her employer: Her work product deteriorated; she was frequently absent. In May, she explained to her employer that she could no longer handle her work, on account of her illness, and she resigned.

HELD: The evidentiary and notice requirements of Section 601B(1) serve to corroborate the existence of conditions which render an individual unable to continue working for a particular employer. Notwithstanding the literal requirements of Section 601B(1), the evidence in the instant case established that the employer was aware that due to a pregnancy-related illness the claimant would be unable to continue working. Such circumstances were within the purview of Section 601B(1). Therefore, the claimant was exempt from the disqualifying provisions of Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.4**
DOCKET/DATE	**85-BRD-05427/7-18-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant worked as a Seamstress for approximately 3 years. On July 21, 1984, the claimant, being 8 1/2 months pregnant, chose to separate from employment. She did not submit any doctor's statement to her employer. The employer was aware that the claimant was 8 1/2 months pregnant.

HELD: The evidentiary and notice requirements of Section 601B(1) serve to corroborate the existence of conditions which render an individual unable to continue working for a particular employer. Notwithstanding the literal requirements of Section 601B(1), the evidence in the instant case established that the employer was aware that due to the imminent birth of the claimant's child the claimant would be unable to continue working. Such circumstances were within the purview of Section 601B(1). Therefore, the claimant was exempt from the disqualifying provisions of Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.4**
DOCKET/DATE	**ABR-85-3491/9-30-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Pregnancy (Constructive Discharge)**
CROSS-REFERENCE	**MC 135.1, Discharge or Leaving**

The claimant was 6 months pregnant, when, according to her employer's standard policy, she was given a choice: She could be placed on "Maternity Leave Status," which meant she could no longer work, but would be eligible to be rehired, if there was an opening, after her baby was born; or, she could continue working by signing a "Release of Liability" form, which stated that she would release all rights to recovery for injury to herself or the unborn child, regardless of the cause of such injury. The claimant refused to sign a "Release of Liability," was placed on "Maternity Leave Status," and was told she could re-apply for work after her baby was born.

HELD: If a company rule requires separation at a certain stage of pregnancy, the separation, if it occurs at that stage, is a discharge, not a voluntary leaving. Even though the worker may take some action which results in the separation, a separation which arises out of the employer's rule will constitute a constructive discharge. In the instant case, the claimant's refusal to sign a "release" constituted a constructive discharge cognizable under Section 601A of the Act. Because compelling circumstances caused the claimant to refuse to sign the form, her actions in refusing to sign did not exhibit a willful disregard of duties owed to the employer. The claimant was discharged for reasons other than misconduct connected with her work.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.4**
DOCKET/DATE	**ABR-85-3401/10-3-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant was employed as a Secretary for 4 years, until October, 1984, toward the end of her 8th month of pregnancy. The claimant gave her employer 2 weeks' notice of her intention to leave, then trained her replacement in the interim.

The claimant stated that, while she was in regular contact with her obstetrician, he had not specifically advised her to leave work when she did. The claimant testified, however, that her physical condition had been interfering with the performance of her duties.

The claimant's child was born in November.

Subsequently, the claimant was disqualified for benefits, a Referee concluding that she "...left work for personal, domestic reasons." The claimant was determined not to have qualified for a medical exemption under Section 601B(1), because she "...did not present proof that she had been advised medically to leave her job."

HELD: The evidentiary and notice requirements of Section 601B(1) serve to corroborate the existence of conditions which render an individual unable to continue working for a particular employer. However, there is no requirement that for every circumstance the corroboration be express, rather than implied. Where the latter stages of pregnancy are concerned, it is quite common for an obstetrician to permit the patient to continue working for as long as she feels able, and, as a practical matter, it is often the patient who determines when she should discontinue working.

In the instant case, the evidence established that the claimant was 8 months pregnant, that she was receiving regular prenatal care, that her physical condition was causing her difficulty on the job, and that her employer was aware of her condition. From

such facts, it could reasonably have been inferred that the claimant had been deemed unable to continue working. All of the pertinent elements of Section 601B(1) having been satisfied, the claimant should not have been disqualified for benefits under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.4**
DOCKET/DATE	**ABR-85-2840/9-9-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant was employed as a Supervisor. A physician's statement, dated August 22, 1984, indicated that the claimant -- who was 8 months pregnant -- would be able to continue to work until the onset of labor. However, on August 24, the claimant chose to separate from employment, at the same time declining to accept a 6 week maternity leave. The claimant told her employer that she did not wish to return to work for 6 months, in order to nurse her baby.

The claimant's child was born on September 20.

HELD: The evidentiary and notice requirements of Section 601B(1) serve to corroborate the existence of conditions which render an individual unable to continue working for a particular employer. In the instant case, there was neither any express or implied doctor's advice -- let alone any evidence -- that the claimant, at the time of leaving, was no longer able to perform her job duties. The time of the claimant's leaving, together with her statement that she did not wish to return to work for 6 months, indicated that the claimant's reasons for leaving were personal and non-medical. Therefore, this leaving was not within the purview of Section 601B(1). The disqualifying provisions of Section 601A were applicable.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.4**
DOCKET/DATE	**ABR-85-7145/2-25-86**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant was a part-time Cashier. At a time when she was 3-1/2 months pregnant, she gave 2 weeks notice of her intention to resign. She did not request a maternity leave of absence, nor did she present evidence that a physician had determined that she was unable to perform her work. The claimant later testified: "I was pregnant and having a difficult pregnancy."

The issue presented was whether the claimant met the requirements, under Section 601B(1), for an exception to the disqualifying provisions of Section 601A.

HELD: Generally, in order for an exception under Section 601B(1) to apply, it must be shown by competent medical evidence that a worker's pregnancy has rendered her physically unable to continue working in her customary occupation, or that the work itself will have an adverse effect upon the health or well being of the worker or her unborn child. Further, the employer must be given notice of the claimant's condition, so that a reasonable accommodation might, if possible, be made.

In the instant case, the claimant was in the early stages of pregnancy. There was no evidence presented to show that the claimant had been precluded from working by a doctor's determination (either express, or, as a practical mater -- when childbirth is imminent -- implied), or that her work might have been harmful to her unborn child. Further, the pregnancy not being advanced, the employer may not have had notice of the claimant's condition, or, even if it did, should have been given an opportunity to make some accommodation; however, the claimant eliminated this possibility by quitting outright.

The claimant did not qualify for a Section 601B(1) exception.

Risk of Illness or Injury VL 235.45

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.45**
DOCKET/DATE	***Eggleston v. IDES*, 557 N.E. 2d 534 (1990)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness or Injury (Reasonable Accommodation)**
CROSS-REFERENCE	**None**

The claimant's work involved substantial telephone duty. She told her branch manager that she needed a telephone headset because using an ordinary handset caused poor posture and chronic muscular pain. The claimant also told him that she suffered from ringing in the ears, resulting from stress. The branch manager told her to buy a telephone headset and she would be reimbursed. The claimant did not buy the headset. Instead, she resigned.

The claimant informed her branch manager that she was quitting because of her "mistrust" of him and, from her perspective, their personality conflict.

When the claimant filed her claim for unemployment benefits, she stated that she left for health reasons. She submitted to the Department a statement from a doctor who advised her to quit because of "tension and stress on her job."

HELD: When risk of illness or injury is an issue under Section 601A, the claimant must:

1) offer competent testimony (some medical evidence) that adequate health reasons justified leaving;

2) have informed the employer of the health problem; and

3) have been available where a reasonable accommodation was made by the employer.

Here, the claimant's failure to purchase the headset after being informed that she would be reimbursed made her unavailable for a reasonable accommodation and ineligible under Section 601A.

Section 601B(1) provides an exemption to the disqualifying provisions of Section 601A. In order for the exception to apply, the claimant must:

1) have been deemed unable to work by a licensed, practicing physician; and

2) have informed the employer that this was her reason for leaving (the purpose of this condition being that, if the employer is given notice, some accommodation might be made).

Here, the claimant failed to inform the employer that she was quitting because of a health problem and, therefore, there could be no exception under Section 601B(1).

The claimant was ineligible for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.45**
DOCKET/DATE	**ABR-89-5257/10-10-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Risk of Illness (Due to Cigarette Smoke)**
CROSS-REFERENCE	**VL 515.35, Working Conditions, Environment**

The claimant stated that he left work because of cigarette smoke in the office. He never told his employer that cigarette smoke was bothering him.

HELD: If a worker asserts that he had good cause for leaving, because his working environment posed a risk to his health, he must:

1) offer competent testimony (some medical evidence) that adequate health reasons justified quitting;
2) have informed the employer of the problem; and

3) have been available for a reasonable accommodation.

Here, at the least, the claimant failed to inform the employer of any problem. Therefore, he did not establish that he had good cause for leaving. Benefits were denied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.45**
DOCKET/DATE	**ABR-86-141/4-7-86**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Risk of Illness or Injury**
CROSS-REFERENCE	**VL 138.05, Disciplinary Action**

The claimant's supervisor told her that her work needed improvement. The claimant became so upset after the conversation with her supervisor that she decided to consult a therapist; the therapist was not a licensed physician, but a social worker. The social worker determined that the claimant's supervisor's statements had created an "intolerable situation" which was "threatening to (the claimant's) emotional balance." On that basis, the social worker advised the claimant to quit her job, and she did.

HELD: Section 601B(1) of the Act reads, in pertinent part:

> The (disqualifying) provisions of this Section (601A) shall not apply to an individual who has left work voluntarily because he is deemed physically unable to perform his work by a licensed and practicing physician...

In the instant case, the claimant had not been deemed unable to work by a licensed practicing physician, but had been advised to quit her job by a social worker. Therefore, the claimant was not entitled to a Section 601B(1) exception.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.45**
DOCKET/DATE	***Patrick Burke v. Board of Review*, 477 N.E. 2d 1351**
AUTHORITY	**Section 601A of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Risk of Illness or Injury**
CROSS-REFERENCE	**VL 515.65, Working Conditions, Safety**

The claimant, a worker in a nuclear facility, testified that 2 fellow employees had been found to be contaminated with radiation. The extent of their contamination, he testified, was that, upon leaving the facility, they had to take showers and some work clothing was lost. The claimant himself was found not to be contaminated. Nonetheless, believing that there were areas of radiation still unknown, making working conditions unduly hazardous for him, the claimant quit. At no time had he sought medical treatment or advice, nor had he complained to superiors about the purportedly hazardous conditions. He stated that he did not complain because he did not wish to be branded a troublemaker.

HELD: In order to demonstrate that health is a compelling reason or terminating employment, a claimant must:

(1) offer competent testimony (some medical evidence) that adequate health reasons existed to justify termination at the time of termination;

(2) have informed the employer of the health problem, and

(3) be available, where a reasonable accommodation is made by the employer, for work which is not inimical to his health.

The failure to satisfy any one of the three conditions explicated above will bar a claim for unemployment compensation.

In the case at bar, the claimant did not establish good cause attributable to his employer based upon health reasons. He did not adduce any medical evidence to support the allegations concerning alleged health problems. He did not report purportedly unsafe conditions to his employer. His conduct did not meet the standard of ordinary common sense; in short, he did not act in good faith. As a result, he was disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.45**
DOCKET/DATE	**85-BRD-04632/6-20-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Risk of Illness or Injury**
CROSS-REFERENCE	**None**

The claimant was employed as a Prison Guard for two years. He resigned, contending that working as a prison guard was stressful.

HELD: An employee's reasonable fear that his work constitutes a hazard to his safety is some evidence of good cause. However, certain occupations carry an unusually high risk of injury and accompanying stress. A person entering one of these occupations assumes these as "ordinary" risks of that occupation. Accordingly, in order to show good cause, the worker must present additional evidence to show that the risks were disproportionately high for the occupation. In this case, the claimant knew, or should have known, that his work as a correctional officer entailed a degree and type of stress dissimilar to that of more conventional work. He did not show that, given the nature of his work, the working conditions were unusually stressful. The claimant did not establish that he had good cause for leaving his job.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.45**
DOCKET/DATE	**ABR-86-1950/7-31-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Risk of Illness or Injury**
CROSS-REFERENCE	**None**

The claimant worked in a Hospital Developmental Center as a Mental Health Technician. During her 2 years of employment, in addition to being involved in scuffles in attempts to control or work with unruly patients, she was knocked down and hit in the face. The injuries were severe enough to cause her to be absent from work for days and weeks at a time.

During the claimant's shift, there were no male employees available to help out. The claimant requested to be transferred to other areas of the facility where she would not be exposed to such problems. However, on the basis of seniority, she did not qualify for a transfer.

Subsequent to another assault by a patient, the claimant quit.

HELD: Certain occupations carry an unusually high risk of injury, and a person entering one of these occupations assumes that risk as "ordinary" for the occupation. However, an individual who presents evidence to show that the risk was disproportionately high for the occupation will have demonstrated that she had good cause attributable to the employer of leaving work voluntarily, provided that the she gave the employer an opportunity to remedy the situation.

In the instant case, although the claimant entered a profession involving a degree of risk due to the unpredictability of her patients, she suffered repeated and serious injuries to her person during a relatively short period of time. The claimant demonstrated that the employer, by not hiring male staffers for her shift, may have been in part responsible, or at least ought to have made some accommodation. The claimant established that the risk of injury was disproportionately high for her occupation as a Mental Health Technician and that she gave her employer an opportunity to remedy the situation. That failing, she had good cause attributable to her employer for leaving.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.45**
DOCKET/DATE **ABR-87-5552/4-7-88**
AUTHORITY **Section 601A of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Risk of Illness or Injury**
CROSS-REFERENCE **VL 50.05, Attributable; VL 515.65, Working Conditions**

The claimant worked in a hospital as a Registered Pediatric Nurse whose duties included providing nursing care to children with various diseases - including Acquired Immune Deficiency Syndrome (AIDS).

The hospital informed nurses as to how AIDS could be transmitted. The hospital formally instructed nurses concerning the treatment of AIDS patients. On the doors of patients who had been exposed to the AIDS virus were notices reminding nurses about blood and secretion precautions to be taken. In addition, the hospital followed established procedures that were taken for other infectious diseases transmitted through the blood, such as hepatitis, which involved precautions against contact with patients' blood and secretions.

The claimant became separated from employment because she refused to provide care for an infant who had been exposed to the AIDS virus.

HELD: Dangers inherent in a job are not necessarily attributable to the employer. Only where the risks of a job are disproportionately high, because the employer either acts or fails to act, will such a risk result in a finding of attributability.

Nursing, as an occupation, involves contact with patients who might have contracted contagious diseases. The claimant, as nurse, assumed this risk as the ordinary risk of the nursing occupation. The evidence in this matter did not establish that the risk of the claimant's contraction of the AIDS virus was disproportionately high. This was because of the precautions taken by the employer.
The claimant did not make herself available for work despite the employer's reasonable precautions. As such, she did not have good cause attributable to the employer for leaving her job.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.45**
DOCKET/DATE **ABR-88-1316/5-31-88**
AUTHORITY **Section 601 of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Risk of Illness or Injury**
CROSS-REFERENCE **VL 425.05, Suitability of Work**

The claimant accepted a job as a machine operator. Shortly after acceptance, she learned that, despite the job's title, she was required to lift metal shafts, some weighing 100 lbs. During the first week of training, other workers assisted her. During the second week of training, knowing she would not be able to lift the shafts when left to herself, she quit.

She was disqualified for benefits because she did not consult a physician before leaving.

HELD: Section 601B-5 provides that there will be no disqualification if a job is unsuitable at the time of acceptance. When it is the suitability of the work for the individual and not a medical condition that causes her to quit, it is unnecessary for her to seek the advice of a physician.
In this case, the claimant left work that was unsuitable due to her size and strength limitations. She was not disqualified.

Leaving without Notice VL 290
General VL 290.05
No decision

Military Service VL 305
General VL 305.05
No decision

New Work VL 315
General VL 315.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 315.05**
DOCKET/DATE	**ABR-85-5408/12-27-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**New Work**
SUBTITLE	**Good Cause for Refusing**
CROSS-REFERENCE	**VL 5.05, Voluntary Leaving; RW 5.05, Refusal of Work**

The claimant had been working as a Secretary when her employer notified her that, although her secretarial position was about to be abolished, there was still work for her, at 20 cents more per hour, with no loss of benefits -- as a Riveter.

The claimant feared that if she accepted such work her secretarial skills would decline and she would be denying herself opportunities for career advancement. She rejected the Riveter job, thereby quitting.

HELD: A transfer to substantially different work constitutes "new work." A worker who refused such new work does so with good cause if the new work is unsuitable. Only if the conditions of the new work are substantially less favorable to the worker than her customary work may the new work be defined as unsuitable. The skills which an individual has acquired, and the extent to which those skills might be eroded, is a consideration in determining whether new work is substantially less favorable.

In the instant case, the employer wished to transfer the claimant to work which was substantially different from her customary work and, accordingly, constituted "new work." The claimant's acceptance of work as a Riveter would have resulted in the erosion of skills she had acquired as a Secretary, and, in turn, would have lessened her opportunities for career advancement. Because the conditions of the new work would have been substantially less favorable to the claimant than her customary work, the new work was unsuitable. The claimant had good cause for quitting.

Pension VL 345
General VL 345.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 345.05**
DOCKET/DATE	**ABR-86-5060/3-30-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Pension – Retirement**
SUBTITLE	**Early Retirement**
CROSS-REFERENCE	**VL 450.25, Lay-off Imminent; VL 500.1, Wage, Agreement**

The claimant had been employed, as a Tool Maker, for 18 years. The employer was contemplating a reduction in work force, and, toward that end, told the claimant that if he were to retire on or before April 18, 1986, he would be entitled to his retirement pension, which included a medical package which included his sick wife. He was also told that if the were to retire after April 18, 1986, he would not be granted the medical package and benefits which included his sick wife. On April 18, 1986, the claimant applied for early retirement, so that his sick wife would be covered by his medical benefits.

HELD: Some employers have adopted special early retirement programs for the purpose of encouraging older workers to retire early and gain certain advantages, such as bonuses or increased benefits. In those cases, whether a worker leaves with good cause attributable to the employer is determined by examining, where applicable, the following factors: the period of time between early retirement and mandatory retirement; the degree of encouragement by supervisory personnel to retire early; whether the inducement to retire is financially substantial; in short, the question to be asked is whether a reasonably prudent person, under the same or similar circumstances, would accept early retirement.

Notwithstanding the above, care must be taken to distinguish cases such as the instant one. In the instant case, the employer did not offer the claimant a package containing any advantages; rather, the employer sought to discontinue existing medical coverage. The claimant was confronted by an imminent and material breach of the continued working agreement. His apprehension was reasonable, in that this would impose a financial burden upon him; he had a compelling reason for leaving - a reasonable person would not have waited to suffer the actual detriment. The work had been rendered unsuitable, and the claimant left work with good cause attributable to his employer, without disqualification under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **83-BRD-121-FE/10-7-83**
AUTHORITY **Section-601A and S-601B1.**
TITLE **Pension**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked as a letter carrier for 10 years. He left his job to retire and collect his pension on February 28, 1983, and his retirement was not compulsory. The work involved considerable walking and his legs had begun to bother him but he had not been advised to quit by a physician. In his appeal the claimant submitted a letter from his physician, dated June 3, 1983, stating that the claimant had been under his care. It did not state he had been deemed physically unable to perform his work prior to leaving the job.

HELD: A worker who leaves work when retirement is not compulsory leaves work voluntary. The claimant left work because he had sufficient seniority to retire and to collect his pension and not on the advice of his physician. This is voluntary leaving without good cause attributable to the employer. The claimant is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **83-BRD-13124/11-16-83**
AUTHORITY **Section-601A**
TITLE **Pension**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant is sixty-two years old and had worked for the employer thirty-five years as a packer. The claimant voluntarily left employment to receive union retirement benefits, which were more than the wages he received by working. The employer testified that there was no mandatory retirement age for employees and that other employees worked while in their late sixties or seventies.

HELD: While the claimant quit for a compelling personal reason, it was not attributable to the employer. He is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **ABR-94-11677/2-8-95**
AUTHORITY **Section 601A of the Act and 56 Ill. Adm. Code 2840.125**
TITLE **Pension**
SUBTITLE **Early Retirement / Buyout Incentive**
CROSS-REFERENCE **None**

The claimant, a part-time deli-clerk, accepted a buyout incentive package. Her job was not in jeopardy, nor would working conditions change. The sole reason she accepted the buyout offer was because she had become dissatisfied with part-time work.

HELD: Rule 2840.125 provides, in pertinent part, that an individual who accepts a buyout package is ineligible unless she reasonably believes her employment will be terminated under terms and conditions substantially less favorable than those of the offer, or that her employment will continue, but under terms and conditions substantially less favorable than those immediately prior to the offer. In the instant case, the claimant had no reasonable belief that her job would be terminated or that working conditions would become less favorable. Therefore, the claimant was ineligible for benefits under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **ABR-95-6150/8-2-95**
AUTHORITY **Section 601A of the Act and 56 Ill. Adm. Code 2840.125**
TITLE **Pension**
SUBTITLE **Early Retirement / Buyout Incentive**
CROSS-REFERENCE **None**

The claimant accepted an early retirement offer because he had heard a rumor that his position had been declared "surplus." He was never notified officially of this fact and never discussed the situation with anyone in management prior to accepting the offer. The employer testified that, had the claimant not accepted the offer, he could have continued working under the same conditions as he had always worked.

HELD: Rule 2840.125 provides, in pertinent part, that an individual who accepts a buyout package is ineligible unless he reasonably believes his employment will be terminated under terms and conditions substantially less favorable than those of the offer. The rule further provides that a "reasonable belief" includes an individual's seeking but not receiving assurances. Here, the claimant's belief was not reasonable, but was instead based upon mere speculation, because he never discussed his situation with anyone in management. He was ineligible for benefits under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **ABR-95-3439/8-2-95**
AUTHORITY **Section 601A of the Act and 56 Ill. Adm. Code 2840.125**
TITLE **Pension**
SUBTITLE **Early Retirement / Buyout Incentive**
CROSS-REFERENCE **None**

In April, 1994, the employer made a buyout offer of six months continued wages and insurance coverage if the claimant would leave work by July, 1994. At the time of the offer, there were rumors the claimant's store was closing; also, some workers had already been laid off without being replaced. The claimant asked for assurances the store was not closing or that she could transfer to another store. Such assurances were not given. The claimant then accepted the buyout offer.

HELD: Rule 2840.125 provides, in pertinent part, that an individual who accepts a buyout package is ineligible unless she reasonably believes her employment will be terminated under terms and conditions substantially less favorable than those of the offer. The rule further provides that a "reasonable belief" includes an individual's seeking but not receiving assurances. Here, the layoffs and the rumors, coupled with the employer's unresponsiveness to the claimant's attempts to receive assurances, constituted a reasonable belief in accordance with the rule. The claimant was not ineligible.

Period of Disqualification VL 350
General VL 350.05
Aggravating Circumstances VL 350.1
Mitigating Circumstances VL 350.3
Subsequent Employment VL 350.5

ISSUE/DIGEST CODE **Voluntary Leaving/VL 350.5**
DOCKET/DATE **83-BRD-14635/12-8-83**
AUTHORITY **Section-601B2.**
TITLE **Period Of Disqualification**
SUBTITLE **Subsequent Employment**
CROSS-REFERENCE **VL 365.15, Definite under Prospect Of Other Work**

The claimant was on a medical leave of absence due to an injury, and, when he returned to work, he was placed in a lower paying position. He worked at this new job for five weeks, became dissatisfied with it, and located other bona fide work. He remained employed at this job for seven weeks.

HELD: The evidence clearly established that the claimant left work in order to accept new bona fide work which he then held for a period of more than two weeks. Under the circumstances, he is not subject to any disqualification for benefits for voluntarily leaving work.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 350.5**
DOCKET/DATE **ABR-85-5139/11-27-85**
AUTHORITY **Section 601A of the Act**
TITLE **Period Of Disqualification**
SUBTITLE **Subsequent Employment**
CROSS-REFERENCE **MS 95.3, Construction of Statutes**

The claimant had worked part-time, on a commission basis, as a Jewelry Salesperson. When she quit that job, she was disqualified for benefits under Section 601A.

Subsequently, an appeal hearing was held to consider the claimant's contention that she had requalified for benefits pursuant to the requalification provisions of Section 601A. At that hearing, the claimant stated that, since leaving her Jewelry Salesperson job, she had worked for more than the required 4 weeks, earning more than her weekly benefit amount in each week. She stated that she had been working 8 to 10 hours per week, as a Bartender, in a tavern owned by her husband.

The tavern did not list the claimant as an employee. The claimant testified that this was because she had been paid in cash, without any withholding for Federal or State taxes. At the time she had certified for benefits, she did not report any earnings from her work as a Bartender.

HELD: Section 601A of the Act requires, for requalification, that an individual become reemployed, and have earnings equal to or in excess of her weekly benefit amount in each of 4 calendar weeks. Such earnings --

> must be for services in employment, or have been or will be reported pursuant to the provisions of the Federal Insurance Contributions Act...

It would be inconsistent with the purpose of the Act if the phrase "services in employment" was to be interpreted to include work which was a sham. In the instant case, the claimant failed to establish that, upon leaving her work as a Jewelry Salesperson, she had performed bona fide work as a Bartender. Therefore, it could not be concluded that she had earned wages from services in employment.

Further, the claimant's earnings had not and would not be reported pursuant to the provisions of the Federal Insurance Contributions Act.

Because the claimant did not show that she had earned wages from services in employment or that her earnings had or would be reported pursuant to the provisions of the Federal Insurance Contributions Act, she did not requalify for benefits.

Personal Affairs VL 360
General VL 360.05

ISSUE/DIGEST CODE **Voluntary Leaving/VL 360.05**
DOCKET/DATE **83-BRD-10125/8-13-83**
AUTHORITY **Section-601A**
TITLE **Personal Affairs**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant quit work to go to California to seek custody of his children who were living in that state with his wife from whom he was separated. The claimant requested a leave of absence for 6 months or one year which was denied him.

HELD: The claimant voluntarily left work for compelling personal reasons which were not attributable to the employer. He is ineligible for benefits.

Personal Appearance VL 363
General 363.05
No decision

Prospect of other Work VL 365
General VL 365.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.05**
DOCKET/DATE	**83-BRD-11423/10-7-83**
AUTHORITY	**Section-601A**
TITLE	**Prospect Of Other Work**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 365.25, Uncertain under Prospect Of Other Work**

The claimant worked as a delivery driver. He was offered a similar job by another employer at a higher wage and gave his employer two weeks' notice. Prior to the expiration of the two-week period, he fell and injured his back at work. He informed his new employer that he would not be able to begin work until his situation improved, and he was told to contact them when he could begin work. One and a half weeks later, he contacted the new employer but was told the position had been filled.

HELD: The claimant quit work to accept a new job. The job did not materialize because of the claimant's inability to begin work as scheduled. The claimant is disqualified from benefits for voluntarily leaving his first job without good cause attributable to his employer. Had he been able to enter into his second employment and either worked in each of two weeks or had earnings equal to twice his weekly benefit amount, he would have avoided the disqualification.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.05**
DOCKET/DATE	**ABR-85-933/9-4-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Section 601B-2, Exception to Section 601A Disqual.**
CROSS-REFERENCE	**None**

A travel agency in Lake Forest, Illinois advertised for an employee. The claimant, who was working in Kankakee, Illinois at the time, replies to the advertisement, was accepted for employment, resigned from her Kankakee position, and relocated with her family to Lake Forest, where she began working for her new employer. After 1 week, the claimant resigned. She was paid $400 for her week's work. She then filed for unemployment benefits. It was determined that her weekly benefit amount was $161.

HELD: Section 601B-2 provides an exception to the disqualifying provisions for Section 601A, where an individual voluntarily leaves work for the purpose of accepting other bona fide work. In order to qualify for the exception, an individual must be employed in the new position in each of 2 weeks or earn from work in the new position at least twice his or her weekly benefit amount.

In the instant case, the claimant left her Kankakee job for the purpose of accepting other bona fide work, from which she earned more than twice her weekly benefit amount. As a consequence, with respect to leaving the Kankakee job, the claimant had met the requirements for a Section 601B-2 exception.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.05**
DOCKET/DATE	**ABR-84-518-FSC/7-1-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Section 601B-2, Exception to Section 601A Disqual.**
CROSS-REFERENCE	**None**

The claimant was employed as a Customer Service Manager. The work was part-time and during his tenure at the job the claimant was drawing partial unemployment benefits. On April 12, 1984, the claimant quit his Customer Service job in order to accept work as a Vacuum Cleaner Salesman. This work was part-time also and the claimant continued drawing partial unemployment benefits. The claimant became separated from his Vacuum Cleaner Salesman job on May 19, 1984.

HELD: Section 601B-2 provides an exception to the disqualifying provisions of Section 601A, where an individual voluntarily leaves work for the purpose of accepting other bona fide work. In order to qualify for the exception, an individual must be

employed in the new position in each of 2 weeks or earn from work in the new position at least twice his or her weekly benefit amount.
In the instant case, although the claimant left his Customer Service Job for the purpose of accepting other work, and then did work during the ensuing 5 weeks, he was also an unemployed individual during that 5 week period (because he was drawing unemployment benefits). As a consequence, with respect to leaving his Customer Service job, he did not meet the requirements for a Section 601B-2 exception.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.05**
DOCKET/DATE	**ABR-85-3379/9-9-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Section 601B-2, Case Where Exception Did Not Apply**
CROSS-REFERENCE	**None**

The claimant was employed as a Clerk until November, 1984, when she gave her employer notice that she intended to quit in order to join the United States Air Force. After quitting her job, the claimant failed the Air Force's physical examination. Subsequently, the claimant filed for unemployment benefits.

HELD: Section 601B-2 provides an exception to the disqualifying provisions of Section 601A, where an individual voluntarily leaves work for the purpose of accepting other bona fide work. In order to qualify for the exception, an individual must be employed in the new position in each of 2 weeks or earn from work in the new position at least twice his or her weekly benefit amount.

In the instant case, because the claimant did not work in each of 2 weeks or earn at least twice her weekly benefit amount from such work, the exception did not apply.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.05**
DOCKET/DATE	***Woodliff v. Ill. Dept. of Labor,* 487 N.E. 2d 645 (1985)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Self-Employment**
CROSS-REFERENCE	**MS 95.1/.2/.3, Construction of Statutes**

The claimant, a Carpenter with 18 years experience -- which included self-employment -- worked for a company from January, 1981 until June, 1982 when he quit to again become self-employed. From that self-employment, the claimant earned $1,160 in June, $1,442 in July, $925 in August, and $704 in September. In October, he filed for unemployment benefits.

The sole issue in the instant case was whether the claimant's leaving the company to become a self-employed carpenter was a leaving to "accept other bona fide work" within the meaning o Section 601B-2.

HELD: Section 601B-2 of the Act provides an exception to the disqualifying provisions of Section 601A, where an individual voluntarily leaves work to "accept other bona fide work."

The court determined that "accept" and "work" should have their popularly understood meanings; neither requires that a strict employer-employee relationship exist; "acceptance of work" would include individual tasks undertaken by a self-employed person, for the people who hired that person (e.g., the carpentry jobs the claimant accepted and performed while self-employed). The court stated that, if the legislature had intended to limit "accept other bona fide work" to situations involving an employer-employee relationship, it could have done so very easily, by requiring that the work be "for an employer other than the individual applying for benefits." Even more simply, the legislature could have used the word "employment" rather than work, since the statute (Section 206 of the Act) defines "employment" to require an employer-employee relationship. The legislature's failure to draft Section 601B-2 in such a fashion was a further indication that the statutory exception at issue included self-employment such as the claimant's.

More importantly, the "bona fide" requirement was to safeguard against individuals who might leave one job to accept another which was a sham. In the instant case, the court examined the claimant's self-employment to determine if it was genuine:

(1) The claimant had experience in the occupation; and

(2) He had a history of self-employment; and

(3) He had been relatively successful at his self- employment.

Because the claimant's self-employment was genuine it was concluded that he had accepted other bona fide work within the meaning of Section 601B-2 and was entitled to the exception.

Characteristics of Other Work VL 365.1
No decision

Definite VL 365.15

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.15**
DOCKET/DATE	**83-BRD-14635/12-8-83**
AUTHORITY	**Section-601B2.**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Definite**
CROSS-REFERENCE	**VL 350.5, Subsequent Employment under Period Of Disqualification**

The claimant worked as a service advisor and quit his job. The claimant was on a medical leave of absence due to injury, and when he returned to work, he was placed in a lower paying position. He worked at this new job for five weeks, became dissatisfied with it, and located other work. He remained employed at this job for seven weeks.

HELD: The evidence clearly established that the claimant left work in order to accept a new job which he then held for a period of more than two weeks. Under the circumstances, he is not subject to any disqualification for voluntarily leaving work.

Manpower, Regulation Affecting VL 365.2
No decision

Uncertain VL 365.25

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.25**
DOCKET/DATE	**83-BRD-11423/10-7-83**
AUTHORITY	**Section-601A**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Uncertain**
CROSS-REFERENCE	**VL 365.05,General under Prospect Of Other Work**

The claimant worked as a delivery driver. He was offered a similar job by another employer at a higher wage and gave his employer two weeks' notice. Prior to the expiration of the two-week period, he fell and injured his back at work. He informed his new employer that he would not be able to begin work until his situation improved, and he was told to contact them when he could begin work. One and a half weeks later, he contacted the new employer but was told the position had been filled.

HELD: The claimant quit work to accept a new job. The job did not materialize because of the claimant's inability to begin work as scheduled. The claimant is disqualified from benefits for voluntarily leaving his first job without good cause attributable to his employer. Had he been able to enter into his second employment and either worked in each of two weeks or had earnings equal to twice his weekly benefit amount, he would have avoided the disqualification.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.25**
DOCKET/DATE	**83-BRD-12664/11-9-83**
AUTHORITY	**Section-601A**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Uncertain**
CROSS-REFERENCE	**None**

The claimant was last employed as a furnace knockout man. He quit his job to accept work with his brother in the Ottawa-Marseilles area, where his brother was supposed to receive an entire route of campground maintenance work. In contemplation of working for his brother, the claimant moved to Marseilles, Illinois. After the claimant moved, the job with his brother did not materialize.

HELD: The claimant left work to accept alternate work under more favorable conditions. The claimant's reasons for leaving were not attributable to the employer, and he is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.25**
DOCKET/DATE	**ABR-85-1566/6-20-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Uncertain**
CROSS-REFERENCE	**VL 135.4 Discharge or Leaving**

The claimant had been employed for 5 years as a Machine Operator and Laborer. He announced that he would be relocating to Texas, where he hoped to obtain a higher paying job. The claimant forewent a leave of absence, withdrew his retirement money, and went to Texas. However, he was unsuccessful in obtaining work there.

HELD: A worker does not have good cause attributable to the employer to quit a job if the reason for leaving is only to look for other work, even if the worker has reasonably presumed that he had definite prospects for other work. The desire to obtain work which is more advantageous or personally satisfying does not make the most recent work unsuitable per se, nor does it establish compelling reasons for leaving. Accordingly, in the instant case, because the evidence established that the claimant left work solely to obtain other work, which did not materialize, he left work without good cause attributable to his employer.

Relation of Alleged Cause to Leaving VL 385
General VL 385.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	***Grant v. Board of Review*, 558 N.E. 2nd 438 (1990)**
AUTHORITY	**Section 601A of the Act**
TITLE:	**Relation of Alleged Cause to Leaving**
SUBTITLE	**Failure to Return after Maternity Leave**
CROSS-REFERENCE	**VL 50.05, Attributable To or Connected with Employment**

After her child was born and her maternity leave had expired, the claimant informed her employer that she wished to stay at home with her baby. She asked if the employer would hold her job open. The employer responded that the job could not be held open indefinitely, but that every effort would be made to help her if, eventually, she was ready to return to work. When the claimant eventually decided to return to work, the employer informed her that there was a hiring freeze.

HELD: Whether a leaving is attributable to the employer depends upon the employer's conduct prior to or at the time of the work separation. The work separation occurred when the claimant did not return immediately from her maternity leave. The hiring freeze occurred after the work separation. The claimant was ineligible for benefits because she left work voluntarily for personal reasons unrelated to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	**ABR-87-1354/4-14-87**
AUTHORITY	**Section 601A of the Act**
TITLE:	**Relation of Alleged Cause of Leaving**
SUBTITLE	**Alleged Burden upon Religion**
CROSS-REFERENCE	**VL 90.05, Conscientious Objection; VL 515.5, Morals**

The claimant worked as a Supervisor in a medical center's kitchen. His schedule was such that he was able to attend either a Jehovah's Witness church meeting on Tuesday evening or a ministers' training session on Thursday evening.

Then the employer decided to institute a new 1 a.m. to 3 a.m. shift. The employer asked the claimant to supervise this shift, in addition to his regular shift. These additional responsibilities would have lasted 1 month. The claimant refused to work the additional hours.
In order to begin operations on its new shift, and as a result of the claimant's refusal, the employer was compelled to rearrange other supervisors' schedules. This, in turn, impacted upon the claimant. The claimant was told that his work schedule would have to be changed, temporarily, regardless. He was offered a variety of schedules, before he accepted a part-time position as a relief cook.

The relief cook job had 2 weeks left to run - after which the claimant would be returned to his regular supervisory position and shift - when the claimant observed that he would be scheduled to work both Tuesday and Thursday evenings. He promptly gave the employer 2-weeks' notice of his intention to resign.
The claimant stated that he quit because he wished to attend either the Tuesday or the Thursday church meeting - or, preferably, both. He acknowledged that he was not required by the church to attend such meetings, but that it was his personal decision to do so.

HELD: If an alleged cause of leaving is to be considered good cause, it must exist at the time of leaving. If the alleged grievance or condition has been remedied or is about to be remedied, it cannot be considered good cause for leaving.

In this case, regardless of any alleged burden upon religion, at the time the claimant left work, no such burden existed. At the time the claimant's 2-weeks' notice of quit expired, so did his temporary job; he would have been back in his supervisory position, working the same shift as had always been acceptable. Because the claimant's alleged cause of leaving did not exist at the time of leaving, he was disqualified under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	**85-BRD-05589/7-25-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Relation of Alleged Cause of Leaving**
SUBTITLE	**Immediate and Continuing Non-acceptance of Conditions (Sexual Harassment)**
CROSS-REFERENCE	**VL 515.5, Working Conditions**

The claimant was employed as a Secretary and Payroll Clerk for 3 years, until September, 1984. She testified that immediately after her divorce in April, 1984, the owner of the corporation for which she worked began to harass her with lewd remarks, sexual advances, and offensive touching. She testified that she ignored or expressed displeasure at the remarks, and that she rebuffed the advances and offensive physical contacts. The claimant testified that she did not quit immediately because she had two children to support and needed the income from her job to support them. The claimant testified that finally, in August, 1984, she sought the advice of a Claims Adjudicator, who advised the claimant that prior to quitting her job she should first demand that the harassment stop. When the harassment did not stop, the claimant quit.

HELD: When an individual, employed in other than a temporary or probationary capacity, has continued to work under allegedly unsuitable conditions, that individual must show that she expressed her immediate and continuing non-acceptance of such conditions. Otherwise, it would be assumed that the individual had acquiesced to such conditions, rendering them not unsuitable at the time of the work separation, in which case it could not be concluded that the individual left work with good cause attributable to the employer, or if at all for the reason stated.

In the instant matter, despite the employer-owner's conduct, the claimant continued to work in other than a temporary or probationary capacity for 6 months. However, by expressing displeasure at the owner's remarks and by rebuffing his advances,

the claimant showed immediate and continuing non-acceptance of such conduct. The claimant established that she left work solely because of sexual harassment.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	**ABR-85-3377/9-24-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Relation of Alleged Cause of Leaving**
SUBTITLE	**When Multiple Reasons are Presented for Leaving Work**
CROSS-REFERENCE	**VL 139.05. Discrimination**

The claimant, who had been employed as a Secretary, gave a number of reasons for quitting her job; among them, discrimination. The claimant was of Mexican origin. She testified without contradiction that, from the time she became employed until the day she quit, her employer made disparaging remarks in her presence about Mexicans and belittled her by name-calling in front of her co-workers.
HELD: When multiple reasons are presented for leaving work, good cause is found if one genuine reason constitutes good cause attributable to the employing unit. Discrimination on account of race is an unjustifiable business practice with respect to unemployment insurance eligibility, and good cause will be found in a voluntary leaving based upon such discrimination.

In the instant case, although the claimant cited a number of reasons for quitting, the Board of Review considered it necessary to discuss only one. The record established that the employer was responsible for a work environment which the claimant reasonably perceived to be discriminating, unfair and abusive. The voluntary leaving was, therefore, on that basis alone, with good cause attributable to the employer. The claimant was not subject to a disqualification under Section 601A of the Act.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	**ABR-86-9-FE/7-16-86**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness Or Injury**
CROSS-REFERENCE	**VL 235.25, Illness or Injury**

The claimant worked for the United States Postal Service for 36 years.

The claimant testified that, for the last 5 or 6 years, his job had caused him stress, and that his employer was aware that he had been under the care of a physician for hypertension and migraine headaches. The claimant added that, in March, 1985, his physician had advised him to seek a less stressful job.

Nonetheless, the claimant forewent a disability leave and decided to continue working for 8 more months, until November, 1985, so that he would become eligible to receive his retirement pension.

HELD: Section 601B(1) provides an exception to the disqualifying provisions of Section 601A, provided that an individual leaves work as a result of a physician's determination that he is unable to continue working in his customary occupation.

In the instant case, the claimant did not leave his job as a result of his physician's determination that he was unable to work, but, rather, upon becoming eligible to collect his retirement pension. Retirement, not health, was the genuine reason for the work separation, and, therefore, the claimant was not entitled to an exception under Section 601B(1).

Suitability of Work VL 425
General VL 425.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 425.05**
DOCKET/DATE	**ABR-85-2592/10-4-85**
AUTHORITY	**Section 601 of the Act**
TITLE:	**Suitability Of Work**
SUBTITLE	**Section 601B-5**
CROSS-REFERENCE	**VL 500.5, Wages, Low; MS 95.1, Construction of Statutes**

After being laid-off from his job, the claimant saw an advertisement in a newspaper for work as a Sales Representative. Although the claimant had no experience in the field (selling vacuum cleaners), he concluded that, if he applied himself diligently, he could earn $980 per month. The work first required the claimant to attend initial training sessions, 60 miles from his home, at his own expense. The claimant attended these sessions, as well as follow-up sessions, which were administered during the work week. The claimant's regular schedule involved driving to facilities where he would pick up merchandise and obtain sales leads, then proceeding to homes where he would give demonstrations of the vacuum cleaners he had been trained to sell.

At the time of hire, the claimant had been told he would be paid on a commission basis, dependent upon sales of vacuum cleaners. After 5 weeks, the claimant had sold 1 vacuum cleaner, for which he was paid $75 commission. Since this was substantially less than he had hoped to earn, he quit.

HELD: Section 601B contains several exceptions to the provision that a voluntary leaving must be with good cause attributable to the employing unit in order for the claimant to qualify for unemployment insurance benefits. The exception provided for in Section 601B-5 concerns voluntary leaving of work after separation from other employment. Disqualification does not apply to an individual who has voluntarily left work which he had accepted after separation from other work, provided that the most recent work would be deemed unsuitable under the provisions of Section 603. Section 603 provides that, in determining whether or not any work is suitable for an individual, consideration shall be given to the individual's prior training and experience.

The purpose of the Section 601B-5 exception is to not penalize industrious individuals who prefer work to unemployment benefits and to not discourage unemployed individuals from venturing into new fields of work. In the instant case, a disqualifying decision would have penalized an industrious individual who preferred work to benefits, and, in general, would have discouraged unemployed individuals from venturing into new fields of work. Accordingly, the claimant was not subject to a disqualification under Section 601A of the Act.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 425.05**
DOCKET/DATE	**ABR-88-1316/5-31-88**
AUTHORITY	**Section 601 of the Act**
TITLE:	**Suitability Of Work**
SUBTITLE	**Section 601B-5**
CROSS-REFERENCE	**VL 235.45, Health or Physical Condition**

The claimant accepted a job as a machine operator. Shortly after acceptance, she learned that, despite the job's title, she was required to lift metal shafts, some weighing 100 lbs. During the first week of training, other workers assisted her. During the second week of training, knowing she would not be able to lift the shafts when left to herself, she quit.
She was disqualified for benefits because she did not consult a physician before leaving.

HELD: Section 601B-5 provides that there will be no disqualification if a job is unsuitable at the time of acceptance. When it is the suitability of the work for the individual and not a medical condition that causes her to quit, it is unnecessary for her to seek the advice of a physician.

In this case, the claimant left work that was unsuitable due to her size and strength limitations. She was not disqualified.

Termination of Employment VL 440
General VL 440.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 440.05**
DOCKET/DATE	**83-BRD-14154/11-30-83**
AUTHORITY	**Section-601A**
TITLE	**Termination of Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

After approximately 17 years as a packer for the employer, the claimant accepted retirement. The representative stated that all individuals who had worked in excess of ten years could elect to retire or to continue to work until the mandatory retirement age of seventy. The claimant elected to take retirement since he was going to be sixty-five in June 1983. The claimant testified that he was aware that he could have continued working but decided to retire.

HELD: The claimant left work voluntarily without good cause attributable to the employer. The claimant's job was not in jeopardy, and he could have continued working had he chosen to do so. His decision to retire was completely voluntary and not attributable to the employer. He was, therefore, ineligible to receive benefits.

Time VL 450
General VL 450.05
No decision

Days of Week VL 450.1
No decision

Hours VL 450.15
No decision

General VL 450.151
No decision

Irregular VL 450.152
No decision

Long or Short VL 450.153

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.153**
DOCKET/DATE	**83-BRD-532-FSC/10-5-83**
AUTHORITY	**Section-601A**
TITLE	**Time**
SUBTITLE	**Hours Long or Short**
CROSS-REFERENCE	**None**

The claimant left work because his scheduled hours were reduced from 19 to 13 hours per week.

HELD: While attributable to the employer, this is not a good cause for leaving. If the claimant's wages are reduced to less than his weekly benefit amount, he can file a claim for unemployment benefits while he works the reduced hours and looks for other work. He is disqualified for voluntary leaving work without good cause and is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.153**
DOCKET/DATE	**ABR-86-1747/7-31-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Hours**
SUBTITLE	**Long or Short (Reduction in Hours)**
CROSS-REFERENCE	**VL 150.2, Distance to Work; VL 500.752**

The claimant traveled 68 miles each way to his work, as a Heavy Equipment Operator, which he performed 5 days per week, 9 to 10 hours per day. Then his work schedule was changed: He was assigned 2 days or work per week, and sometime those were half days. The claimant testified that, due to his reduced work schedule, he was compelled to quit; he could no longer afford to travel the 68 miles to and from work.

HELD: A reduction in wages -- which occurs only as a result of a reduction in hours -- does not constitute good cause attributable to the employing unit for leaving, unless the time or costs of transportation become disproportionate to the earnings. In the instant case, the time and money spent by the claimant in order to travel to and from his work had become disproportionate to his earnings. He left work with good cause attributable to his employer.

Night VL 450.154

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.154**
DOCKET/DATE	**ABR-95-6237/8-2-95**
AUTHORITY	**Section 601A of the Act**
TITLE	**Time**
SUBTITLE	**Night**
CROSS-REFERENCE	**None**

The claimant worked as a convenience store cashier. For four years, she worked the day shift, and never alone. Then the employer reassigned her to the night shift, working alone. The claimant feared for her safety and complained to the employer. When no accommodation was made, she quit.

HELD: Leaving work because of a mere preference for working days or objection to working nights is without good cause attributable to the employer. Here, however, the employer made a unilateral, substantial change in working conditions; the leaving was attributable to the employer. Also, the claimant had a reasonable subjective fear of working at night alone; this constituted good cause. The claimant left work with good cause attributable to her employer and was not ineligible under Section 601A.

Prevailing Standard, Comparison with VL 450.155
No decision

Discrimination because of Union Membership or Activity VL 450.2
No decision

Lay off Imminent VL 450.25

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.25**
DOCKET/DATE	**ABR-86-5060/3-30-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Time**
SUBTITLE	**Lay-off Imminent**
CROSS-REFERENCE	**VL 345.05, Retirement; VL 500.1, Wages, Agreement**

The claimant had been employed, as a Tool Maker, for 18 years. The employer was contemplating a reduction in work force, and, toward that end, told the claimant that if he were to retire on or before April 18, 1986, he would be entitled to his retirement pension, which included a medical package which included his sick wife. He was also told that if he were to retire after April 18, 1986, he would not be granted the medical package and benefits which included his sick wife. On April 18, 1986, the claimant applied for early retirement, so that his sick wife would be covered by his medical benefits.

HELD: Some employers have adopted special early retirement programs for the purpose of encouraging older workers to retire early and gain certain advantages, such as bonuses or increased benefits. In those cases, whether a worker leaves with good cause attributable to the employer is determined by examining, where applicable, the following factors: the period of time between early retirement and mandatory retirement; the degree of encouragement by supervisory personnel to retire early; whether the inducement to retire is financially substantial; in short, the question to be asked is whether a reasonably prudent person, under the same or similar circumstances, would accept early retirement.

Notwithstanding the above, care must be taken to distinguish cases such as the instant one. In the instant case, the employer did not offer the claimant a package containing any advantages; rather, the employer sought to discontinue existing medical coverage. The claimant was confronted by an imminent and material breach of the continued working agreement. His apprehension was reasonable, in that this would impose a financial burden upon him; he had a compelling reason for leaving - a reasonable person would not have waited to suffer the actual detriment. The work had been rendered unsuitable, and the claimant left work with good cause attributable to his employer, without disqualification under Section 601A.

Intimidation VL 450.3
No decision

Overtime VL 450.35

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.35**
DOCKET/DATE **ABR-85-5217/13-3-85**
AUTHORITY **Section 601A of the Act**
TITLE **Time**
SUBTITLE **Overtime**
CROSS-REFERENCE **VL 500.753, Wages, Overtime Without Compensation**

When the claimant was hired as Office Manager, at $25,000 per year, she was told that she would be expected to work overtime -- more than her usual 37-1/2 hours per week -- for an indeterminable period of time. This was due to the employer's conversion to and installation of automated systems in its plant and offices.

After 7 months on the job, the claimant quit. She testified that she had been working 45 hours per week, without being compensated for her overtime hours.

HELD: Overtime work is not unsuitable per se. But a voluntary leaving will be with good cause if the hours worked or wages paid are in violation of statute, or if the work is otherwise determined to be unsuitable.

Certain types of employment are exempted from the provisions of Illinois' applicable overtime statute among these, managerial positions. The claimant held a managerial position, for which she was paid on an annual, not hourly, basis. Therefore, she was not automatically entitled to compensation for overtime work. Nor was it shown, by any express or implied terms of hire, that the claimant was promised overtime pay or that the employer deviated from those terms.

The claimant did not present any evidence to show that the overtime work adversely impacted her domestic life or her health. She failed to show the existence of any conditions which made her work incompatible with her well-being -- other than her dislike for overtime work. The mere dislike of overtime work does not, in and of itself, constitute good cause for leaving work.

The claimant left work without good cause attributable to her employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.35**
DOCKET/DATE ***Hamilton v. Board of Review,* 482 N.E. 2d 1126 (1985)**
AUTHORITY **Section 601A of the Act**
TITLE **Time**
SUBTITLE **Overtime**
CROSS-REFERENCE **None**

The claimant, a shipping clerk, was an hourly employee. The employer offered to place her on salary at an increase in regular pay. She accepted.

At the time of acceptance, the claimant knew that, as a salaried worker as opposed to an hourly worker, she would be required to work overtime. Also, she would be paid less for overtime than would an hourly worker (although her total of regular and overtime pay would be greater).

One month passed. The claimant was dissatisfied with her overtime pay. Her family was dissatisfied with her working overtime hours. On a Friday, the claimant asked to be reinstated as an hourly worker upon whom no overtime demands would be made.

The employer agreed to reinstate her as of the following Monday, the start of the next payroll period. In the meantime, she was directed to report for weekend overtime work as scheduled.

The claimant told her employer that she would not work that weekend. The employer responded that overtime work was a condition of the job she had accepted, and, until Monday, she would have to live with the salaried conditions.

The claimant did not report for work on Saturday or Sunday. On Monday, she reported to the employer's office, not to work, but to inquire about vacation pay and profit-sharing.

HELD: Overtime work is not per se unsuitable and does not constitute good cause for leaving. Other factors might render overtime work unsuitable; for example, if it is at unilaterally and substantially reduced compensation.

In this case, the claimant was paid pursuant to an agreement and the employer did nothing to alter the terms of that agreement. If anything, the employer demonstrated that it was willing to accommodate the claimant.

The evidence showed only that the claimant was dissatisfied with overtime work. That alone did not render the work unsuitable. She left without good cause and was ineligible for benefits.

Part-time or Full-time VL 450.4

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.4**
DOCKET/DATE	***Hart v. Jackson*, 600 N.E.2d 932**
AUTHORITY	**Section 601A of the Act**
TITLE	**Time**
SUBTITLE	**Primary (full-time) and Secondary (part-time) Work**
CROSS-REFERENCE	**MS 95.3, Construction of Statutes**

The claimant became separated from full-time work, upon which his claim for benefits could be based. He then quit his part-time job, located near the full-time job, because his travel expenses were now excessive in relation to his part-time wages (which were less than one-half what his weekly benefit amount would be). He was denied benefits, under Section 601A, for voluntarily leaving his last job.

The claimant argued that, even though he quit work for reasons not attributable to his part-time employer, he should not be denied benefits under Section 601A.

HELD: Section 601A applies whether a claimant leaves full-time or part-time work. (See *Minfield v. Bernardi*, this Digest, VL 450.4.)
However, the term "work" in Section 601A does not mean work upon which no claim is made and which has no effect upon entitlement to and the amount of benefits. Therefore, Section 601A does not apply where the following conditions exist:

1) the claimant becomes separated from primary full-time work upon which his claim is based;

2) the claimant's entitlement and benefit amount would be unaffected by whether or not he remained at the secondary part-time job; that is, if he remained at the part-time job, he would still be unemployed under Section 239 and would not have his benefits reduced under Section 402.

However, the claimant left his part-time job under those circumstances. He was not ineligible under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.4**
DOCKET/DATE	***Minfield v. Bernardi*, 460 N.E. 2d 766 (1984)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Time**
SUBTITLE	**Part-time or Full-time**
CROSS-REFERENCE	**None**

The claimant worked full-time for the city of Chicago and also worked part-time for Field's. On December 9, 1981, she was discharged by the city of Chicago.

The claimant had an 8 year old son, who had a speech problem and learning disability. Alone, her wages from her part-time work at Field's were insufficient to pay expenses, including the cost of a baby sitter. On January 3, 1982, the claimant quit her job with Field's.

At her appeal hearing, she told the Referee that, although Field's had been paying her the rate agreed upon at the time of hire and did not do anything to break the contract of hire, "I needed more money. I couldn't afford to pay my baby sitter. I needed more hours. They didn't have any available. They had a freeze on hiring."

HELD: Generally, dissatisfaction with the number of working hours does not constitute good cause to leave employment. An employee who works at unsteady employment may well be dissatisfied with the job and seek another which provides more regular employment and better weekly wages. But she has an opportunity to pursue that course on the days or at the times when

she is not working. There are circumstances which might give rise to good cause for leaving - for example, if: the hours of work or reporting requirements prevent the claimant from seeking full-time work; there is an obligation to report to work regularly, without an assurance of actual work; there is a reduction in wages as well as hours; transportation time or costs, in relation to total remuneration, have become excessive. But, none of these existed in the case at bar.

The claimant's employment at Field's was dependable and in accordance with the terms, conditions, hours, and compensation she had accepted at the time of hire. It was suitable work. It was not rendered unsuitable simply because the claimant became separated from other work. The claimant was not unemployed due to the lack of suitable work, and was disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.4**
DOCKET/DATE **84-BRD-3089/3-2-84**
AUTHORITY **Section-601A**
TITLE **Time**
SUBTITLE **Part-time or Full-time**
CROSS-REFERENCE **VL 5.05, General under Voluntary Leaving**

The claimant was on a disability leave of absence for a period of fourteen months. When she reapplied for work with her last employer, she was offered a job but was told that the hours of work for all employees were being reduced. The claimant refused the job because she did not like the part-time work, and then she retired on social security.

HELD: Part-time work is not unsuitable per se, and a leaving because the work is less than full-time hours is generally without good cause attributable to the employing unit if the hours of work or reporting requirements do not prevent the claimant from seeking full-time work. The claimant could have looked for work in this case while working part-time. It must be concluded that she voluntarily left her job without good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.4**
DOCKET/DATE **Ill. App. 1st Div. 83-146 2/2-6-84**
AUTHORITY **Section-601A**
TITLE **Time**
SUBTITLE **Part-time or Full-time**
CROSS-REFERENCE **None**

The claimant worked to support an 8 year old son who had a speech problem and a learning disability. She left her work at Marshall Field's after her request for full-time work was denied. She testified, "I needed more money. I couldn't afford to pay my babysitter. I needed more hours. They said they didn't have any available because they had a freeze on hiring."

HELD: The claimant's decision to leave her work because of her dissatisfaction with wages and hours did not constitute "good cause attributable to the employer within the meaning of the statute."
The employer did nothing to alter the terms, conditions, hours or compensation of the job plaintiff originally accepted. Therefore, the claimant is disqualified from receiving benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.4**
DOCKET/DATE ***Carol Rodgers v. IDES*, 542 N.E. 2d 168 (1989)**
AUTHORITY **Sections 239, 402, and 601A of the Act**
TITLE **Time**
SUBTITLE **Part-time or Full-time**
CROSS-REFERENCE **MS 95.4, Construction of Statutes**

The claimant held 2 jobs, 1 full-time, 1 part-time. On December 31, she was laid off from her full-time job. She continued to work at her part-time job, 10 hours per week, at $4 per hour. On January 6, she filed claim for unemployment benefits. Because she was working less than full-time and earning less than her weekly benefit amount ($142), she was "unemployed" within the meaning of Section 239 of the Act and eligible for benefits. On January 11, she quit her part-time job, for reasons not attributable to the part-time employer.

The Referee and Board of Review held that, because the claimant left work for reasons not attributable to her employer, Section 601A required that she be held ineligible. The circuit court reversed and the Department appealed.

HELD: The appellate court made the following observations:

The Act is designed to provide some form of economic security to persons involuntarily unemployed. When the claimant was involuntarily laid off from full-time work, she became unemployed, under Section 239. No part of her part-time earnings of $40 per week exceeded 50% of her weekly benefit amount, so whether or not she continued working part-time, there would have been no reduction in her weekly benefit amount, under Section 402. The part-time employer would not have been charged as a result of the claimant receiving benefits. To deny benefits would work in favor of her former full-time employer, which would have been charged.

The court held that, in this case, the Department's "literal and rigid" interpretation of Section 601A did not serve the Act's purpose and was "unnecessarily harsh." Benefits were allowed.

(See *Minfield v. Bernardi*, this Digest, VL 450.4.)

Seasonal VL 450.45
No decision

Shift VL 450.5
No decision

Temporary VL 450.55
No decision

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.55**
DOCKET/DATE	**83-BRD-12161/10-31-83**
AUTHORITY	**Section-601A**
TITLE	**Time**
SUBTITLE	**Temporary**
CROSS-REFERENCE	**None**

The claimant was employed as a research assistant on a temporary assignment for about six weeks. The claimant left her work to go to another state to look for work. At the time she left, there remained work available for her.

HELD: Although the nature of the claimant's assignments was temporary, there nevertheless continued to be work available to the claimant at the time she quit her job. The claimant initiated her own unemployment for personal reasons not attributable to the employer and is ineligible to receive benefits.

Union Relations VL 475
General VL 475.05

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 475.05**
DOCKET/DATE	**84-BRD-2902/2-29-84**
AUTHORITY	**Section-601A**
TITLE	**Union Relations**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant resigned after his union voted to accept a contract which reduced wages and benefits. The claimant felt that he should not be forced to accept changes that he did not agree with, even though they were accepted by a majority of the employees.

HELD: When a union agreement has been accepted by both the union and the employer, the terms of the agreement become a part of the employment contract. Both the union members and the employer are expected to follow the terms of their agreement.

The claimant's refusal to accept the terms of an agreement negotiated by his union was a voluntary leaving without good cause attributable to the employer, and he is disqualified for benefits.

Argumentment with Employer VL 475.1
No decision

Discrimination Because of Union Membership or Activity VL 475.2
No decision

Intimidation VL 475.3
No decision

Labor Dispute, Participation in VL 475.35
No decision

Non-Union Shop or Supervisor VL 475.55
No decision

Remuneration VL 475.65
No decision

Requirement to Join Company Union VL 475.7

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 475.7**
DOCKET/DATE	**ABR-899-3121/11-29-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Union Relations**
SUBTITLE	**Requirement to Join Company Union (vs. Paying Dues)**
CROSS-REFERENCE	**None**

The claimant worked as a home health care aide. She as informed by the employer's director that she was required to join the company union or forfeit her job. She was not given the option to retain her job by the mere payment of union dues and initiation fees (without the additional requirement that she join the union). The claimant informed the director that she would not join the union. This resulted in her separation from work.

HELD: Under federal statutes, it is an unfair labor practice to compel a worker to join a union. It is not an unfair practice to require a worker to pay dues or initiation fees (which may provide the basis for union benefits, even if the worker does not join the union).

Here, the employer's requirement that the claimant join a union was contrary to federal law. Her leaving was with good cause attributable to the employer. Benefits were allowed.

Requirement to Join or Retain Membership in Bona Fide Labor Organization VL 475.75

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 475.75**
DOCKET/DATE	***Pearson v. Board of Review,* 551 N.E. 2d 1021 (1990)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Union Relations**
SUBTITLE	**Requirement to Pay Union Dues**
CROSS-REFERENCE	**VL 160.05, Efforts to Retain Employment**

The claimant's union dues were automatically deducted from her paycheck, until she was transferred, at a reduced wage, to another job location. There, her paycheck reflected a wage reduction, but, under a different union local, dues were not automatically deducted. For three months, the claimant was unaware of this and accumulated $80 in back dues. When she was informed, she signed an authorization that directed the employer to "deduct membership dues from pay." She asked if the $80 in back dues, in addition to future dues, would be deducted. She was told no; instead, she had to pay the $80 up front or lose her job. The claimant had no money and was already heavily in debt. She refused her supervisor's offer of a loan because she

knew she would be unable to pay him back. So she lost her job. The Board of Review denied benefits, finding that the claimant failed to exhaust reasonable means of remaining employed (e.g., borrowing from her supervisor).

HELD: Section 601A demands that the employer not be even *one* causal factor in the work separation. (Court's emphasis).

In light of this, whether a worker makes a reasonable effort to retain employment must be considered in light of what the employer has or has not done.

Here, it was erroneous to consider the claimant's effort or lack of effort to retain employment (e.g., not borrowing from her supervisor) without also considering the employer's lack of effort. The employer failed to inform the claimant of the need for a new authorization and failed to offer her an alternative payment plan, which would have been permissible according to the language of the new authorization. In short, the reasonable means of repaying the debt and retaining employment were those that the employer did not make available; therefore, it was not relevant what steps the claimant pursued.

Benefits were allowed.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 475.75**
DOCKET/DATE	**ABR-85-6626/1-16-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Union Relations**
SUBTITLE	**Requirement to Retain Membership in Bona Fide Union**
CROSS-REFERENCE	**VL 135.15, Discharge or Leaving, Constructive Quit**

Pursuant to the terms of the employer's collective bargaining agreement with the union, the payment of union dues was a mandatory condition of employment. The claimant had been aware of this unchanging condition. He also acknowledged receiving letters from his employer concerning his non-payment of union dues; the employer had given him a deadline by which to pay his dues. When the deadline passed, and the claimant had still failed to pay his union dues, he was discharged.

HELD: When there is a union shop and a worker is aware that maintaining membership in the union is a requisite to continued employment, a separation which results from the worker's failure to meet this requisite constitutes a voluntary leaving, even if the employer "discharges" the worker at the union's insistence, since the worker has the choice of remaining employed. Generally, such a voluntary leaving is without good cause attributable to the employer. In the instant case, the claimant voluntarily separated himself from employment without good cause attributable to the employer.

Requirement to Resign from or Refrain from Joining Bona Fide Labor Organization VL 475.8
No decision
Restrictions as to Type of Work VL 475.85
No decision

Voluntary VL 495
General VL 495.05

ISSUE/DIGEST	**Voluntary Leaving/VL 495.05**
DOCKET/DATE	**ABR-86-9166/7-15-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Voluntary**
SUBTITLE	**Early Retirement**
CROSS-REFERENCE	**VL 50.05, Attributable; VL 210.05, Good Cause**

The employer's witness testified that the employer intended to reduce its work force. This was to be accomplished in 2 parts: the first part was an early retirement program; the second part was conditional upon the success of the first part - that is, if not enough workers took advantage of the retirement program, there would have to be layoffs. The claimant, an Assistant Mine Manager, had heard a rumor that his position was to be eliminated. Then he was offered the early retirement package, which included financial incentives. Fearing that, if he did not accept the package, he would be demoted, which would have resulted in a financial loss, the claimant accepted the early retirement package.

HELD: The Unemployment Insurance Act provides that benefits shall be paid to individuals who are out of work due to the lack of suitable work and through no fault of their own. Accordingly, there can be no separation disqualification when a worker has been laid off, since no action taken by the worker, but, rather, a unilateral action by the employer, has caused the work separation.

In this case, the employer decided the number of positions it wanted eliminated. Had the requisite number of workers not resigned, the employer would have laid off the number necessary to meet its goal. The same number of people would have been unemployed, whether they quit or were laid off. This work separation, therefore, had the same effect as a lay off.

Further, the employer, on one hand, offered financial incentives to those workers who left; on the other hand, the employer did not interpose any safeguards or job protection for those who did not resign - those who stayed, even if they were not laid off, faced the prospect of loss of wages through demotions. It was clear then that the employer was the moving party, desirous of having workers accept an early retirement package; and those who, like the claimant, did the employer's bidding, acted as reasonable persons would have under the same or similar circumstances.

The claimant became involuntarily unemployed due to economic conditions beyond his control. This was a leaving with good cause attributable to the employer.

ISSUE/DIGEST	**Voluntary Leaving/VL 495.05**
DOCKET/DATE	**85-BRD-04668/6-25-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Voluntary**
SUBTITLE	**Distinguished from Lay Off**
CROSS-REFERENCE	**None**

The claimant had been employed as an Electrician for twenty-two years. His son was a co-worker. The employer planned to lay off the claimant's son as part of a reduction in its work force due to economic conditions. The claimant, feeling that he could better afford being laid off than a younger man with a family, requested to be laid off in the place of his son. The employer consented and the claimant became separated from employment.

HELD: This was not a voluntary leaving, but a lay off. Viewing the total picture, it was not decisive that it was the claimant and not his son who became unemployed. Although the claimant chose to accept the lay off in the place of his son, it was the employer which affected the reduction in force, and the claimant's decision had no impact on the number of unemployed, since, had he not decided to accept the lay off in his son's stead, his son would have been laid off. Because this was a lay off resulting from economic conditions beyond the claimant's control, he was in that class of unemployed persons for whom the Act was designed to provide benefits.

ISSUE/DIGEST	**Voluntary Leaving/VL 495.05**
DOCKET/DATE	**85-BRD-62-FE/6-25-85**
AUTHORITY	**Section 601A & 602A of the Act**
TITLE	**Voluntary**
SUBTITLE	**Definition**
CROSS-REFERENCE	**MC 135.1, Discharge or Leaving, Constructive Discharge**

The claimant was employed by the United States government, as a clerk-typist, in West Germany. She was a "dependent spouse," working during her husband's tour of military duty in that country. When her husband's tour of duty ended, and he was transferred back to the United States, the claimant left her Clerk-Typist position, submitting a letter of resignation. Later, she testified that her resignation had been a formality only: Army personnel rules directed that a dependent spouse was not permitted to remain in a foreign country upon her husband's transfer.

HELD: The claimant had no option to remain at work, due to the rules promulgated by her employer. Therefore, she did not leave work voluntarily, and no disqualification for benefits under Section 601A could be imposed.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 495.05**
DOCKET/DATE	***Chicago Transit Auth. v. Didrickson*, 276 Ill. App. 3d 773, 659 N.E.2d 28 (1st Dist. 1995)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Voluntary**
SUBTITLE	**End of a Temporary Assignment**
CROSS-REFERENCE	**None**

The claimant worked in a summer-only program administered by the CTA, then, at the expiration of the program, applied for unemployment benefits. It was argued that she should be denied benefits because, by agreeing to the terms of the summer employment program, she represented that she did not want to work beyond the summer, and that this constituted a voluntary leaving.

HELD: It is an erroneous view that the voluntary leaving provisions of Section 601A apply to those employees who are separated from the work force upon the expiration of predetermined contract terms. Section 601A does not contain an express disqualification of employees hired for a specified term (nor does the Act otherwise disqualify workers who are hired for temporary positions and find themselves unemployed upon the expiration of the employment term). Where the employment terms imposed by the employer allow the employee no alternative but to relinquish a position, the separation is not voluntary, and the disqualifying provisions of Section 601A do not apply.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 495.05**
DOCKET/DATE	***Prospect Heights Fire Prot. Dist. v. Dep't of Employment Sec.*, 2021 IL App (1st) 182525**
AUTHORITY	**Section 601A of the Act**
TITLE	**Voluntary**
SUBTITLE	**End of an Assignment**
CROSS REFERENCE	**Good Cause, VL 210.05**

Claimant was employed by Prospect Heights Fire Protection District (District), from June 2005 until his retirement in October 2017. Claimant's retirement was predicated on his reaching the age of 65, the mandatory retirement age for active firefighters, according to the Fire Protection District Act. The following month he filed for unemployment benefits. The employer protested and the local office allowed benefits, finding no misconduct. The employer appealed. Following a hearing the Referee affirmed the local office determination. The employer appealed. The Board examined the issue of voluntary leaving as well as misconduct and concluded that claimant's separation was neither voluntary nor the result of misconduct. The employer appealed. The circuit court focused on the issue of voluntary leaving, set aside the Board's decision, and denied benefits.

Noting that there were no Illinois cases examining the effect of statutory mandated retirement on claims for unemployment benefits, the court examined cases from other jurisdictions that have found that employees who reach the mandatory retirement age set forth in their collective bargaining agreements are not entitled to unemployment benefits because their separations from their places of employment when they reach the bargained-for retirement age are considered voluntary. Although the circuit court acknowledged that the mandatory retirement age at issue was set by statute and not included in a collective bargaining agreement, it found the analysis of those cases to be nonetheless "persuasive." The court stated that the claimant's acceptance of employment with the statutorily prescribed mandatory retirement age amounted to a voluntary leaving. Claimant appealed.

HELD: The appellate court affirmed the circuit court's decision, focusing on the issue of voluntary leaving. The court stated that the relevant question is whether claimant's statutorily mandated retirement can be considered a voluntary act without good cause attributable to his employer within the meaning of the Unemployment Act. The court addressed the fact that court had previously examined whether an individual's statutorily mandated retirement constitutes a "voluntary act without good cause attributable to his employer" pursuant to the Unemployment Act. The court noted that there is no dispute that Illinois fire departments are bound by the terms of the Fire Protection Act and the mandatory retirement provision contained therein. The mandatory retirement provision is not a policy set by individual fire departments; rather, it is set by statute and is applicable to Illinois fire departments and firefighters. The claimant and all other firefighters thus know that their careers as firefighters are finite and will terminate when they reach the mandatory retirement age of 65. By accepting employment at the District, claimant accepted and agreed to abide by that employment term. Therefore, when claimant left his employ with the District, in accordance with the terms of his employment that he accepted when he commenced his career as a firefighter, he did so voluntarily. Moreover, given that the mandatory retirement policy at issue was set by statute and not by the District, claimant's separation from his place of employ cannot be considered good cause attributable to his employer.

The court distinguished *Chicago Transit Authority v. Didrickson*, 276 Ill.App.3d 773 (1995), where the same court reached a

different conclusion. In that case the claimant worked in a summer-only program administered by the CTA, and at the expiration of the program, applied for unemployment benefits. In that case the court rejected the CTA's argument that an employee's acceptance of employment for a finite period of time necessarily results in a "voluntary" leaving at the end of that agreed upon time period. The court reasoned that the statute does not disqualify all workers who leave their employment voluntarily, but only those who do so without good cause attributable to the employer. This provision was intended to apply only to those situations where the decision of whether to continue working rests solely with the worker. The court held that the Act does not disqualify workers whose separation from work was compulsory under the terms of their employment contract or as a result of mandated policy adopted by the employer. Where the employment terms imposed by the employer allow the employee no alternative but to relinquish her position, the separation is not voluntary under section 601A of the Act. Unlike the situation in *Didrickson*, the reason for this claimant's separation from his employment was not due to a policy or employment term set by his employer; rather, both claimant and the District were bound to abide by the mandatory retirement age set forth in the Fire Protection Act. Neither claimant nor the District had the ability to disregard the statutorily mandated retirement age. Accordingly, unlike the student in *Didrickson*, there was no possibility that claimant could continue to work for the District without violating the law.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 495.05**
DOCKET/DATE	***CTA v. Doherty*, 684 N.E.2d 867 (1997)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Voluntary**
SUBTITLE	**End of a Temporary Assignment**
CROSS REFERENCE	**None**

The CTA hired students to work during the summer months. Before they started working, each individual signed an agreement which stated, in pertinent part: I do not desire any employment ... beyond [the summer months]. The question presented is whether the separation that occurred after the summer months was a (disqualifying) voluntary leaving or merely the (non-disqualifying) expiration of an employment term.

HELD: This case is distinguishable from *CTA v. Didrickson*, 659 N.E.2d 28 (1995), in which it was held that nothing in Section 601A disqualifies employees hired for a specified term who find themselves unemployed for no other reason than the expiration of that term. Unlike that case, here, the controlling factor is that the decision to continue working or not was solely that of the workers, who did nothing to put the CTA on notice they wanted to stay on the job; in fact, they did just the opposite, as evidenced by signing the agreement. Benefits were denied under Section 601A.

Wages VL 500
General VL 500.05
No decision

7398Agreement Concerning VL 500.1

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.1**
DOCKET/DATE	**ABR91783/5-11-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Agreement Concerning**
CROSS-REFERENCE	**None**

The employer advised its workers that it could no longer afford to pay their premiums for medical and dental coverage. The claimant, who earned $17 per hour, would now have to pay $20 per week for medical and dental coverage. Instead, he quit.

HELD: A substantial breach of the terms of hire or working agreement constitutes good cause for leaving. However, a relatively insignificant change in the terms of hire or working agreement does not constitute good cause; i.e., a reasonable person, who wishes to remain employed, would not leave.

Here, the claimant was faced with a wage reduction of less than 3%. This was not a substantial breach of the terms of hire or working agreement. Further, a reasonable person, under the same or similar circumstances, would not have left work - after which he would still pay for medical and dental coverage.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 500.1**
DOCKET/DATE **ABR-86-5060/3-30-87**
AUTHORITY **Section 601A of the Act**
TITLE **Wages**
SUBTITLE **Agreement Concerning (and Early Retirement)**
CROSS-REFERENCE **VL 345.05, Pension - Retirement; VL 450.25, Lay-off**

The claimant had been employed, as a Tool Maker, for 18 years. The employer was contemplating a reduction in work force, and, toward that end, told the claimant that if he were to retire on or before April 18, 1986, he would be entitled to his retirement pension, which included a medical package which included his sick wife. He was also told that if he were to retire after April 18, 1986, he would not be granted the medical package and benefits which included his sick wife. On April 19, 1986, the claimant applied for early retirement, so that his sick wife would be covered by his medical benefits.

HELD: Some employers have adopted special early retirement programs for the purpose of encouraging older workers to retire early and gain certain advantages, such as bonuses or increased benefits. In those cases, whether a worker leaves with good cause attributable to the employer is determined by examining, where applicable, the following factors: the period of time between early retirement and mandatory retirement; the degree of encouragement by supervisory personnel to retire early; whether the inducement is financially substantial; in short, the question to be asked is whether a reasonably prudent person, under the same or similar circumstances, would accept early retirement.

Notwithstanding the above, care must be taken to distinguish cases such as the instant one. In the instant case, the employer did not offer the claimant a package containing any advantages; rather, the employer sought to discontinue existing medical coverage. The claimant was confronted by an imminent and material breach of the continued working agreement. His apprehension was reasonable, in that this would impose a financial burden upon him; he had a compelling reason for leaving - a reasonable person would not have waited to suffer the actual detriment. The work had been rendered unsuitable, and the claimant left work with good cause attributable to his employer, without disqualification under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 500.1**
DOCKET/DATE **ABR-85-8565/5-30-86**
AUTHORITY **Section 601A of the Act**
TITLE **Wages**
SUBTITLE **Agreement Concerning (Wage Increase)**
CROSS-REFERENCE **None**

The claimant was hired as a Mechanic, at a wage of $5 per hour. On the date of hire, April 29, 1985, he was told that he would receive a wage increase to $5.50 per hour, after he had worked 30 days; there were no other conditions attached. The claimant did receive his raise, although he had to wait 2 weeks beyond the time promised.

In July, 1985, the claimant was told by his employer that there would be another wage increase, this time to $6 per hour, and that the claimant would receive it by July 12, 1985; there were no conditions attached. When the claimant did not receive his raise on July 12, he spoke with the employer, who assured him that there would be no problem. During the ensuing 3 weeks, the wage increase was never implemented. The claimant quit.

HELD: Remuneration paid for work is a material condition at the very heart of the employment relationship. If an employer promises, without attaching conditions, to pay a definite or ascertainable figure by a definite or ascertainable date, then that becomes a term of the working agreement, and its arbitrary breach will constitute good cause attributable to the employer for leaving.

In the instant case, the evidence showed that the claimant was given a definite figure and a definite time for payment of a wage increase. There were no conditions attached to the increase. There was no evidence to show that the employer's failure to pay the increase within a reasonable time was due to a miscalculation or other good faith error. Therefore, it could only be concluded that the employer arbitrarily breached its contract with the claimant, and, as a result, the claimant had good cause attributable to the employer for leaving.

Benefit Amount, Comparison with VL 500.2
No decision

Expenses Incident on Job VL 500.25
No decision

Failure or Refusal to Pay VL 500.3

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.3**
DOCKET/DATE	**83-BRD-9444/8-16-83**
AUTHORITY	**Section-601A**
TITLE	**Wages**
SUBTITLE	**Failure or Refusal to Pay**
CROSS-REFERENCE	**None**

The claimant left work voluntarily because the employer's checks used to pay her wages were being continually returned as a result of insufficient funds in the employer's account. The currency exchange at which she cashed the checks refused further transactions involving these checks. The claimant complained to the employer about the returned wage checks, but the situation did not improve.
HELD: After making a reasonable attempt to correct the situation without success, the claimant left work voluntarily because checks given by the employer, representing her wages, were constantly being returned as a result of insufficient funds in the employer's account. Payment of wages is within the control of the employer and therefore attributable to it.

The prompt payment of wages for work performed is a material factor in a worker's condition of hire, and the employer's continued failure to pay the claimant her wages in a timely manner is a compelling circumstance rendering the work unsuitable for the claimant. The claimant left work voluntarily with good cause and is eligible for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.3**
DOCKET/DATE	**ABR-85-2289/8-21-85**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Failure to Pay**
CROSS-REFERENCE	**None**

The claimant worked as a Waitress for an employer whose rule required employees to reimburse the employer for coffee pots broken during the course of use in the employer's business. On October 17, 1984, the claimant broke a coffee pot. The employer insisted that the claimant pay $5 for the broken coffee pot, but the claimant refused to do so, stating that the coffee pot had been broken accidentally. When the employer refused to give the claimant her paycheck for her services until she paid the $5 for the broken coffee pot, the claimant quit her job.

HELD: The Wage Payment and Collection Act reads, in pertinent part:

> Deductions by employers from wages...are prohibited unless such deductions are (1) required by law; or (2) to the benefit of the employee; or (3) in response to a valid wage assignment or wage deduction order; or (4) made with the express written consent of the employee, given freely at the time the deduction is made. (Ill. Rev. Stat., 1983, ch. 48, par. 39m-9)

Further, aside from any deduction, an employer who willfully refuses to pay wages when due is acting in violation of Illinois State Labor Laws. A claimant will have good cause attributable to her employer for quitting whenever her employer willfully refuses to pay her wages which are due.

In the instant case, the employer's rule set forth a procedure for deducting from wages, without satisfying any of the legal conditions prescribed by the Wage Payment and Collection Act. Therefore, the employer's rule was contrary to Illinois law, and the claimant's refusal to reimburse her employer for the broken coffee pot was justified. Further, the employer made such reimbursement a condition upon which the claimant's wages, which were due, would be paid. The employer willfully refused to pay the claimant wages which were due, in violation of Illinois law, and, as a result, the claimant had good cause attributable to her employer for quitting.

Former Rate, Comparison with VL 500.35
No decision

Increase Refused VL 500.4

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.4**
DOCKET/DATE	***Dunn v. Director*, 476 N.E.2d 77 (1985)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Increase Refused**
CROSS-REFERENCE	**VL 135.2, Discharge or Leaving**

The claimant worked for 3 years as a retail clerk and was earning $5.25 per hour. There was no evidence that this was an unsuitable wage. On a Friday, he wrote his employer a note: "Starting Monday ...I must have $7.60 per hour, or please send (me) my pink-slip." On Monday, the claimant did not report to work or notify the employer of the reasons for his absence. That evening, the employer responded: "You are considered to have self-terminated yourself from employment." The claimant asked whether his claim for unemployment benefits would be contested. The employer informed him that it would. On Tuesday, the claimant attempted to report to work but was escorted from the premises by security guards.

The claimant contended that, because his note gave the employer a choice (give him a 46% pay raise or a pink-slip), this was not a voluntary leaving.

HELD: Generally, if a worker has a choice of remaining employed, his work separation is a voluntary leaving, but, if the employer is unwilling to allow the worker to continue working, the separation is a discharge.

In any case, in order to determine whether a party is exercising a choice, it is necessary to determine his intent. Intent is to be garnered from the totality of the evidence presented, including an examination of a party's words or actions.

In this case, the claimant contended that the employer chose to discharge him. However, the claimant's use of the term "pink-slip," which ordinarily means discharge by the employer, was not dispositive of the issue of intent. The claimant's words (the note) and his actions (an absence without notice and the fact that he would not report again if unemployment benefits were uncontested) indicated that it was his intent, and he chose, to discontinue the employment relationship.

This was a voluntary leaving. Because there was no showing that the claimant's current wage was unsuitable, the leaving was without good cause attributable to the employer.

Living Wage VL 500.45
No decision

Low VL 500.5

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.5**
DOCKET/DATE	**ABR-85-2592/10-4-85**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Low (Commission)**
CROSS-REFERENCE	**VL 425.05, Suitability of Work; MS 95.1, Statutes**

After being laid-off from his job, the claimant saw an advertisement in a newspaper for work as a Sales Representative. Although the claimant had no experience in the field (selling vacuum cleaners), he concluded that, if he applied himself diligently, he could earn $980 per month. The work first required the claimant to attend initial training sessions, 60 miles from his home, at his own expense. The claimant attended these sessions, as well as follow-up sessions, which were administered during the work week. The claimant's regular schedule involved driving to facilities where he would pick up merchandise and obtain sales leads, then proceeding to homes where he would give demonstrations of the vacuum cleaners he had been trained to sell.

At the time of hire, the claimant had been told he would be paid on a commission basis, dependent upon sales of vacuum cleaners. After 5 weeks, the claimant had sold 1 vacuum cleaner, for which he was paid $75 commission. Since this was substantially less than he had hoped to earn, he quit.

HELD: If remuneration, in full or in part, is on a piece-rate or commission basis, good cause attributable to the employing unit for leaving may be found because of low wages, provided that the individual has remained on the job long enough to give the work a fair trial. What constitutes a fair trial must be determined by the facts in each case.

In the instant case, the employing unit had fixed the rate of pay as commission only, and this was the basis upon which the claimant had determined the work to be unsuitable. The evidence established that the claimant diligently devoted himself to his work, which included training sessions at his own expense and 5 weeks' work as a Sales Representative. The claimant gave the work a fair (albeit unsuccessful) trial, and, as a result, his conclusion that the work was not suitable for him was reasonable. He left work with good cause attributable to the employer.

Method or Time of Payment VL 500.55
No decision

Minimum VL 500.6
No decision
Piece Rate, Commission Basis, or Other Method of Computation VL 500.65
No decision

Prevailing Rate VL 500.7
No decision

Reduction VL 500.75
No decision

General VL 500.751
No decision

Hours, Change in VL 500.752

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.752**
DOCKET/DATE	**ABR-86-1747/7-31-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Reduction Proportionate to Change in Hours**
CROSS-REFERENCE	**VL 150.2, Distance to Work; 450.153, Time, Hours**

The claimant traveled 68 miles each way to his work, as a Heavy Equipment Operator, which he performed 5 days per week, 9 to 10 hours per day. Then his work schedule was changed: He was assigned 2 days of work per week, and sometimes those were half days. The claimant testified that, due to his reduced work schedule, he was compelled to quit; he could no longer afford to travel the 68 miles to and from work.

HELD: A reduction in wages -- which occurs only as a result of a reduction in hours -- does not constitute good cause attributable to the employing unit for leaving, unless the time or costs of transportation become disproportionate to the earnings. In the instant case, the time and money spent by the claimant in order to travel to and from his work had become disproportionate to his earnings. He left work with good cause attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL-500.752**
DOCKET/DATE	***Acevedo v. IDES*, 324 Ill.App.3d 768, 258 Ill.Dec. 12, 755 N.E.2d 93 (1st Dist., 8/7/01)**
AUTHORITY	**Section 601(A)**
TITLE	**Wages**
SUBTITLE	**Hours, Change in**
CROSS-REFERENCE	**None**

The claimant asserted that he quit work because his supervisor told him that there was no work for him and had reduced his schedule from 40 hours per week to between 13 to 20 per week. At the hearing, at which the claimant failed to appear, the employer testified that the claimant failed to report to work for three consecutive days. The company had reduced employee

hours temporarily because of an administrative problem. However, there was work for the claimant on the days he missed. The claimant's partner continued to work during this period.

HELD: The appellate court held that the reduction of the claimant's work hours did not constitute good cause for the claimant to voluntarily quit his job. The evidence showed that there was work available for the claimant on the days that he missed work. There was no evidence showing that his duties had been changed or his rate of pay had been reduced such as to render the job unsuitable. The effect on the claimant's personal finances of the reduction in hours was deemed by the court not to be attributable to the employer. The court noted that a reduction in hours could render an individual eligible for unemployment benefits if the reduction causes his/her wages to fall below the individual's weekly benefit amount.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 500.752**
DOCKET/DATE ***Irene Collier v. IDES*, No. 86-1397 (1987)**
AUTHORITY **Section 601A of the Act**
TITLE **Wages**
SUBTITLE **Reduction - Change in Hours**
CROSS-REFERENCE **None**

The claimant worked as an assembler. For 2 years she worked an 8-hour shift, 5 days per week, at an hourly rate of $3.95. Because of a business slowdown, the company reduced her workload to 30 hours, 5 mornings per week. The claimant quit.

The claimant stated that she quit when she did because continuing to work mornings would prevent her from seeking full-time work during the time of day when, she believed, most companies did their hiring. She also cited her financial situation, particularly private school tuition for her children.

The Board of Review held that, in the absence of a binding promise to furnish full-time work, the reduction in hours did not so materially vary conditions of work as to render the work unsuitable. The Board of Review issued a decision disqualifying the claimant.
The circuit court determined that the 25% reduction in the claimant's hours was a unilateral and substantial change in her condition of employment which translated into a 25% reduction in pay and that she was entitled to unemployment benefits.

HELD: Dissatisfaction with the number of working hours does not constitute good cause for leaving employment. Generally, if there is no change in the rate of pay, there is no good cause for leaving. Insofar as reduced hours also diminish salary and may be considered a reduction in pay, good cause is dependent upon all attendant circumstances; for example: was there a contractual agreement to furnish 40 hours' work/pay; or, did the hours of employment preclude seeking other work?

In this case, there was no agreement to furnish a 40-hour work week. The claimant's contention that she could not explore work opportunities in the afternoon was her belief, not supported by any evidence. The claimant's personal financial circumstances were not attributable to the employer, nor did they constitute good cause, because the claimant could have continued to draw wages while seeking other work, or, if she was earning less than her weekly benefit amount, while collecting unemployment benefits. The claimant was disqualified for Voluntary Leaving under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 500.752**
DOCKET/DATE **ABR-88-6848/1-25-89**
AUTHORITY **Section 601A of the Act**
TITLE **Wages**
SUBTITLE **Reduction, Change in Hours**
CROSS-REFERENCE **None**

The claimant, a waitress, worked a shift that began at 8 a.m. and included the breakfast rush, from which she derived a substantial amount of her tips. The employer changed her starting time to 9 a.m., which meant that she would not be working during the breakfast rush and would be deprived of a substantial amount of her tips.

HELD: A change or reduction in hours, with a corresponding and proportionate change in wages, generally does not constitute good cause for leaving. However, a change or reduction in hours, with a disproportionate and substantial reduction in wages, constitutes good cause for leaving.

Here, the claimant's wages were disproportionately and substantially reduced by the change in hours. She left work with good cause and benefits were allowed.

Overtime without Compensation VL 500.753

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.753**
DOCKET/DATE	**ABR-85-5217/12-3-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Overtime Without Compensation**
CROSS-REFERENCE	**VL 450.35, Time, Overtime**

When the claimant was hired as Office Manager, at $25,000 per year, she was told that she would be expected to work overtime -- more than her usual 37-1/2 hours per week -- for an indeterminable period of time. This was due to the employer's conversion to and installation of automated systems in its plant and offices.

After 7 months on the job, the claimant quit. She testified that she had been working 45 hours per week, without being compensated for her overtime hours.
HELD: Overtime work is not unsuitable per se. But a voluntary leaving will be with good cause if the hours worked or wages paid are in violation of statute, of if the work is otherwise determined to be unsuitable.

Certain types of employment are exempted from the provisions of Illinois' applicable overtime statute; among these, managerial positions. The claimant held a managerial position, for which she was paid on an annual, not hourly, basis. Therefore, she was not automatically entitled to compensation for overtime work. Now was it shown, by any express or implied terms of hire, that the claimant was promised overtime pay or that the employer deviated from those terms.

The claimant did not present any evidence to show that the overtime work adversely impacted her domestic life or her health. She failed to show the existence of any conditions which made her work incompatible with her well-being -- other than her dislike for overtime work. The mere dislike of overtime work does not, in and of itself, constitute good cause for leaving work.

The claimant left work without good cause attributable to her employer.

Territory, Change in VL 500.754

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.754**
DOCKET/DATE	**ABR-85-8861/5-28-86**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Reduction (Due to Change in Territory)**
CROSS-REFERENCE	**None**

The claimant, an Insurance Salesman working on a commission basis, had been assigned to work a particular territory. Then the employer assigned another salesman to share the territory with the claimant. The other salesman had previously worked the territory, reestablished contact with his former clients, and continually diverted business from the claimant. The claimant discussed the situation with the district sales manager; however, no further changes in territory were made. The claimant quit.

HELD: Individuals employed in field or route sales are typically assigned to pursue their sales in territories of well-defined limits. The potential for making commission wages is often dependent upon marketing suitability of a given territory. When an individual leaves work because of a change in territorial assignment, comparisons between the old and new circumstances must be made. If it is established that the sales potential in the new territory would have been substantially less favorable, resulting in a substantial reduction in commission, good cause attributable to the employing unit for voluntary leaving will be established.

In the instant case, the claimant established that, as a result of the employer assigning another salesman to his territory, business was diverted from the claimant, to the extent that his wages were reduced substantially. Accordingly, the claimant left work with good cause attributable to his employer.

Type of Work or Materials, Change in VL 500.755
No decision

Wage Assignment or Garnishment VL 500.8
No decision

Work, Definition of VL 505
General VL 505.05
No decision

Work, Nature VL 510
No decision

General VL 510.05
No decision

Inside or Outside VL 510.3
No decision
Light or Heavy VL 510.35
No decision

Preferred Employer or Employment VL 510.4
No decision

Veteran's Reemployment VL 510.5
No decision

Working Conditions VL 515
General VL 515.05
No decision

Advancement, Opportunity for VL 515.1
No decision

Agreement, Violation of VL 515.15
No decision

Apportionment of Work VL 515.2

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.2**
DOCKET/DATE	**ABR-85-8546/6-10-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Apportionment of Work**
CROSS-REFERENCE	**VL 210.05, Good Cause**

The claimant worked as a Salesclerk in a health food store. Her work shift would run from 6 to 8 hours, during which time she would be the only employee in the store. The employer had a rule which forbade eating at one's work station, except during rest periods or lunch breaks. The claimant testified that because there were no workers to provide her relief, she could not take a lunch break. Also, she could not take a break to go to the washroom, since that would mean leaving her work station unattended. She complained to her supervisor (whose testimony corroborated the claimant's) to no avail.

HELD: A leaving of work because of objection to the distribution of work will be without good cause attributable to the employing unit unless the distribution of work causes undue hardship for the claimant.

In the instant case, the employer's rule clearly demonstrated that workers were entitled to relief. Because the claimant was afforded no relief, she not only found herself as the only employee in the store, with full responsibility for its operation, but in a position where she either forewent lunch and rest periods to which she was entitled or was compelled to violate the employer's rule and subject herself to possible disciplinary action.

The claimant established that the employer, by not providing her any relief, distributed work in such a fashion as to cause her undue hardship. The average reasonable person subjected to the same conditions would in all likelihood have reacted as the claimant did. She left work with good cause attributable to her employer.

Company Rule VL 515.25
No decision

Duties or Requirements outside Scope of Employment VL 515.3
No decision

Environment VL 515.35

DOCKET/DATE	**ABR-89-5257/10-10-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Environment (Cigarette Smoke)**
CROSS-REFERENCE	**VL 235.45, Health or Physical Condition**

The claimant stated that he left work because of cigarette smoke in the office. He never told his employer that cigarette smoke was bothering him.

HELD: If a worker asserts that he had good cause for leaving, because his working environment posed a risk to his health, he must:

1) offer competent testimony (some medical evidence) that adequate health reasons justified quitting; 2) have informed the employer of the problem; and 3) have been available for a reasonable accommodation.

Here, at the least, the claimant failed to inform the employer of any problem. Therefore, he did not establish that he had good cause for leaving. Benefits were denied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.35**
DOCKET/DATE	**ABR-88-2843/5-31-88**
AUTHORITY	**Section 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Environment**
CROSS-REFERENCE	**None**

The claimant had an allergy to cigarette smoke. An assistant manager kept blowing smoke in her direction in the office. Despite her complaints, the situation persisted, until, finally, she quit.

HELD: If an individual leaves work because of a physical condition surrounding the work, she must show that the physical condition was attributable to the employer and that it resulted in undue hardship for her.

In this case, the smoke in the office was attributable to the employer because the claimant brought it to the employer's attention and no accommodation was made. The claimant had good cause for leaving because she had a medical condition that was adversely affected by the smoke.

The claimant left work with good cause attributable to her employer.

Fellow Employee VL 515.4

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.4**
DOCKET/DATE	**ABR06487/3-9-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Fellow Employee**
CROSS-REFERENCE	**VL 50.05, Attributable to Employer**

The claimant helped her son get a job with her employer. Over the next three years, she loaned her son several thousand dollars, which he did not repay. As time went by, her son would demand more money, and, if she hesitated to pay it, he would threaten her. The son began making demands and threats at work. The claimant asked her supervisor to talk to her son about harassing her at work. The supervisor did, but the son continued to seek her out at work. Finally, the claimant quit.

HELD: If a worker quits because of annoyance with a fellow employee, the leaving is attributable to the employer only if it has a duty, but fails, to act. However, an employer does not have a duty to act in a parental capacity and cannot be expected to resolve every family problem that carries over into the workplace. Here, the claimant left work because of a family problem, not because the employer failed to take action. The leaving was not attributable to the employer. Benefits were denied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.4**
DOCKET/DATE	**83-BRD-14394/12-2-83**
AUTHORITY	**Section-601A**
TITLE	**Working Conditions**
SUBTITLE	**Fellow Employee**
CROSS-REFERENCE	**None**

The claimant quit her job as a cook because she disliked a co-worker and felt job duties were not evenly distributed. She became upset when she learned the co-worker would continue working for the employer the next school year.

HELD: The dislike for a fellow employee does not, in itself, establish a good cause for leaving a job. There is no evidence that the claimant was subject to such conditions or abuse as would have rendered the job unsuitable for her. As such, the claimant's reason for leaving work was purely personal and not attributable to the employer. She is, therefore, ineligible to receive benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.4**
DOCKET/DATE	***Alfonso Barron v. Ward,* No. 86-1630 (1987)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Fellow Employee**
CROSS-REFERENCE	**VL 160.05, Efforts to Secure Employment**

The claimant, who was Mexican, worked with an employee who made repeated derogatory remarks about Mexicans in general and the claimant in particular. Finally, the claimant and the co-worker were engaged in an altercation, during which the co-worker struck the claimant in the face, injuring him.

The co-worker was transferred to another department. After the transfer, the co-worker threatened to kill the claimant and would laugh at him whenever he would see him in the plant.

For business reasons, the employer decided to transfer the co-worker back to the claimant's department. When the claimant learned of this, he told superiors and the union steward he could not and would not work with the co-worker, but they insisted that the transfer was a business necessity and that the claimant should just stay on and work.

The claimant quit.

HELD: An employee is not justified in quitting his job because of a minor, isolated confrontation with a fellow employee. This is particularly true if the abused employee does not have reason to believe that further abuse will result if he stays on the job. An aggrieved employee has a duty to cooperate in some common-sense action to eliminate the problem.

But the general rule indicated above would not apply if an employee were seriously injured, had a genuine fear of assault if he returned to work, had good reason to believe that attempts to work out the problem would be futile, or attempts to stop the abuse had failed.

In this case, the claimant had a genuine fear of further abuse and assault, and good reason to believe that attempts to work out the problem would be futile. He left work with good cause attributable to the employer.

Method or Quality of Workmanship VL 515.45
No decision

Morals VL 515.5

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.5**
DOCKET/DATE	**ABR-87-1354/4-14-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Morals**
CROSS-REFERENCE	**VL 90.05, Conscien. Obj.; VL 385.05, Cause of Leaving**

The claimant worked as a Supervisor in a medical center's kitchen. His schedule was such that he was able to attend either a Jehovah's Witness church meeting on Tuesday evening or a ministers' training session on Thursday evening.

Then the employer decided to institute a new 1 a.m. to 3 a.m. shift. The employer asked the claimant to supervise this shift, in addition to his regular shift. These additional responsibilities would have lasted 1 month. The claimant refused to work the additional hours.

In order to begin operations on its new shift, and as a result of the claimant's refusal, the employer was compelled to rearrange other supervisors' schedules. This, in turn, impacted upon the claimant. The claimant was told that his work schedule would have to be changed, temporarily, regardless. He was offered a variety of schedules, before he accepted a part-time position as a relief cook.

The relief cook job had 2 weeks left to run - after which the claimant would be returned to his regular supervisory position and shift - when the claimant observed that he would be scheduled to work both Tuesday and Thursday evenings. He promptly gave the employer 2-weeks' notice of his intention to resign.

The claimant stated that he quit because he wished to attend either the Tuesday or the Thursday church meeting - or, preferably, both. He acknowledged that he was not required by the church to attend such meetings, but that it was his personal decision to do so.

HELD: Unemployment insurance is designed to guarantee benefits to employees who are out of work through no fault of their own. The determination of fault is to be made in light of the First Amendment freedom of religion provision - and not solely on the basis of the language of a statute defining eligibility. Accordingly, if there is a true religious conviction present, benefits cannot be withheld.

In this case, the claimant was not compelled to leave work on account of a true religious conviction. His attendance at church meetings was, by his admission and by his prior attendance at only 1 of 2 meetings per week, non-obligatory. He had refused temporary work which would not have conflicted with his desire to attend 1 meeting per week. Finally, at the time he quit, the reason for his quit no longer existed - when his 2-week notice of quit expired, so did his temporary assignment.

Neither the employer nor the state conditioned the claimant's receipt of benefits upon conduct proscribed by his faith. There was no burden upon religion. The claimant was disqualified for benefits under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.5**
DOCKET/DATE	**83-BRD-10841/9-23-83**
AUTHORITY	**Section-601B4.**
TITLE	**Working Conditions**
SUBTITLE	**Morals**
CROSS-REFERENCE	**None**

The claimant worked for four months as a housekeeper for a motel managed by a husband and wife.

On one occasion, the manager came into the motel room where the claimant was bent over cleaning and slapped her on her posterior. On another occasion he came into the room where she was working and, after some small talk, put his arms around

her and asked her for a kiss. The claimant refused. She reported the incident to her head maid and finished her work shift, but she did not report to work again. The next morning, the manager telephoned the claimant at home, apologized for the incident the day before, and told her that he would not do it again. The employer did not rebut the claimant's testimony.

HELD: The claimant left her job immediately after her supervisor placed his arms around her and asked for a kiss. Both this incident and the prior incident were unsolicited by the claimant. The claimant complained to the head maid. For the claimant to complain to the manager would have been a useless act. The employer offered no evidence to contradict the claimant's testimony. The owner is responsible for the activities of the manager which, in this instance, amounted to sexual harassment. The claimant voluntarily left work for good cause attributable to the employer, and she is not disqualified from the receipt of benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.5**
DOCKET/DATE	**85-BRD-04467/6-14-85**
AUTHORITY	**Sect. 601 of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Morals (Sexual Harassment)**
CROSS-REFERENCE	**None**

The claimant had been employed as a Data Processing Supervisor for 2 1/2 years.
On November 29, 1982, in response to an Agency questionnaire (Claimant's Statement on Voluntary Leaving), the claimant wrote:

> I was treated fairly until we had a manager change...Instead of letting me train, promote, and fire my employees they took it upon themselves to call my people in behind my back...Management was telling me to supervise my people but how could I when they were writing reviews, promoting and firing people against my wishes. I would come up with new ideas and they...would laugh...I had enough.

On December 16, 1982, during an interview with the Claims Adjudicator, the claimant signed a statement in which she alleged that a co-worker had been "constantly making degrading remarks about going to bed with him." That statement also indicated that the claimant had taken the matter to the employer's Personnel Department, to no avail.

On January 13, 1983, the claimant testified at an appeal hearing, at which time she stated that the main reason she quit her job was on account of sexual harassment, which she had endured for at least 4 months. She testified that she had not apprised anyone in management about the situation, because the employer's general policy was that employees should work things out among themselves first.

The employer's witness, its Personnel Manager, testified that the claimant's statements at the hearing were the first mention of sexual harassment. He testified that the employer had a strict policy regarding sexual harassment, and had the claimant taken the matter to the Personnel Department, the matter would have been dealt with immediately.

HELD: Section 601B-4 of the Act provides an exemption from the disqualifying provisions of Section 601A, but only if an individual has separated from employment solely because of sexual harassment, and only where the employer knew or should have known of the existence of such harassment and failed to take timely or appropriate action.

In the instant case, the claimant testified that sexual harassment was the "main" -- as opposed to "only" -- reason she quit her job, suggesting that there were other reasons. Her prior written statement confirmed the existence of other reasons. Because she did not separate from employment solely because of sexual harassment, no exemption would apply.

Further, it was not established that the employer knew or should have known of any sexual harassment. The claimant's statements to the Adjudicator and to the Referee were contradictory as to whether she had informed her employer about the co-worker's alleged conduct. Contradictory statements lessen a witness' credibility. The employer's witness' testimony was entitled to greater weight. Because the employer was unaware of any acts of sexual harassment, again, no exemption would apply.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.5**
DOCKET/DATE **85-BRD-05589/7-25-85**
AUTHORITY **Sect. 601 of the Act**
TITLE **Working Conditions**
SUBTITLE **Morals (Sexual Harassment by Owner of Company)**
CROSS-REFERENCE **VL 385.05, Relation of Alleged Cause of Leaving**

The claimant was employed as a Secretary and Payroll Clerk for 3 years, until September, 1984, when she quit because the owner of the corporation for which she worked had been harassing her with lewd remarks, sexual advances, and offensive touching. The claimant testified that she had ignored or expressed displeasure at the owner's remarks, and that she had rebuffed the advances and offensive physical contacts, and that, finally, she had demanded that the harassment stop. When the harassment did not stop, the claimant quit.

HELD: Section 601B-4 of the Act provides an exemption from the disqualifying provisions of Section 601A, when an individual has separated from employment solely because of sexual harassment, and where the employer knew or should have known of the existence of such harassment and failed to take timely or appropriate action. In the instant case, the claimant left work solely because of sexual harassment. Since the owner of the corporation was the person responsible for the harassment, it followed that the employer knew and did not take timely or appropriate action to stop the harassment. The exemption was applicable.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.5**
DOCKET/DATE **ABR-85-6665/2-28-86**
AUTHORITY **Sect. 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Morals (Sexual Harassment by Owner of Company)**
CROSS-REFERENCE **None**

The claimant worked as Acting Director of Finance for a company whose Executive Director instructed her to alter certain financial records. In June, 1985, the Executive Director was paid $2508 in lieu of taking a vacation. He figured that, from a tax standpoint, it would be to his advantage to have the $2508 reported as 1986, instead of 1985, income. He turned over to the claimant his vacation check for $2508, marking thereon "DONATION," and instructed the claimant to pay him the $2508 come January, 1986.

The claimant testified that she suspected that the transaction was illegal, investigated the matter and learned from the IRS that such a change was illegal and could subject her to the loss of her C.P.A. license and criminal prosecution. In the alternative, she could refuse the Executive Director's demand, and face a possible discharge for being insubordinate. She chose to resign.

HELD: A worker has good cause attributable to the employing unit for quitting if continuance on the job would involve an undue risk to the worker's morals and therefore her well-being. An undue risk to the worker's morals is clearly involved if the worker is required to do anything which is dishonest, illegal or unethical; this includes a reasonably grounded apprehension that an act is dishonest, illegal or unethical, and will work to the claimant's detriment -- even if it might later prove not to be so.

In the instant case, the claimant was experienced in financial and tax matters, had consulted the IRS, and, therefore, her conclusion -- that her employer had required her to perform an act which was illegal -- had a reasonable basis. Also, the claimant had a reasonably grounded apprehension that performing such an act could subject her to loss of her license and criminal sanctions. It was not necessary for the claimant to continue on the job and await such consequences. The undue risk to the claimant's morals and therefore her well-being established good cause attributable to the employer for leaving.

Prevailing or Consistent Labor Standards VL 515.55
No decision

Production Requirement or Quantity of Duties VL 515.6

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.6**
DOCKET/DATE **83-BRD-12533/11-7-83**
AUTHORITY **Section-601A**
TITLE **Working Conditions**
SUBTITLE **Production Requirement Or Quantity Of Duties**
CROSS-REFERENCE **None**

The claimant was counseled about her work performance on two occasions. The employer told the claimant that her production was at the 60% level and tried to encourage the claimant to raise it to 100%. The employer offered to give the claimant assistance to increase her performance, but this was not accepted. At the second meeting, after the employer again explained that the claimant's performance had not improved, the claimant decided to leave her job and quit work; she didn't believe she could do any better.

HELD: The claimant left her job voluntarily without good cause attributable to the employer. An employer has a right to set a production goal for its employees and to try to help the employees achieve that goal. The claimant's quitting after being encouraged to produce more work does not constitute good cause for leaving work, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.6**
DOCKET/DATE **85-BRD-05980/8-14-85**
AUTHORITY **Sect. 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Production Requirement or Quantity of Duties**
CROSS-REFERENCE **None**

The claimant, a 58 year old married woman with a family, was employed by a retail department store for 18 years, last holding the position of Area Sales Manager, from which she resigned following a change in top management. The claimant testified that during the final weeks of employment there had been pressure put upon her to produce more sales. She testified that she could not adjust to the pressure. She stated that she went home physically and mentally exhausted. Prior to resigning, the claimant had spoken with her manager, who told her to do the best she could.

HELD: An employer's production requirement becomes unreasonable and therefore affords a claimant good cause attributable to the employer for quitting -- when it is set so high that it adversely affects, or can adversely affect, the health of the claimant. On the other hand, a claimant's statement, standing alone, that she was not capable of meeting the employer's production requirement, generally will not afford good cause attributable to the employer for quitting.

In the instant case, while the new management undoubtedly put pressure on the claimant to increase sales, this was an expected condition of her work. Further, the claimant had been told to do the best she could, so, in fact, the production requirement was not intended or applied in such a way as to exceed the claimant's capabilities. Although the claimant may have gone home exhausted, work is, by its nature, arduous and exhausting. Because the claimant did not establish that the employer's production requirement was unreasonable or that it had an adverse effect upon her health, aside from fatigue, the claimant was disqualified for benefits for leaving work without good cause attributable to her employer.

Safety VL 515.65

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.65**
DOCKET/DATE ***Patrick Burke v. Board of Review*, 477 N.E. 2d 1351**
AUTHORITY **Sect. 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Safety**
CROSS-REFERENCE **VL 235.45, Health, Risk of Illness or Injury**

The claimant, a worker in a nuclear facility, testified that 2 fellow employees had been found to be contaminated with radiation. The extent of their contamination, he testified, was that, upon leaving the facility, they had to take showers and some work clothing was lost. The claimant himself was found not to be contaminated. Nonetheless, believing that there were areas of radiation still unknown, making working conditions unduly hazardous for him, the claimant quit. At no time had he sought medical treatment or advice, nor had he complained to superiors about the purportedly hazardous conditions. He stated that he did not complain because he did not wish to be branded a troublemaker.

HELD: In order to demonstrate that health is a compelling reason for terminating employment, a claimant must:

(1) offer competent testimony (some medical evidence) that adequate health reasons existed to justify termination at the time of termination;
(2) have informed the employer of the health problem; and
(3) be available, where a reasonable accommodation is made by the employer, for work which is not inimical to his health.

The failure to satisfy any one of the three conditions explicated above will bar a claim for unemployment compensation.

In the case at bar, the claimant did not establish good cause attributable to his employer based upon health reasons. He did not adduce any medical evidence to support the allegations concerning alleged health problems. He did not report purportedly unsafe conditions to his employer. His conduct did not meet the standard of ordinary common sense; in short, he did not act in good faith. As a result, he was disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.65**
DOCKET/DATE	**ABR-87-5552/4-7-88**
AUTHORITY	**Section 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Safety**
CROSS-REFERENCE	**VL 50.05, Attributable; VL 235.45 Health**

The claimant worked in a hospital as a Registered Pediatric Nurse whose duties included providing nursing care to children with various diseases - including Acquired Immune Deficiency Syndrome (AIDS).

The hospital informed nurses as to how AIDS could be transmitted. The hospital formally instructed nurses concerning the treatment of AIDS patients. On the doors of patients who had been exposed to the AIDS virus were notices reminding nurses about blood and secretion precautions to be taken. In addition, the hospital followed established procedures that were taken for other infectious diseases transmitted through the blood, such as hepatitis, which involved precautions against contact with patients' blood and secretions.

The claimant became separated from employment because she refused to provide care for an infant who had been exposed to the AIDS virus.

HELD: Dangers inherent in a job are not necessarily attributable to the employer. Only where the risks of a job are disproportionately high, because the employer either acts or fails to act, will such a risk result in a finding of attributability.

Nursing, as an occupation, involves contact with patients who might have contracted contagious diseases. The claimant, as a nurse, assumed this risk as the ordinary risk of the nursing occupation. The evidence in this matter did not establish that the risk of the claimant's contraction of the AIDS virus was disproportionately high. This was because of the precautions taken by the employer.

The claimant did not make herself available for work despite the employer's reasonable precautions. As such, she did not have good cause attributable to the employer for leaving her job.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 515.65**
DOCKET/DATE	***Walls v. Department of Employment Security*, 993 N.E.2d 1129, 373 Ill.Dec. 570 (5th Dist., 2013)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Safety**
CROSS-REFERENCE	**VL 50.05, Attributable**

The claimant was employed as a miner. The claimant left his job because the claimant alleged that his employer required him to go down into the mines without proper safety equipment. After the claimant resigned, he filed a complaint with the Mine Safety and Health Administrative (MSHA). The employer responded that the claimant complained once about his safety equipment and that the claimant has access to several other pieces of the same equipment. The employer also pointed out that

the MSHA found no violations. The Board held that the claimant failed to prove that he was required to work in unsafe conditions. The circuit court affirmed the Board's decision and the claimant appealed.

HELD: The claimant failed to show that: (1) the employer implemented a substantial change in the claimant's employment conditions; (2) the claimant was forced to work under unsafe conditions; or (3) the claimant made a reasonable effort to rectify the problem. Therefore, the Appellate Court affirmed the Board's decision that the claimant was ineligible for benefits under Section 601(A).

Sanitation VL 515.7
No decision
Seniority VL 515.75
No decision

Supervisor VL 515.8

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.8**
DOCKET/DATE	**83-BRD-11730/10-20-83**
AUTHORITY	**Section-601A**
TITLE	**Working Conditions**
SUBTITLE	**Supervisor**
CROSS-REFERENCE	**None**

The claimant quit because her supervisor made "unreasonable demands and wouldn't let anyone have an opinion without clearing with her first." She quit without notice to the employer.

At the hearing before the referee, the claimant testified that she considered it an insult when her supervisor told her that she "didn't like the way the project was done and that she couldn't afford to spoon-feed me." The employer's sales manager testified that the claimant had never discussed any problem with him.

HELD: An individual's dislike or disapproval of his supervisor or her employer's method of doing business is not, in and of itself, good cause for leaving work, unless the evidence shows discrimination, abuse, or violence. There is no evidence that the claimant was subjected to any of these conditions which would have rendered the work unsuitable for her. She voluntarily quit without good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.8**
DOCKET/DATE	**ABR-85-2841/9-11-85**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Supervisor**
CROSS-REFERENCE	**None**

The claimant was employed as a Teacher, whose work was normally subject to classroom evaluations, conducted by the Chairperson of her department, 3 times per year. The claimant resigned her position after the Chairperson, during a 3 month period, conducted 18 classroom evaluations of the claimant's work. The evaluations included interrupting lessons and asking the claimant's students questions critical of the claimant's performance, which was not normal procedure.

HELD: A course of conduct on the part of a supervisor which amounts to abuse, hostility, unreasonable discrimination, or which threatens the worker's mental well-being, will constitute a compelling reason, and therefore good cause, for leaving work. In the instant case, the evidence established that the claimant was subjected to evaluations which were excessive both in their number and manner. The Chairperson engaged in a course of conduct which amounted to harassment. Therefore, the claimant had good cause attributable to her employer for leaving work.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.8**
DOCKET/DATE	**84-BRD-499/1-13-84**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Supervisor**
CROSS-REFERENCE	**None**

The claimant alleged that for a period of six months she was subjected to harassment by her supervisor. She cited instances in which her supervisor had criticized her for issuing an excessive number of credit slips and had then questioned her as to the reasons for issuing the slips. She also told of another instance in which the supervisor had called her attention to a shortage in the cash receipts. She felt that her honesty had been questioned and that the supervisor had not given her an opportunity to explain the circumstances. She resigned her position after one of these incidents.

HELD: The evidence established that the claimant became sensitive to certain characteristics of her supervisor. Dislike or friction between a supervisor and a worker is not in itself good cause for leaving which is attributable to the employer. There must be additional evidence that the supervisor's conduct amounted to unreasonable discrimination, abuse or hostility. In the instant case, the supervisor's conduct in questioning the claimant was within the scope of her duties. Therefore, the claimant voluntarily left work without good cause attributable to the employer. She is disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.8**
DOCKET/DATE	**84-BRD-413/1-12-84**
AUTHORITY	**Section-601A**
TITLE	**Working Conditions**
SUBTITLE	**Supervisor**
CROSS-REFERENCE	**None**

In the presence of co-workers, the claimant's supervisor constantly yelled at him, cursed him, called him a dummy, and told him he was stupid. The claimant complained to the management, and relations with the supervisor improved. Eventually, however, the supervisor reverted to the same practices, and, on the date the claimant quit, the supervisor yelled at him in the presence of another supervisor.

HELD: The repeated attacks of verbal abuse by the supervisor were good cause for the claimant's leaving. Since he had made reasonable and unsuccessful efforts to remedy the situation by reporting the matter to the employer, the circumstances were within the employer's knowledge and control. It is concluded that the claimant quit for good cause attributable to the employer, and he is not disqualified from receiving benefits.

Temperature or Ventilation VL 515.85
No decision

Transfer to Other Work VL 515.9

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.9**
DOCKET/DATE	**ABR-85-9196-10-86**
AUTHORITY	**Sect. 601 of the Act**
TITLE	**Transfer to Other Work**
SUBTITLE	**Section 601B-3**
CROSS-REFERENCE	**None**

The employer informed the claimant that he was being transferred to a job as a Drill Press Operator. Under the terms of a collective bargaining agreement, another employee would have had to vacate that Drill Press position to make the job available to the claimant, who had more seniority. The claimant objected to the transfer and quit.

HELD: Section 601B-3 of the Act provides that the disqualifying provisions of Section 601A shall not apply to an individual who has left work voluntarily in lieu of accepting a transfer to other work under the terms of a collective bargaining agreement or pursuant to an established employer plan, if the acceptance of such other work would require the separation from that work of another individual currently performing it.

The claimant's separation from work was within the purview of Section 601B-3 and the exception applied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.9**
DOCKET/DATE	**83-BRD-14848/12-13-83**
AUTHORITY	**Section-601A**

TITLE **Working Conditions**
SUBTITLE **Transfer to Other Work**
CROSS-REFERENCE **None**

The claimant worked for approximately three years until she quit her job. She had been promoted on two previous occasions during her employment. Her most recent position was that of an Administrative Clerk. The employer notified her that she was being transferred to a Billing Clerk position at the same rate of pay. The employer was confident that she would be able to learn the new position. The claimant reviewed the job description of the Billing Clerk position, believed that she was not qualified to fill it, and notified the employer that she would not accept the job reassignment.

HELD: The claimant was to be transferred from her position as an Administrative Clerk to that of a Billing Clerk, with no reduction in her salary. While the employer expressed confidence in her ability to perform her new duties, the claimant decided that she was unqualified for the position and left work. Although the claimant's leaving work was attributable to the employer in that it unilaterally changed the claimant's work assignment, the claimant left without good cause. Other than her subjective conclusion that she could not perform her new duties, the claimant did not make any effort to attempt the new job before leaving work and therefore could not show that the work was in fact unsuitable. The claimant is ineligible to receive benefits.

Weather or Climate VL 515.95
No decision

ABLE AND AVAILABLE

Able and Available AA 5
General AA 5.05

ISSUE/DIGEST CODE	**Able and Available/AA 5**
DOCKET/DATE	**ABR-85-7949/3-28-86**
AUTHORITY	**Sections 500C and 702 of the Act**
TITLE	**General**
SUBTITLE	**Sufficiency of Employer's Protest**
CROSS-REFERENCE	**PR 405.2, Right of Review, Persons Entitled**

The claimant filed a claim for benefits and the Claims Adjudicator mailed a notice of the claim to the employer. The employer filed a timely protest, in which it stated, in pertinent part:

> The Claimant was employed in a seasonal capacity with our company, working for the 1984 Christmas season only. The Claimant was aware of the temporary status of her position at the time of the acceptance. The Claimant has not shown an attachment to the full-time labor force through (such employment, and) in addition, the Claimant does have marketable skills for which there are positions available in the full-time labor market. This is evident by the fact that the Claimant did secure employment subsequent to working (for us). Based on this information, we question the Claimant's efforts to secure full-time permanent employment.

The issue presented was whether the employer was entitled to receive a determination with respect to the availability for work.

HELD: An employer is entitled to receive a claimant's determination when it has filed a timely and sufficient protest. In order to be sufficient a protest must contain a reason which would tend to support its conclusion. In cases involving an individual's availability for work, the employer must provide a reason which would tend to support a conclusion that the individual was unavailable for work during the period under review. The mere (and self-evident) fact that an individual is unemployed does not mean that it is presumed that the person wishes to remain unemployed and is therefore unavailable for work.

In the instant case, the employer provided reasons why the claimant may have been available -- not unavailable -- for work. The employer established that the claimant had marketable skills and had applied them by accepting 2 jobs. Other than that, the employer merely restated the fact that the claimant was unemployed.

The employer's protest was insufficient, and the employer was not entitled to receive notice of the Claims Adjudicator's determination.

Attendance at School or Training Course AA 40
General AA 40.05

ISSUE/DIGEST CODE	**Able & Available/AA 40.05**
DOCKET/DATE	***Moss v. IDES*, 357 Ill. App. 3d 980 (1st Dist. 2005)**
AUTHORITY	**Section 500C4 of the Act**
TITLE	**Attendance at School or Training Course**
SUBTITLE	**Whether Principal Occupation is Worker or Student**
CROSS-REFERENCE	**None**

The claimant's hours were reduced after she had been employed as a full-time security officer with the defendant security services company for 1-½ years. The claimant subsequently enrolled in a college program to become a medical assistant. The claimant attended classes from 7:00 a.m. until noon Wednesday through Saturday. The claimant testified she chose morning classes so she would be available for afternoon or evening shift work with the defendant, and she was looking for whatever work she could get, full-time or part-time. She said she only went to school five hours a day and still had time to work. The Hearing Referee observed, "Most jobs are Monday to Friday, X number of hours," and asked the claimant if she would drop school if she were offered a full time job. The claimant responded she would not leave school because she would need to repay her student loan whether or not she finished the college program. The Hearing Referee found the claimant ineligible for UI benefits under Section 500C4 because her principal occupation was that of a student. The claimant appealed to the BOR, stating she was a part-time student and would change her class schedule to fit her work schedule, and explaining the security business was not conducted just from 9 a.m. to 5 p.m. and people in the security field seldom get a 9 to 5 shift. The BOR

affirmed the Hearing Referee. The Circuit Court affirmed the BOR. The Appellate Court reversed and remanded the case.

HELD: In determining if a claimant's principal occupation is that of a student, the focus should be on whether the claimant has placed restrictions on her job search because of her status as student. That is, is work subordinate to and geared around an educational program, and is a claimant available to work a full-time job in light of school commitments? In this case, the BOR incorrectly interpreted the claimant's response to the Hearing Referee that she would not quit school if offered a full-time job to mean she was not looking for full-time work. The claimant said she would not leave school, but she did not say she would turn down the job. She never said she was not available or willing to work a full-time job, and in fact testified she would take full-time work if she could get it. A claimant can be available for work and remain a student. The circumstances in this case show the claimant wanted to remain available for work, and scheduled school around work, not the other way around. In addition, the focus on a Monday through Friday, 9 to 5 workweek was incorrect. In some fields such as the claimant's, jobs are primarily available for second or third shifts. In such circumstances a claimant can go to school and be available for full-time work at the same time. A claimant's circumstances must be considered on a case-by-case basis.

ISSUE/DIGEST CODE	**Able and Available/AA 40.05**
DOCKET/DATE	**83-BRD-8543/7-21-83**
AUTHORITY	**Section 500C4**
TITLE	**Attendance At School Or Training Course**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant had begun a full-time college schedule of eighteen credit hours, and she was continuing this schedule during the two weeks under review. She stated that she would not accept any work which had to be performed during her class hours and that she would not revise her class schedule to allow her to accept such work.

HELD: The claimant's principal occupation was that of a student during the two weeks under review. She was deemed to be unavailable for work, and she is ineligible for benefits.

Note: Had the claimant previously attended school full-time while working full-time, and if she had given evidence of seeking similar full-time work such that neither the work nor school would interfere with each other, she would not be ineligible.

ISSUE/DIGEST CODE	**Able and Available/AA 40.05**
DOCKET/DATE	**ABR-87-7121/12-30-87**
AUTHORITY	**Section 500C4 of the Act**
TITLE	**Attendance At School**
SUBTITLE	**Whether Principal Occupation is Worker or Student**
CROSS-REFERENCE	**None**

The claimant worked as a cook for 4 years. She worked late afternoon shift commencing at 3 p.m. Due to the nature of the employer's business, she worked full-time each April through October and part-time each November through March.

In July, 1987, she became unemployed because the employer's business establishment was ruined by fire. In August, 1987, she began attending college courses full-time, in order to obtain an Associate Degree in Law Enforcement. Her classes were primarily from 9 a.m. through 12:30 p.m. When the employer reopened in September, she returned to work on the late afternoon/evening shift.

The claimant was denied unemployment benefits for the period July 26 through August 8, because, when she filed for benefits, she indicated that she would prefer to work in the late afternoon or evening so as to avoid a conflict with her schooling. She also testified that she would forego attendance at college classes in order to accept full-time work on any shift.

HELD: Section 500C-4 of the Act provides that an individual shall be deemed unavailable for work if her principal occupation is that of a student in attendance at or on vacation from school.

Whether or not an individual's principal occupation is that of a student is determined by considering the individual's work history, the type of work sought, and any labor market restrictions which would result from activities connected with school.

In this case, examination of these factors indicated that the claimant's principal occupation was that of a worker. Her work experience and the availability of second shift work for a cook showed that there were no undue restrictions upon her opportunities for obtaining remunerative work. Her testimony further indicated that school did not take priority over her work.

The claimant was available for work and eligible for benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 40.05**
DOCKET/DATE	***Sonia I. James v. IDOL*, 465 N.E. 2d 879 (1983)**
AUTHORITY	**Section 500C-4 of the Act**
TITLE	**Attendance At School**
SUBTITLE	**Whether Principal Occupation is Worker or Student**
CROSS-REFERENCE	**MS 95.2, Construction of Statutes**

The claimant worked as a psychological consultant. After 2 years at the job, she executed an employment agreement. The agreement provided that she would work only 16-20 hours per week. This would allow her to pursue a doctorate in psychology during off-hours. She needed the doctorate to become a registered psychologist and eventually obtain a better job.

The claimant enrolled in 3 courses that she attended 2 evenings per week. She also enrolled in a clinical training program in a Chicago hospital, from 9 a.m. to 4 p.m., 2 days per week. In addition to devoting 18-20 hours to attending classes and training, it was necessary for the claimant to study 6-8 hours each week.

The claimant became separated from employment, and, shortly thereafter, during a vacation between semesters, she filed for unemployment benefits. She told the Claims Adjudicator that any employer would have to be flexible in order to accommodate the requirements of her educational program.

HELD: The fact that a student also works does not mean she is automatically available for work and eligible for benefits. The issue is not simply availability under Section 500C.

The legislature has considered the common circumstance of a claimant who is employed on a part-time basis while attending school and has unambiguously declared, under Section 500C4, that, if she is principally occupied as a student, she shall be "deemed" unavailable for work, irrespective of Section 500C.

In this case, the claimant contended that, because she could balance both work and continuing education, she was available for work under Section 500C. But, as stated, that was not the issue. The issue was whether her principal occupation was that of a student. The time requirements of her work were less than those necessary for her studies. The evidence showed that any employment would be geared around and subordinated to her educational program. Therefore, her principal occupation was that of a student. Because her principal occupation was that of a student, she was deemed unavailable for work, and was ineligible for benefits, under Section 500C-4.

ISSUE/DIGEST CODE	**Able & Available / AA 40.05**
DOCKET/DATE	***Miller v. IDES* (1994)**
AUTHORITY	**Section 500C4 of the Act**
TITLE	**Attendance at School or Training Course**
SUBTITLE	**Whether Principal Occupation is Worker or Student**
CROSS-REFERENCE	**None**

The claimant attended classes on Monday, Wednesday, and Friday from 8 a.m. until noon, on Tuesday from 9 a.m. to 10 a.m., and on Thursday from 1 p.m. to 3 p.m. He indicated to IDES that he would prefer to work evening or afternoon shifts, and not on Monday through Thursday, because of school. At his hearing, he qualified his statements by explaining that he had worked and attended school in the past and, if offered an 8 to 5 job, he would have accepted it and made arrangements with teachers to complete his courses. The Board of Review denied benefits.

HELD: Section 500C4 provides that a claimant is "deemed" unavailable for work when his principal occupation is that of a student. Here, although the claimant indicated he would forego taking classes in order to obtain a full-time job and had in the past successfully worked full-time while attending classes, the evidence ***also*** demonstrated that he was a full-time student who sought part-time work that would not interfere with his classes. Thus, the Board's finding that his principal occupation was that of a student was not against the manifest weight of the evidence.

Citizenship or Residence Requirements AA 70
General AA 70.05

Conscientious Objection AA 90
General AA 90.05

Contract Obligation AA 105
General AA 105.05

ISSUE/DIGEST CODE	**Able and Available/AA 105.05**
DOCKET/DATE	**ABR-85-5971/1-16-86**
AUTHORITY	**Sections 239 and 500C of the Act**
TITLE	**Contract Obligation**
SUBTITLE	**Effect Upon Eligibility**
CROSS-REFERENCE	**AA 375.05, Receipt of Other Payments**

The claimant, a Janitor, worked for his employer for 36 years, until his position was eliminated, in March, 1985. Still, the employer intended to keep him on the payroll for 2 months more, during which time the claimant would not be required to sign in or perform any work; this, the employer explained, would be its "farewell gift" to the claimant for his "long and faithful years of service."

When the claimant filed a claim for unemployment benefits, for the period March 10, 1985 through March 30, 1985, the employer asserted that, because the claimant had been and would be kept on the payroll until May, 1985, he was not an unemployed individual; and, accordingly, this would bar eligibility under Section 500C.

HELD: Section 500C of the Act requires, as a condition of eligibility, that a claimant be an "unemployed individual."

Section 239 of the Act provides that:

> An individual shall be deemed unemployed in any week with respect to which no wages are payable to him and during which he performs no services...

In the instant case, the evidence established that, subsequent to the elimination of the claimant's position in March, 1985, he performed no services for his employer. Further, he was not under any contractual obligation to perform services for his employer. Because the money which he was to receive was to be paid to him in consideration of services previously rendered -- for which he had already been paid wages, this money did not constitute wages with respect to the weeks under review, but, instead, was, as the employer originally stated, a gift.

Accordingly, because no wages were payable for services performed during the period under review, the claimant was an unemployed individual and the money paid to him by his employer was not a bar to his eligibility under Section 500C. Further, because the claimant was not contractually obligated to perform any future services for his employer, it was not shown that his availability for work was unduly restricted by the employer's arrangement.

Discrimination AA 139
General AA 139.05
No decision

Distance to Work AA 150
General AA 150.05
No decision

In Transit AA 150.1
No decision

Removal from Locality AA 150.15
No decision
Transportation and Travel AA 150.2

ISSUE/DIGEST CODE **Able and Available/AA 150.2**
DOCKET/DATE **83-BRD-14621/12-8-83**
AUTHORITY **Section 500C**
TITLE **Distance To Work**
SUBTITLE **Transportation And Travel**
CROSS-REFERENCE **None**

The claimant, a resident of Peoria, testified that she would accept employment within a radius of fifteen to twenty miles from her home. She conducted a reasonable search for work and was physically able to accept work.

HELD: A travel restriction of fifteen to twenty miles in the Peoria area is not an undue restriction. The claimant is available for work and is eligible for benefits.

Domestic Circumstance AA 155
General AA 155.05
No decision

Children, Care of AA 155.1

ISSUE/DIGEST CODE **Able and Available/AA 155.1**
DOCKET/DATE **ABR-85-3083/7-25-85**
AUTHORITY **Section 500C of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Children, Care of**
CROSS-REFERENCE **None**

The claimant filed a claim for benefits for the 7 week period from November 4, 1984 through December 22, 1984, during which time she reportedly contacted 4 prospective employers. The claimant explained that during the period under review she did not have the services of her regular baby sitter; the claimant had been and would be needed at home to care for her minor children until a new baby sitter could begin work on January 7, 1985.

HELD: Once it is determined that a claimant has small children who require care, it becomes necessary to establish to what extent the childcare limits the claimant's availability for work. A claimant who must devote her full time to the care of her children, and who has no arrangements for their care should she be offered work, must be held unavailable for work. In the instant case, the claimant's lack of reliable childcare precluded her from making a realistic number of employer contacts or accepting an offer of work during the period under review. Accordingly, the claimant was denied benefits for being unavailable for work.

ISSUE/DIGEST CODE **Able and Available/AA 155.1**
DOCKET/DATE **ABR-86-1912/7-28-86**
AUTHORITY **Section 500C of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Children, Care of**
CROSS-REFERENCE **AA 160.25, Refusal of Work**

The claimant worked full-time, as a Nursing Supervisor, from January through December, 1984. During that period, she also accepted work -- as many as 15 assignments -- from a medical employment agency, which continued to employ her into January, 1985. On both January 18 and 19, 1985, the employment agency telephoned the claimant at 5:30 a.m. and offered her temporary work to start at 7 a.m. the same day.

The claimant stated that, upon such short notice, she would be unable to arrange for the services of her customary baby sitter, who lived 1-1/2 hours away. The claimant later testified that she had to be particular about who would baby sit, since her 3 year old child had previously been abused. She stated that she would have accepted the assignments had she had more time to arrange for childcare. Her customary babysitter also testified that she would have been available to baby sit on the days in question.

Although the claimant established, by the number and quality of her other job contacts, that she was actively seeking work, she was denied benefits on the basis of being generally unavailable due to her domestic responsibilities.

HELD: Once it is determined that a worker has a child who requires care, it becomes necessary to establish to what extent the childcare limits the claimant's availability for work. As long as the worker is able to demonstrate an active work search and that, should she secure employment, childcare arrangements could be made during normal working hours, an immediate lack of childcare should not affect her availability.

In the instant case, the claimant established that she had made an active search for work. She also established that, in the event that she secured employment, childcare arrangements could be made during normal working hours. The difficulty in this case was not that the claimant lacked childcare, but that, with respect to one particular prospective employer, the claimant was given a relatively brief period between the time she was notified of work and the time she was to report to work. It would be wrong to conclude from this that the claimant's inability to arrange for childcare placed an undue restriction upon her employability, or that these specific refusals of work evidenced a general unwillingness to work. The claimant made a genuine effort to find work, and met the requirements of Section 500C.

Financial Circumstances AA 155.15

ISSUE/DIGEST CODE	**Able and Available/AA 155.15**
DOCKET/DATE	**ABR-85-4128/10-28-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Financial Circumstances**
CROSS-REFERENCE	**AA 500.05, Wages**

The claimant's work experience consisted of 2 years of various assignments, obtained through a temporary employment placement agency, for which she was paid $5.25 per hour. The claimant stated that, during the period under review, she would accept similar work only if it paid $7 or $8 per hour, so that she could afford a babysitter for her 3 young children.

HELD: When a worker imposes wage demands which materially reduce her possibilities of obtaining suitable work, such demands constitute an undue restriction, and render her unavailable for work. Generally, a worker's personal financial problems bear no relationship to the suitability of work. In the instant case, the claimant placed an undue restriction upon her employability by stipulating a minimum acceptable wage, which bore no relationship to her training or experience and which she could not reasonably expect to receive. She was unavailable for work within the meaning of Section 500C.

Home or Spouse in another Locality AA 155.2
No decision.

Household Duties AA 155.25
No decision.

Illness or Death of Others AA 155.35
No decision.

Parent, Care of AA 155.45
No decision.

Effort to Secure Employment or Willingness to Work AA 160
General AA 160.05

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	***Winnie Kelley v.IDOL*, 513 N.E. 2d 988 (1987)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment and Willingness to Work**
SUBTITLE	**Mental Attitude Evidenced by Work Search**
CROSS-REFERENCE	**AA 450.45, Time, Seasonal**

The claimant worked for the police department as a school crossing guard. She worked every regular school term for 15 years and was laid off every summer. She filed for, and was initially denied, benefits during her most recent layoff period.

At an appeal hearing, she testified that, although she expected to return to her regular job in the fall, she was looking, and always had looked, for work during the summer. She had held a summer job, in a city streets cleanup program, 4 years earlier. During the current period, she was seeking a sales job. One week, she contacted 2 department stores in the same shopping mall, the contacts being on consecutive days; in another week, she made 1 employer contact in person and a telephone contact 3 days later; in 2 other weeks, she made 2 telephone contacts. She never made more than 3 contacts in any week, and, in that instance, all 3 were made on the same date.

HELD: A seasonal worker is not per se ineligible for benefits during the off-season of her regular employment. Still, she must meet the same eligibility requirements as all other claimants.

In general, whether one is available for work depends to a great extent upon the individual's mental attitude as evidenced by the effort put forth in the search for work.

In this case, the claimant's search constituted a perfunctory effort to secure employment. It indicated that she had made a career choice to remain in a field which involved a summer layoff and to remain detached from the labor market.

Benefits were denied.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	***Estella Galarza v. IDOL*, No. 2-87-0186 (1987)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Multiple or Repeated Contacts**
CROSS-REFERENCE	**AA 450.45, Time, Seasonal; AA 450.55, Time, Temporary**

The claimant, a Migrant Farm Worker in the Harvard, Illinois area, was laid off in the spring between crops. She made 17 job contacts during the 4-week period under review. Many of the contacts were with the same prospective employers. The claimant testified without contradiction that job opportunities in the Harvard-Woodstock area were extremely limited.

The claimant was denied benefits, in part because she made repeated job contacts.

HELD: An individual's efforts to secure employment or willingness to work cannot be judged solely upon the basis of the number of job contacts or whether the claimant has made multiple contacts. There is no authority for the proposition that multiple contacts are somehow invalid per se.

Where an individual shows that job opportunities in his field or in his area are extremely limited, multiple contacts may establish that an active work search was conducted.

The claimant's work search was determined to be adequate and benefits were allowed under Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	***Brown v. Bd. of Review*, 8 Ill. App. 3d 19, 20, 289 N.E.2d 40, 41 (1st Dist. 1972)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**General**
CROSS REFERENCE	**None**

Claimant worked for the Skil Corporation from February 27, 1970 to April 14, 1970 when she was ‘laid off’. She filed a claim for unemployment benefits commencing April 12, 1970. A protest was filed alleging the claimant was unavailable for work. The claimant’s work search showed five attempts by her to obtain employment within the period from June 8, 1970 to June 12, 1970. The claimant stated that she did not seek work commencing May 17, 1970 because at that time the truck strike was on ‘and no one is hiring.’ The agency found that claimant was unavailable for work from May 17, 1970 through June 13, 1970 since she had failed to show ‘an active work search’ during this time.

Claimant appealed and at her hearing she testified that she did not look for work from May 17, 1970 to June 6, 1970 because there was a strike and it would be no use to go out to look for work. The Referee allowed benefits from June 7, 1970 through June 13, 1970 when she had looked for work, but denied benefits from May 17, 1970 to June 6, 1970 on the ground that the efforts of claimant to seek new employment during this time could not 'be considered sincere or sufficient enough to constitute compliance with the active search for work requirements of the Act.' The Referee also found that, 'The claimant did not look for work during the above period as she felt that it was useless to do so because of the truck strike which was in effect at the time.' Claimant appealed to the Board of Review. The Board affirmed the decision of the Referee. Claimant appealed to the circuit court which affirmed the Board. Claimant appealed.

HELD: The appellate court affirmed the decision of the Board stating that they could not say that the finding of the administrative agency was against the manifest weight of the evidence and could not substitute their judgment for that of the administrative agency. Nevertheless, the court went on to state,

> It is our considered opinion that the words 'actively seeking work' cannot be construed as setting a rigid and inflexible standard which can be applied in determining eligibility of the claimant in each and every case. These words, as used by the legislature, created a standard of reasonability in the conduct of the claimant in seeking employment which must be determined as an issue of fact by the administrative agency in each particular case in accordance with all of the evidence, facts and circumstances bearing upon the situation.
>
> We will, however, add one further comment with reference to the decision of the Board presently before us. The decision stated categorically that, '(a)s long as the claimant made no effort to find work, she could not become eligible for benefits.' This language does not go to the proper issue in this case. It is too broad in its implications and certainly should not be applied to an individual who is partially unemployed or on a layoff of short duration. He should not be expected to seek work elsewhere. *** The standard of reasonability under the particular facts and circumstances in each individual case must be applied by the administrative agency and no strict or rigid rule may be invariably applied.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**ABR-86-2894/9-19-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Age**
CROSS-REFERENCE	**AA 235.1, Health or Physical Condition, Age**

The claimant retired from government service, and during the next 3 years, she sought work exclusively through temporary employment agencies. During the period under review, the claimant contacted these temporary employment agencies, by telephone, and made no other efforts to secure employment. She testified that she did not attempt to make any direct employer contacts because her age was against her: she was 58 years old.

HELD: Unemployment Insurance benefits are payable to individuals who are out of work due to the lack of suitable work and for no other reason. If an individual's work opportunities are limited, by employers who are unwilling to hire or train her due to age or related reasons, it follows that there is a lack of suitable work, and it cannot be concluded on that basis, alone, that the individual is not available for or actively seeking work.

In this case, however, the evidence showed that the claimant had long ago and unilaterally determined that there was no suitable work to be had. She made no attempt to contact prospective employers who may in fact have had work for which she qualified, regardless of her age. The claimant's search for work was meager and inadequate and did not constitute the active search for work required by the Act.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**ABR-86-2024/9-26-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Refusal of Work**
CROSS-REFERENCE	**AA 165.05, Employer Requirements, Fees to be Paid**

The claimant had applied to a medical personnel service, for work as a companion or nurse's aide. The personnel service required that she undergo a thorough physical examination, including a TB test and x-rays, before she could be accepted for employment or assigned work. It was not the practice of the personnel service to pay for such physical examinations or tests. The claimant contacted her county health department and was told that none of the tests could be administered gratis. The claimant informed the personnel service that she could not follow through with her application for work, because she could not afford the cost of the tests.

The claimant had previously worked as an assembler and lunchroom aide, and, during the period in question, in addition to applying for work with the medical personnel service, had applied for retail sales, factory, janitorial, and childcare work.

HELD: An employer has the right to set forth certain requirements which must be met by an individual before that individual may obtain a position with that employer. The worker may be restricted from working for such an employer because of those requirements which she either cannot or will not meet. The inability or failure of the worker to meet the employer's requirements, although indicating unavailability for the position in question, will not render her unavailable for work in general, provided there are no undue restrictions upon her acceptance of other full-time employment for which she is qualified.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**83-BRD-13800/11-22-83**
AUTHORITY	**Section-500C**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

When interviewed by the claims adjudicator, the claimant stated that he did not think he had contacted any prospective employers during the two weeks in question. At the hearing before the Referee, the claimant testified that he had made certain employer contacts, but he was uncertain about the dates on which the contacts were made.

HELD: The claimant's vague and uncertain testimony did not establish that he actively looked for work within the meaning of the Act during the two weeks under review, and he is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**84-BRD-418/1-12-84**
AUTHORITY	**2./S-500C**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was working part-time during the two-week period under review because she was unable to work on Saturday when she had no childcare. She listed five personal contacts with employers in her work search, and she contacted her union which was certified by the Director of Labor as meeting the search requirements of the Act. She would travel an hour to work, and she would work any shift.

HELD: The claimant was seeking full-time work while working part-time. She placed no undue restrictions on the acceptance of work, and she met the active work search requirements by contacting her union and by making an independent work search as well. She is eligible for benefits for the two-week period considered in the appeal.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**84-BRD-4255/3-29-84**
AUTHORITY	**3./S-500C**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was last employed on August 5, 1983. For the four week period from August 21, 1983 through September 17, 1983, she testified that she sought to save traveling expenses by seeking work only one day in each of the two week periods. She testified to having made five work search contacts on September 14th, but she had no recollection of seeking work the first week and could not list any employers contacted prior to September 24th.

HELD: Section 500C of the Act requires as a condition of eligibility that a claimant be able to work, available for work, and actively seeking work during the period for which a claim is filed.

The evidence established in this case that the claimant did not search for work during each week of the period. At most she looked for work on only two days, and she could identify only five contacts during the four weeks. The claimant's search was meager and constituted only a perfunctory effort to qualify for unemployment insurance. She is unavailable for work and ineligible for benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**84-BRD-4349/3-29-84**
AUTHORITY	**4./S-500C**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant, a furniture repairman, is 60 years of age, and he had been out of work for five weeks prior to the period of availability considered in this appeal. His work search during the four week period consisted of reading newspaper ads and making telephone calls to four employers.

HELD: Reading newspaper ads and making four telephone contacts in a four week period does not constitute an active search for work within the meaning of the Act. The claimant is ineligible for benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**ABR-85-3122/8-16-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Examining the Method and Quality of a Work Search**
CROSS-REFERENCE	**None**

During the 6 week period under review, the claimant sought secretarial, clerical or general office work, by making 5 employer contacts in-person, 4 contacts by telephone, and 10 contacts by sending out resumes. Although the Claims Adjudicator determined that the claimant was otherwise available for work, benefits were denied because it was determined that the claimant's method of contacting employers -- primarily by resume -- did not constitute an active search for work. Upon appeal, a Referee affirmed the Claims Adjudicator's determination, and the claimant appealed that decision to the Board of Review.

In her appeal to the Board of Review, the claimant stated that she mailed resumes in response to specific requests (or advertisements) for resumes. She further testified that her method of mailing resumes resulted in several personal interviews being granted, and led to subsequent employment.

HELD: The primary purpose of the Unemployment Insurance Act is to provide benefits to individuals who are involuntarily unemployed due to the lack of suitable work, and for no other reason. Accordingly, the Act requires as a condition of eligibility that a claimant be able to work, available for work, and actively seeking work during the period for which a claim is filed. An active search for work establishes that the claimant is involuntarily unemployed, due to the lack of suitable work and for no other reason. It is the quality of the claimant's efforts to find work which must ultimately determine whether she has met the requirement that she must be actively seeking work.
Direct, in-person contact with an employer is not the only method the claimant may use to find work. Depending upon the circumstances, other methods may be equally or more effective. Some methods which may reasonably be utilized in a search for work are checking of newspaper advertisements, sending letters or making telephone calls to employers.

In the instant case, the evidence established that the claimant made her contacts in-person, by telephone, and by mailing resumes (a method preferred by the employers in question). The claimant contacted numerous employers by methods which were effective for her field of work. This was a thorough, extensive and productive search for work. Accordingly, the Board of Review concluded that the claimant had been actively seeking work during the period under review.

ISSUE/DIGEST CODE **Able and Available/AA 160.05**
DOCKET/DATE **ABR-85-5799/12-27-85**
AUTHORITY **Section 500C of the Act**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **Age**
CROSS-REFERENCE **AA 235.1, Health or Physical Condition, Age**

The claimant, a 58-year-old woman with 30 years experience as a Legal Secretary, sought work in that field by checking the want ads in the *Chicago Daily Law Bulletin* and by registering and maintaining contact with Job Service. She also contacted secretarial agencies, but her efforts, over a 3 month period, to secure general secretarial work were unsuccessful, in part because she lacked word processing skills and in part because employers who had that type of work to offer were seeking an "entry-level girl" and considered the claimant overqualified as a result of her experience as a Legal Secretary.

The claimant was denied benefits under Section 500C, the Referee concluding that, in light of those considerations, the claimant's work search was unrealistic, and she was not genuinely attached to the labor force.

HELD: The reluctance of employers to hire older workers does not make an older worker unavailable for work. Also, it may be that technological advances will result in a more difficult period of adjustment and longer period of unemployment, but this does not necessarily mean that the claimant has imposed undue restrictions upon her availability.

In the instant case, the evidence showed that the claimant was able to work, and that, since she placed no undue restrictions upon her acceptance of work, she was available for work within the meaning of Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 160.05**
DOCKET/DATE **ABR-86-597/4-11-86**
AUTHORITY **Section 500C of the Act**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **Quality of Work Search**
CROSS-REFERENCE **None**

The claimant last worked as a Merchandise Handler. She certified that, during the 2 week period under review, she made 6 in-person employer contacts.

On September 17, she made 1 contact. On September 18, her contact was the establishment next door. On September 24, 25, and 26, the claimant made 1 contact each day; all these establishments were within a one block radius, in the same area as the earlier contacts.

HELD: The purpose of the Unemployment Insurance Act is to provide benefits to individuals who are involuntarily unemployed due to the lack of suitable work and for no other reason. Accordingly, the Act requires as a condition of eligibility that a claimant actively seek work; an active search for work establishes that a claimant is involuntarily unemployed due to the lack of suitable work and for no other reason.

In the instant case, the evidence showed that the claimant's efforts were meager and perfunctory at best. The claimant managed to accomplish in 2 weeks what she should have accomplished in 1 day. This was not a work search realistically designed to return the claimant to the full-time labor force. It was not an active work search. The claimant did not meet the active work search requirement of Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 160.05**
DOCKET/DATE ***Stein v. Department of Employment Security*, 2017 IL App (3d) 160335, --- N.E.3d ---- (3d Dist., 2017)**
AUTHORITY **Section 500C of the Act**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **Quality of Work Search**
CROSS-REFERENCE **None**

The claimant injured his shoulder at work and was assigned limited duties until he was laid off. The claimant later underwent surgery after which the claimant was medically unable to work. The Department denied benefits for the period between his layoff and surgery finding that the claimant had not been "actively seeking work" during that period. At the hearing, the claimant submitted a work search record which indicated that he made two work searches for each of the weeks under review. Of the 27 inquiries, 25 were made in Canton, where he resided. The claimant stated at the hearing that he was willing to work any days, any hours, and travel up to an hour away, and for at least $10 per hour. The referee denied benefits, stating that the claimant's job search constituted a "meager" effort such that it was not a search "reasonably calculated to return to the labor force." In his appeal, the claimant attached an affidavit in which he stated that when he was at the Department's Peoria office an employee told him that searching for two or three jobs per week would be sufficient. The Board affirmed the denial of benefits. It addressed the claimant's argument regarding the ill-informed advice from the Local Office representative, the Board cited two cases that stand for the general rule that a government entity is not bound through equitable estoppel by an unauthorized act of a governmental employee. *See*, *Deford–Goff v. Department of Public Aid*, 281 Ill. App. 3d 888, 667 N.E.2d 701 (4th Dist. 1996) and *Halleck v. County of Cook*, 264 Ill. App. 3d 887 (1994)). The circuit court upheld the Department's decision and the claimant appealed.

HELD: The appellate court noted that Section 500C of the Act does not define, "actively seeking work". However, the Department has defined it in section 2865.115 of the Illinois Administrative Act (Rules). The court discussed the guidelines and examples contained in the Rules and noted that "actively seeking work" is determined by the quality of the claimant's efforts, though the quantity of the job contacts should be considered. The claimant made only two inquiries per week during the entire period under review and did not intensify his efforts as his period of unemployment lengthened as is required under section 2865.115(e) of the Rules. The court further stated that the quantity of job inquiries is not necessarily the sole, or even the major determinant of the diligence of the claimant's job search. In reviewing the quality of the claimant's job search the court noted that, while the claimant stated that he was willing to work as far as 40 miles from his home, 25 of the 27 contacts were made in his hometown. In addition, the claimant had been coming off a job in which his duties were limited due to his shoulder injury, and he provided no evidence at the hearing that he would be physically capable of performing the positions for which he was inquiring as required under section 2865.115(b) of the Rules. As such, his search was unrealistic. Finally, the court noted that the claimant made no attempt to attack the Board's rationale for rejecting the claimant's claim that equitable estoppel bound the Department by unauthorize acts of ministerial officers. The court affirmed the denial of benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	***Leach v. Dep't of Empl. Sec*., 2020 IL App (1st) 190299**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment**
SUBTITLE	**Quality of Work Search**
CROSS-REFERENCE	**PR 195.05, Fair Hearing & Due Process, PR 190.2 Judicial Notice**

After filing for unemployment benefits, Claimant was notified he needed to register for work with the IDES Job Link and that his "registration will be considered complete when you create or upload at least one resume." Claimant was then sent a notice informing him he had to provide work search records "and/or any documentation that may demonstrate your ability to work" prior to the interview. A claims adjudicator attempted to call the Claimant twice, but he did not answer the phone. A determination was issued, finding Claimant not eligible for benefits under Section 500C of the Act. Claimant appealed. A Notice of Telephone hearing was sent to Claimant, reiterating one of the issues to be considered was whether Claimant was able and available for work during the period in question. At the hearing, only Claimant appeared and testified. He testified he had asked to have weekends off but was available Monday through Friday. He denied asking for a leave of absence. He testified he was looking for another job and kept track of "some of the places" he applied to online but acknowledged he had not been keeping an actual record. He testified he applied at McDonald's, IHOP, and a "few other places" over a four-week period. He testified he registered with the Illinois Job Link service and was available for any work shift outside of the weekends. At the conclusion of the hearing, the Referee asked Claimant if he had anything else to tell him regarding his availability for work. Claimant responded that he had nothing to say. As the Referee was closing the hearing, Claimant indicated he had one thing he wanted to add and testified he was not getting enough hours at his prior employer and they refused to schedule him for more hours despite his request. The Referee issued a decision finding Claimant had requested a reduction in work hours due to family matters and that Claimant failed to keep a work search record and could only recall one job contact per week. Therefore, he did not meet the work search requirements of Section 500C. On appeal, Claimant stated he was actively seeking work but did not have a list of his work search history because he was not aware that he needed to have that information available. The Board, found that Claimant was not able and available for work pursuant to Section 500C, and noted that Claimant had failed to successfully register on the Illinois Job Link as he did not submit a resume.

In reversing the Board's decision, the circuit court found the proceedings before the Department failed to conform to due process. It noted the claims adjudicator denied Claimant benefits after she failed to contact him after a single attempt. The court further opined the Referee "cross-examined Claimant in an exceedingly hostile fashion, cut off his attempts to explain events or develop the record, adopted wholesale the version of events put forth by the non-participating Employer, and denied benefits due to Claimant's lack of evidence of a job search." The court held the issue of Claimant's job search was completely unrelated to the claims adjudicator's decision and he thus had no reason to anticipate he would need to be prepared to discuss it. The circuit court also held the Board improperly conducted its own fact-finding when it determined Claimant failed to register with the Illinois Job Link website and that the Board somehow circumvented the traditional adversarial process by engaging in "*ex parte* fact-finding."

HELD: The appellate court reversed the circuit court on all issues, finding the Board's decision to not be clearly erroneous. Claimant's failure to provide a written work search record, combined with his minimal job contacts, and failure to register with the Illinois Job Link demonstrated he was not actively seeking work during the benefit period.
The appellate court noted Claimant was, both at the adjudicator and hearing stage prior to the scheduled interview and hearing, adequately put on notice that his work search was at issue. As such, he was required to provide a written work search record. The circuit court therefore erred in finding Claimant's job search was a "surprise issue."

The appellate court also noted Claimant was contacted twice by the claims adjudicator, not once, and Claimant failed to respond on both occasions. Claimant was also provided with opportunities to reschedule the interview as well as a notification that a failure to participate would result in a denial of benefits. Claimant was therefore not denied due process by the claims adjudicator's denial of benefits.

Regarding the Referee's conduct, the court noted the Referee was attempting to develop the record by obtaining basic information from Claimant in the form of yes or no questions. The Referee has discretion to control the hearing in the best manner under the circumstances. Contrary to the circuit court's decision, the Referee did not prevent Claimant from explaining events or developing the record. Following the three incidents noted by the circuit court, the Referee allowed Claimant to provide long, explanatory answers to his questions. Furthermore, Claimant was provided with the opportunity to add anything at the end, which he did. Accordingly, the appellate court noted Claimant was afforded a full opportunity to present testimony regarding his separation and his job search.

Finally, regarding the Board taking judicial notice of Claimant's failure to register with the Illinois Job Link, the appellate court found no due process violation by the Board taking judicial notice of a readily verifiable fact to aid in the disposition of a case. The Illinois Job Link website is a public website and an individual's registration with it is readily verifiable and the accuracy of the information cannot be reasonably questioned. It was therefore appropriate for the Board to take judicial notice of Claimant's failure to register without offering him a further opportunity to testify or otherwise submit evidence.

ISSUE/DIGEST CODE	**Able and Available/AA 165.05**
DOCKET/DATE	**ABR-86-2024/9-26-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Employer Requirements**
SUBTITLE	**Fees to be Paid by a Claimant**
CROSS-REFERENCE	**AA 160.25, Refusal of Work**

The claimant had applied to a medical personnel service, for work as a companion or nurse's aide. The personnel service required that she undergo a thorough physical examination, including a TB test and x-rays, before she could be accepted for employment or assigned work. It was not the practice of the personnel service to pay for such physical examinations or tests. The claimant contacted her county health department and was told that none of the tests could be administered gratis. The claimant informed the personnel service that she could not follow through with her application for work, because she could not afford the cost of the tests.

The claimant had previously worked as an assembler and lunch room aide, and, during the period in question, in addition to applying for work with the medical personnel service, had applied for retail sales, factory, janitorial, and childcare work.

HELD: An employer has the right to set forth certain requirements which must be met by an individual before that individual may obtain a position with that employer. The worker may be restricted from working for such an employer because of those requirements which she either cannot or will not meet. The inability or failure of the worker to meet the employer's

requirements, although indicating unavailability for the position in question, will not render her unavailable for work in general, provided there are no undue restrictions upon her acceptance of other full-time employment for which she is qualified.

The Board of Review has consistently held that if a prospective employee is required to pay for a required physical examination she may have good cause for refusing to take the exam. But, aside from that, the evidence established that the claimant was seeking work in many fields, without placing any undue restrictions upon her employability. Therefore, although she may have been unavailable for 1 job, this did not render her unavailable for work in general. The claimant was available for and actively seeking work within the meaning of Section 500C.

ISSUE/DIGEST CODE	**Effort to Secure Employment AA 160.05**
DOCKET/DATE	**ABR-18-1825093/11-07-18**
AUTHORITY	**Section 500C of the Act/Section 2865.11(h) of the Rules**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof and Presumption**
CROSS REFERENCE	**AA 190.1, Able and Available**

Claimant worked for a temporary staffing agency. Claimant's last day of work was June 18, 2018. Once the work assignment for Employer ended, Claimant did not contact Employer for the period under review from July 1, 2018 through August 11, 2018 because the Claimant relocated from the area served by Employer. Employer filed a protest to Claimant's eligibility for benefits. In the first two weeks of the period, Claimant actively sought work and contacted various prospective employers, which included retailers and other staffing agencies. Claimant was only able to provide proof of his job contacts for the first two weeks of the period.

HELD: Claimant was eligible for benefits only for the first two weeks of the period under review. Under Section 500C of the Act, a Claimant is eligible for benefits if he is actively seeking work. Under Section 2865.115(h) of the Rules, "There is a rebuttable presumption that an individual is not actively seeking work if he was last employed by a 'temporary help firm', as defined in Section 2865.1, and the temporary help firm submits a notice of possible ineligibility (see Section 2720.130) alleging that, during the week for which he claimed benefits, the individual did not contact the temporary help firm for an assignment. The presumption is rebutted if the individual shows that he did contact the temporary help firm or that he had good cause for his failure to contact the temporary help firm for an assignment." In this case, Claimant rebutted the presumption, as he showed good cause for his failure to contact Employer as he moved out of the area served by Employer. However, Claimant was only eligible for benefits for the first two weeks of the period under review because he could only provide sufficient evidence that he was actively seeking work during that period.

Application for Work AA 160.1
No decision.

Attitude or Behavior AA 160.15
No decision.

Employment AA 160.2

ISSUE/DIGEST CODE	**Able and Available/AA 160.2**
DOCKET/DATE	***Phyllis Dimodica v.IDES*, No.2-87-0173 (1987)**
AUTHORITY	**Section 409(K)(5) of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Employment**
CROSS-REFERENCE	**None**

The claimant resided and worked in Freeport, Illinois, a relatively small city (population 25,000) surrounded by a rural area. The 1982 recession resulted in widespread unemployment and unavailability of jobs.

The claimant had been employed for over 11 years until her layoff in July, 1981. During her last 7 years with the company, she worked as a silk screener, and her final rate of pay was $6.51 per hour.

Upon her layoff, she filed for and received regular unemployment insurance benefits until they expired in April, 1982. Upon the expiration of regular benefits, the claimant field for extended benefits. She was denied extended benefits.

In July, 1982, the claimant procured employment as a waitress at a rate of pay of $2.01 per hour. The claimant held this job until October 29, 1982. Then she obtained work as a waitress for a different employer from November 4 until December 13 at a rate of pay of $2.25 per hour.

In January, 1983, she again filed for extended benefits. Again, she was denied.

The claimant was denied benefits for 2 reasons: first, on forms which she had submitted to IDES, she indicated that the minimum wage acceptable to her was $5.80 per hour - this was determined to be an unreasonable wage demand, since most places to which she applied did not pay this amount; second, it was determined that the number of job contacts made by the claimant - 84 (not including repeat contacts) in 24 weeks - was insufficient to constitute the "systematic and sustained effort" required under Section
409(K)(5). The Claims Adjudicator, Hearings Referee, and Board of Review concluded that the claimant's efforts were not calculated to return her to the workplace.

HELD: Normally, the fact that an individual has obtained work is the best evidence that she was available for and actively seeking work.

In this case, it was difficult to imagine how it could have been concluded that the claimant's work search was not designed to return her to the work place when it did, in fact, return her to the work place for 5 months.

Although the claimant did list a minimum acceptable wage of $5.80 per hour on claim forms, it was obvious that she was willing to accept employment for a lesser figure since she actually did so by taking 2 waitress positions which paid $2.01 and $2.25 per hour.

Although the claimant was operating from a small city in a rural area in the midst of a devastating recession, she was still able to locate and contact 84 different employers during the relevant periods and was successful in finding work.

The claimant made a systematic and sustained effort to find work and was eligible for extended benefits.

Refusal of Work AA 160.25

ISSUE/DIGEST CODE	**Able and Available/AA 160.25**
DOCKET/DATE	**ABR-86-1912/7-28-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Refusal of Work**
CROSS-REFERENCE	**AA 155.1, Domestic Circumstances**

The claimant worked full-time, as a Nursing Supervisor, from January through December, 1984. During that period, she also accepted work -- as many as 15 assignments -- from a medical employment agency, which continued to employ her into January, 1985. On both January 18 and 19, 1985, the employment agency telephoned the claimant at 5:30 a.m. and offered her temporary work to start at 7 a.m. the same day.

The claimant stated that, upon such short notice, she would be unable to arrange for the services of her customary babysitter, who lived 1-1/2 hours away. The claimant later testified that she had to be particular about who would baby sit, since her 3-year-old child had previously been abused. She stated that she would have accepted the assignments had she had more time to arrange for childcare. Her customary babysitter also testified that she would have been available to baby sitter on the days in question.
Although the claimant established, by the number and quality of her other job contacts, that she was actively seeking work, she was denied benefits on the basis of being generally unavailable due to her domestic responsibilities.

HELD: Once it is determined that a worker has a child who requires care, it becomes necessary to establish to what extent the childcare limits the claimant's availability for work. As long as the worker is able to demonstrate an active work search and

that, should she secure employment, childcare arrangements could be made during normal working hours, an immediate lack of childcare should not affect her availability.

In the instant case, the claimant established that she had made an active search for work. She also established that, in the event that she secured employment, childcare arrangements could be made during normal working hours. The difficulty in this case was not that the claimant lacked childcare, but that, with respect to one particular prospective employer, the claimant was given a relatively brief period between the time she was notified of work and the time she was to report to work. It would be wrong to conclude from this that the claimant's inability to arrange for childcare placed an undue restriction upon her employability, or that these specific refusals of work evidenced a general unwillingness to work. The claimant made a genuine effort to find work and met the requirements of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 160.25**
DOCKET/DATE	**ABR-85-2803/10-30-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Refusal of Work**
CROSS-REFERENCE	**AA 190.15, Evidence, Weight and Sufficiency**

The claimant last worked from July, 1984 until December, 1984. She certified that during the period under review -- December 23, 1984 through January 5, 1985 -- she contacted department stores, hospitals, a bank, and other employers in an effort to secure work.

A former employer, which had laid off the claimant in March, 1984, testified that the claimant had refused offers of work:

> I called her in April (1984), and each time I called...she said she wasn't able to come back to work because her daughter was expecting a baby and she had to stay and be with her daughter...

HELD: Section 500C of the Act requires that an individual be able to work, available for work, and actively seeking work -- during the period under review.

The claimant certified that she had met those conditions. The employer's evidence, which did not take into account the claimant's July, 1984 through December, 1984 employment, and which proceeded to address a 9 month old refusal of work, was not relevant to the issue of the claimant's eligibility during the period under review.

There being no evidence of record to suggest that the claimant was unavailable for work during the period under review, the claimant was eligible for benefits under Section 500C.

The Board of Review has consistently held that if a prospective employee is required to pay for a required physical examination she may have good cause for refusing to take the exam. But, aside from that, the evidence established that the claimant was seeking work in many fields, without placing any undue restrictions upon her employability. Therefore, although she may have been unavailable for 1 job, this did not render her unavailable for work in general. The claimant was available for and actively seeking work within the meaning of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 160.25**
DOCKET/DATE	***Eddings (and Lee) v. IDOL*, 146 Ill. App. 3d 62 (1986)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Refusal of Work**
CROSS-REFERENCE	**AA 500.05, Wages**

The claimant was laid off from her job as a High School Teacher with the Chicago Board of Education. During the ensuing weeks, she directly contacted private and public educational institutions, as well as the Chicago Board of Education's personnel department, in the hope of obtaining suitable work as a teacher.

She did not contact the Chicago Board of Education's Substitute Teaching Center. A representative of the Chicago Board of Education testified that, from a list of 5,000 substitute teachers, an average of 2,000 were called for work each day. Day-to-day substitute teachers were paid at an approximately 40% reduction in salary.

A Referee denied benefits, concluding that, although the claimant had otherwise conducted a good work search, she had failed to contact the Sub Center where work was available.

HELD: Whenever an individual fails to apply for work as directed by an employer, a determination must be made with respect to her availability, giving consideration to the suitability of the job opportunity. Work in the individual's usual occupation or work for which she is reasonably qualified by prior training or experience is suitable work, provided the conditions of the work are not substantially less favorable than those prevailing on her last job or for similar work in the locality.

Here, the claimant should not have been denied benefits, because the school system would have committed her to the uncertain status of a day-to-day substitute at an approximately 40% reduction in salary. That employment was substantially less favorable than the claimant's previous employment as a higher-salaried full-time teacher. Because the claimant otherwise actively sought work, she met the eligibility requirements of Section 500C.

Registration and Reporting AA 160.3

Voluntary Leaving or Suspension of Work AA 160.35

Employer Requirements AA 165
General AA 165.05

Bond AA 165.1

Marital Status AA 165.15

Physical Status AA 165.2

Equipment AA 180
General AA 180.05

Evidence AA 190
General AA 190.05

ISSUE/DIGEST CODE	**Able and Available/AA 190.05**
DOCKET/DATE	***Johnson v. Board of Review*, 479 N.E. 2d 1082 (1985)**
AUTHORITY	**Sections 500C and 801 of the Act**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**PR 190-05, Evidence: PR 380.2, Review**

The claimant filed a claim for unemployment insurance benefits, for the period February 22, 1981 through July 5, 1981. The Claims Adjudicator determined that the claimant was ineligible, pursuant to the provisions of Section 500C of the Act, in that he had not met his burden of demonstrating that he had been available for and actively seeking work during the period under review.

The claimant appealed, requesting that certification forms which he had filed with the Local Office be considered at the appeal hearing. The forms listed the claimant's job contacts and had been filed by the claimant every 2 weeks, as required by the Department's rules. Those certification forms were never forwarded by the Local Office and were not made a part of the record at the appeal hearing, during which the claimant testified about his job contacts and his availability for work. After the hearing, the Referee issued a decision affirming the Adjudicator's determination that the claimant had not been available for or actively seeking work. The Board of Review also affirmed the denial of benefits.

The claimant filed an action for administrative review. His complaint alleged that the decision denying benefits violated Section 801 of the Unemployment Insurance Act, which stated, in pertinent part:

> At any hearing (bearing upon the issue) the...claimant's certification that, during the week or weeks affected by the hearing, he was able to work, available for work, and actively seeking work...shall be a part of the record...

HELD: Under Section 801 of the Act, the Agency is required to submit certification forms which it has in its possession. If those forms are not submitted and made a part of the record, as a matter of law a decision denying benefits under Section 500C cannot stand. In the instant case, because the claimant's certification forms were not made a part of the record, the claimant could not be denied benefits. The decision of the Board of Review was reversed.

Burden of Proof and Presumptions AA 190.1

ISSUE/DIGEST CODE	**Able and Available/AA 190.1**
DOCKET/DATE	**85-BRD-05681/7-30-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof and Presumptions**
CROSS-REFERENCE	**AA 190.15, Evidence, Weight and Sufficiency**

On January 4, 1985, in the course of an interview in which the Claims Adjudicator was considering the claimant's search for work during the period under review -- December 2, 1984 through December 29, 1984 -- the claimant stated: "I had no idea that I have to look for work. I have no work search."

On February 11, 1985, during an appeal hearing in which the Referee was considering the claimant's search for work for that same period, the claimant testified that he had contacted nine prospective employers, both in-person and by telephone.

HELD: The claimant-appellant had the burden of establishing by credible evidence that he had actively sought work during the period under review. Because the claimant's testimony before the Referee had been impeached (discredited by his earlier statements to the Claims Adjudicator), it could not be concluded that his testimony before the Referee was entitled to greater weight. Therefore, the claimant did not establish that he had actively sought work in compliance with the requirements of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 190.1**
DOCKET/DATE	**ABR-85-9292/6-30-86**
AUTHORITY	**Section 500C and 56 Ill. Adm. Code 2720.245**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof and Presumptions**
CROSS-REFERENCE	**PR 190.05, Evidence; PR 380.2, Rehearing or Review**

In his decision, the Referee wrote:

> The employer appealed the determination allowing benefits under Section 500C. Therefore, the employer had the burden of going forward with the evidence. The testimony of the employer added nothing to the evidence submitted to the Claims Adjudicator... (Therefore) the employer did not go forward with the evidence (and) the claimant is eligible for benefits...

HELD: At an appeal hearing, the appellant has the burden of coming forward with evidence to show that the Adjudicator's determination is incorrect. This does not preclude the appellant from coming forward with some evidence previously presented, or with evidence in all respects identical to the evidence presented earlier. The burden of coming forward should not be confused with the weight of the evidence or a burden of proof.

Further, a finding of fact by a Referee identical to that of the Claims Adjudicator does not require that the Referee come to the same conclusion of law as the Adjudicator. A legal conclusion is one which must follow, as a matter of law, from a given set of facts. It is the Referee's responsibility -- as the appellate tribunal -- to render a legal conclusion. He is not absolved from this responsibility just because a Claims Adjudicator has made similar findings of fact, irrespective of the Adjudicator's conclusion. As it happened, in this case, the Board of Review found that the Claims Adjudicator's conclusion -- and, therefore, the Referee's -- was incorrect.

ISSUE/DIGEST CODE **Able and Available/AA 190.1**
DOCKET/DATE **ABR-94-9575/12-16-94**
AUTHORITY **Section 500C of the Act/56 Ill. Adm. Code 2865.115(h)**
TITLE **Evidence**
SUBTITLE **Burden of Proof and Presumptions**
CROSS-REFERENCE **None**

The claimant completed an assignment for a temporary help agency. Subsequently, that agency submitted a protest that the claimant did not contact it in an effort to find work. The claimant admitted this was true; he felt the agency ought to have contacted him.

HELD: 56 Ill. Adm. Code 2865.115 provides that if a temporary help agency submits a protest alleging that an individual did not contact it after completing an assignment, this creates a rebuttable presumption that the individual was not actively seeking work. The presumption may be rebutted if the individual shows good cause for his failure to contact the agency. Here, the agency's protest created a rebuttable presumption that the claimant was not actively seeking work. The claimant's response, which failed to explain why he could not have contacted the agency, did not establish good cause and did not rebut the presumption. The claimant was not actively seeking work.

ISSUE/DIGEST CODE **Able and Available/AA 190.1**
DOCKET/DATE **ABR-18-1825093/11-07-18**
AUTHORITY **Section 500C of the Act/56 Ill. Adm. Code 2865.115(h)**
TITLE **Evidence**
SUBTITLE **Burden of Proof and Presumption**
CROSS REFERENCE **160.05 Effort to Secure Employment**

Claimant worked for a temporary staffing agency. Claimant's last day of work was June 18, 2018. Once the work assignment for Employer ended, Claimant did not contact Employer for the period under review from July 1, 2018 through August 11, 2018 because the Claimant relocated from the area served by Employer. Employer filed a protest to Claimant's eligibility for benefits. In the first two weeks of the period, Claimant actively sought work and contacted various prospective employers, which included retailers and other staffing agencies. Claimant was only able to provide proof of his job contacts for the first two weeks of the period.

HELD: Claimant was eligible for benefits only for the first two weeks of the period under review. Under Section 500C of the Act, a Claimant is eligible for benefits if he is actively seeking work. Under Section 2865.115(h) of the Rules, "There is a rebuttable presumption that an individual is not actively seeking work if he was last employed by a 'temporary help firm', as defined in Section 2865.1, and the temporary help firm submits a notice of possible ineligibility (see Section 2720.130) alleging that, during the week for which he claimed benefits, the individual did not contact the temporary help firm for an assignment. The presumption is rebutted if the individual shows that he did contact the temporary help firm or that he had good cause for his failure to contact the temporary help firm for an assignment." In this case, Claimant rebutted the presumption, as he showed good cause for his failure to contact Employer as he moved out of the area served by Employer. However, Claimant was only eligible for benefits for the first two weeks of the period under review because he could only provide sufficient evidence that he was actively seeking work during that period.

ISSUE/DIGEST CODE **Able and Available/AA 190.1/.15**
DOCKET/DATE **ABR-85-6826/2-28-86**
AUTHORITY **Section 500C of the Act**
TITLE **Evidence**
SUBTITLE **Burden of Proof/Weight and Sufficiency**
CROSS-REFERENCE **None**

The employer appealed an Adjudicator's determination that the claimant had been actively seeking work during the period under review. After the employer testified, the claimant, who had previously filed for unemployment benefits -- and knew that she should keep accurate records of her work search -- was called upon to testify and be cross-examined regarding her certification forms and work search efforts.

The claimant stated that she had looked for work every working day during the period under review and that she had contacted 2 or 3 employers daily. But she did not remember the names of the employers she had reportedly contacted. She said:

I go to see so many places, it's hard for me to remember.

When the Referee asked how the claimant knew which date to attribute to each contact, the claimant responded:

I was...guessing at random because I know I had went out that week looking for a job.

HELD: Evidence is the means for ascertaining the existence or non-existence, truth or falsity of a fact. To establish the existence and truth of an active work search under Section 500C, an individual must present evidence which is competent, authentic and reasonable.

In the instant case, after the employer had come forward, the burden was upon the claimant to establish that she had actively sought work during the period under review. But the claimant failed to present evidence which would have tended to prove the existence and truth of an active work search.

Because the claimant failed to establish that she had been actively seeking work during the period under review, she was denied benefits under Section 500C.

Weight and Sufficiency AA 190.15

ISSUE/DIGEST CODE	**Able and Available/AA 190.15**
DOCKET/DATE	**85-BRD-05681/7-30-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Credibility)**
CROSS-REFERENCE	**AA 190.1, Burden of Proof and Presumptions**

On January 4, 1985, in the course of an interview in which the Claims Adjudicator was considering the claimant's search for work during the period under review -- December 2, 1984 through December 29, 1984 -- the Claimant stated: "I had no idea that I have to look for work. I have no work search."

On February 11, 1985, during an appeal hearing in which the Referee was considering the claimant's search for work for that same period, the claimant testified that he had contacted nine prospective employers, both in-person and by telephone.

HELD: Inconsistent statements may impeach an individual's testimony. Because the claimant's testimony before the Referee had been discredited by his earlier statements to the Adjudicator, it could not be concluded that the claimant had met his burden of demonstrating by credible evidence that he had actively sought work in compliance with the requirements of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 190.15**
DOCKET/DATE	**ABR-87-3589/7-16-87**
AUTHORITY	**Sections 500C and 801 of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**None**

At an appeal hearing before a Referee, the claimant testified that she sought full-time work as a housekeeper, receptionist, baker, and food service worker. She named 11 employers whom she had contacted during the period under review. She stated that she would accept any shift and travel 1 hour each way to work by public transportation. She would accept a starting wage of $5 per hour (compared to her last wage of $9.67 per hour). She had made arrangements for childcare in the event that she found work. The employer offered no evidence at the hearing.

The claimant had previously filed a certification form with her Local Office, purportedly listing those same employers and work search methods for the period under review; however, the certification form was not contained in the record.

Benefits were allowed to the claimant under Section 500C, whereupon the employer appealed. Citing *Johnson v. Board of Review*, 479 N.E. 2d 1082 (1985), the employer contended that it was a requirement that the claimant's certification form be

part of the record, in order to show that the claimant made an active and realistic search for work during the period under review. In the absence of that certification form, the employer argued, benefits could not be allowed.

HELD: Under *Johnson v. Board of Review*, where an individual's certification form is not made a part of the record, benefits cannot be denied under Section 500C. The reason for this is that, in a case involving Section 500C, the burden is placed upon the claimant to establish his or her eligibility by competent evidence, and such competent evidence cannot be withheld, even inadvertently, by the Agency.

On the other hand, benefits may be allowed to an individual, even in the absence of a certification form, provided that the individual can establish, by other, equally competent evidence, that she was able to work, available for work, and actively seeking work during the period in question.

In this case, the claimant's testimony was competent and sufficient evidence, which, in the absence of any contrary evidence offered by the employer, established that the claimant was able to, available for, and actively seeking work.

ISSUE/DIGEST CODE	**Able and Available/AA 190.15**
DOCKET/DATE	**ABR-85-2803/10-30-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**AA 160.25, Effort to Secure Employment**

The claimant last worked from July, 1984 until December, 1984. She certified that during the period under review -- December 23, 1984 through January 5, 1985 -- she contacted department stores, hospitals, a bank, and other employers in an effort to secure work.

A former employer, which had laid off the claimant in March, 1984, testified that the claimant had refused offers of work:

> I called her in April (1984), and each time I called...she said she wasn't able to come back to work because her daughter was expecting a baby and she had to stay and be with her daughter...

HELD: Section 500C of the Act requires that an individual be able to work, available for work, and actively seeking work -- during the period under review.

The claimant certified that she had met those conditions. The employer's evidence, which did not take into account the claimant's July, 1984 through December, 1984 employment, and which proceeded to address a 9 month old refusal of work, was not relevant to the issue of the claimant's eligibility during the period under review.

There being no evidence of record to suggest that the claimant was unavailable for work during the period under review, the claimant was eligible for benefits under Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 190.15**
DOCKET/DATE	**85-BRD-06335/9-3-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Inherently Incredible)**
CROSS-REFERENCE	**None**

The claimant had been employed for several summers as a Golf Course Inspector. At the time of his appeal hearing, in April, 1985, he had again accepted employment at that seasonal job. He did not appear at the appeal hearing.

During the period under review -- December 24, 1984 through February 8, 1985 -- the claimant purportedly made exactly one employer contact on each of the 35 weekdays of that period, including Christmas Eve, Christmas Day, New Year's Eve, and New Years Day. On the work search list which the claimant had submitted to the Agency, he indicated that on those days he had contacted the named employers' secretaries in-person.

HELD: Work search statements which are not only contrary to common sense but are inherently incredible cannot support a conclusion that an individual conducted a realistic, active search for work. The unrebutted evidence established that the claimant was a seasonal worker who did not conduct a realistic, active search for work in compliance with the requirements of Section 500C.

Experience or Training AA 195
General AA 195.05
No decision

Government Requirements AA 215
General AA 215.05
No decision.

License or Permit AA 215.1

ISSUE/DIGEST	**Able and Available/AA 215.1**
DOCKET/DATE	**ABR-85-4196/9-9-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Government Requirements**
SUBTITLE	**License or Permit**
CROSS-REFERENCE	**None**

During the 4 week period under review, the claimant's work search consisted of repeated telephone calls to 2 real estate firms. The claimant was seeking work in Real Estate Sales and Management, for which he had neither previous experience nor the required state license.

HELD: An individual, to be eligible for unemployment benefits, must be available for work in his normal occupation, or one for which he is qualified by training and experience. If a license is required for the work which the individual seeks, and he does not have one, he is not available for work in that occupation. In that situation, the worker's eligibility will depend upon the extent to which he is available for other work.

In the instant case, the claimant did not possess a license required for the work which he sought. Therefore, he was not available for work in that occupation. Because he did not demonstrate that he was seeking work in any other occupation, he was determined to be ineligible for unemployment benefits.

Manpower Regulation AA 215.15
No decision

Health or Physical Conditions AA 235
General AA 235.05

ISSUE/DIGEST CODE	**Able and Available/AA 235.05**
DOCKET/DATE	**Rogers *v. Department of Employment Security, 2022 IL App (1st) 210468***
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**General**
CROSS-REFERENCE	**AA 235.15, Emotional or Mental Illness, PR 380.1, Additional Proof**

From August 2018 to July 2019, Claimant worked as a full-time motor vehicle cashier for the Secretary of State. On May 30, 2019, Claimant was involved in a car accident that reinjured her knee. On July 26, 2019, Claimant tendered a resignation letter stating that she was under the care of several doctors and, due to the aftereffects of the accident, was losing focus, sleep, and unexplained weight. In order to heal properly she was resigning. Claimant filed for benefits. The Local Office requested that Claimant submit a doctor's note attesting to her fitness to work and gave Claimant additional time to produce a letter. Claimant failed to submit a letter. The Local Office found Claimant ineligible for benefits from 8/11/2019 through 8/24/2019 under Section 500C of the Act as Claimant failed to demonstrate that she was able to work. Claimant filed a request for reconsideration and attached letters from two doctors; one from a clinical psychologist stating that Claimant was under her care for clinical depression, and another letter, from Ijaz Ahmad, stating that she was able to work from 8/11/19. This Ahmad letter had a

typographical error and was not on a letterhead. The Local Office issued a "Notice of Reconsideration and Appeal" again denying Claimant and scheduled a hearing on the 500C issue.

At the hearing Claimant submitted the Ahmad letter. The ALJ, noting the typographical error and that the formatting of the letter did not "look regular," believed the note did not "look genuine." Claimant agreed that the note looked "homemade." Claimant stated that that she would like "the opportunity to get something more professional" from Dr. Ahmad. That request was denied for purposes of that hearing. The ALJ asked her about the lack of a statement from her psychologist and Claimant answered that Dr. Saafir did not feel comfortable providing that information. The ALJ affirmed the Local Office determination, noting Claimant was previously given extra time to supplement any doctor's notes and that the Dr. Ahmad letter "appears fabricated." Even if the letter were legitimate, the evidence shows the claimant's medical difficulties primarily stemmed from the psychiatric conditions for which she was consulting a psychologist and, without evidence that this medical professional considered the claimant mentally capable of returning to work, the claimant on these facts did not demonstrate that she was able to work during the period under review. Claimant appealed. The Board affirmed, noting that Claimant sought to present additional information, but it did not consider her request because "she failed to set forth a sufficient explanation showing that for reasons not her fault and outside her control she was unable to introduce the evidence at the hearing before the Referee as required by Section 2720.315(b) of the Benefit Rules." The Board found (1) Claimant left her employment due to a medical condition; (2) during the benefit period Claimant sought treatment from three physicians due to her medical condition; (3) prior to her initial interview, Claimant failed to provide any notes from her physicians regarding her ability to work during the benefit period; (4) the letter she submitted when filing her appeal was "not on letterhead of the provider, has a spelling error, appears unformatted and the person signing it does not give their title"; and (5) Claimant "did not provide documentary evidence from her two other medical providers stating that she was able to work during the benefit period." Claimant appealed. The circuit court reversed the Board, finding two points of error: that the Board erred in discounting the Ahmad letter based on suspicions alone because witness testimony may only be discounted if it was "impeached, contradicted by positive testimony or by circumstances, or found to be inherently improbable"; and that the Board erred in refusing to consider Claimant's request to present additional evidence.

HELD: In reversing the circuit court, the appellate court found the Board's findings were not against the manifest weight of the evidence. The court did not assess the Ahmad letter's authenticity because the Board did not rest its determination solely on that letter. In addition to her knee injury, Claimant suffered from anxiety and depression which also affected her ability to work. When the ALJ asked her about getting a statement from her psychologist, Claimant answered that Dr. Saafir did not feel comfortable providing that information. Without a statement from Dr. Saafir regarding Claimant's ability to work, she cannot show that she "is physically and mentally capable of performing work for which he or she is otherwise qualified." (See Section 2865.105(a) of the Rules). The court further held the Board did not err in declining to consider additional evidence from Claimant as she failed to explain that, for reasons outside her control, she was unable to introduce the evidence at the hearing before the Referee. See Section 803 of the Act and Section 2720.315(b) of the Rules.

ISSUE/DIGEST CODE	**Able and Available/AA 235.05**
DOCKET/DATE	***Wilbon v. Ill. Dep't of Empl. Sec.*, 2020 IL App (1st) 192106-U**
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 190.05 Evidence**

The claimant filed for benefits after his employer reduced his hours because he had a medical condition and was under a doctor's care. The claimant was originally denied benefits and he appealed. At a hearing, the employer failed to appear. The Referee marked several documents as Agency Exhibit 1, which included the employer's protest, and stated that they may refer to any or all of those documents during the hearing. The claimant was again denied benefits, appealed to the Board and was, again denied. the Board's decision was based on its assessment of the claimant's credibility in light of the fact that he had changed his story after the claims adjudicator denied his application for benefits. The Board's determination was that the claimant's testimony that he was able to work and available for work was not credible in light of his statements to the claims adjudicator that he was "still under a doctor's care," and his failure to provide the referee a doctor's statement showing his ability to work during the relevant period. The circuit court reversed the Board, finding that the Department failed to admit certain documents, including the employer's protest, into evidence and thus "there was no competent evidence to support the Board's determination." The Department appealed.

HELD: The Appellate Court affirmed the circuit court's decision allowing benefits, stating that the being under a doctor's care does not mean the claimant was not ready for work and willing to accept suitable work. It simply means that, like so many

employees, he was seeing a physician for a medical issue. Being under a doctor's care does not establish that the claimant was not able to work or available for work under section 500(C) of the Act. There were no findings by the Board that the claimant had requested his hours be reduced or had told his employer that he could not work due to a medical issue. Thus, the Board's finding affirming the denial of unemployment benefits was clearly erroneous.

Furthermore, the Appellate Court stated that, contrary to the trial court's holding, the Board could have based its decision on the documents in Agency Exhibit 1 even if the referee did not formally admit them into evidence. Section 801(A) of the Act provides that "[a]t any [referee] hearing, the record of the claimant's registration for work, or of the claimant's certification that, during the week or weeks affected by the hearing, he was able to work, available for work, and actively seeking work, or any document in the files of the Department of Employment Security submitted to it by any of the parties, shall be a part of the record, and shall be competent evidence bearing upon the issues." Accordingly, the General Assembly has determined that, by operation of law, documents submitted by the parties—including employer protests—automatically become part of the record and constitute competent evidence.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

ISSUE/DIGEST CODE	**Able and Available/AA 235.05**
DOCKET/DATE	**ABR-85-6293/2-25-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Minor or Day-to-Day Ailment**
CROSS-REFERENCE	**AA 350.05, Period of Ineligibility**

The period under review was April 21 through April 27. The claimant testified that she was ill with influenza on Monday, April 22 and Tuesday, April 23 and was unable to seek or accept work on those days. Although she had not completely recovered from the flu's effects, she nevertheless contacted numerous employers, including 3 in-person, during the remainder of the week. Despite her efforts, she was held to be unable to work for the entire week and was denied benefits.

HELD: It cannot be assumed that because a claimant had been ill that she remained unable to work. The material point is not whether she had been ill, but whether she was able to work. Where a worker has a touch of the flu or a cold or some other minor ailment, she may still be able to work and ready to accept work. In the instant case, the evidence showed that, although the claimant was unable to work on Monday and Tuesday, she was seeking work and ready to accept work during the remainder of the week. She was eligible for (reduced) benefits.

Age AA 235.1

ISSUE/DIGEST CODE	**Able and Available/AA 235.1**
DOCKET/DATE	**ABR-86-2894/9-19-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Age**
CROSS-REFERENCE	**AA 160.05, Effort to Secure Employment, Age**

The claimant retired from government service, and during the next 3 years, she sought work exclusively through temporary employment agencies. During the period under review, the claimant contacted these temporary employment agencies, by telephone, and made no other efforts to secure employment. She testified that she did not attempt to make any direct employer contacts because her age was against her: she was 58 years old.

HELD: Unemployment Insurance benefits are payable to individuals who are out of work due to the lack of suitable work and for no other reason. If an individual's work opportunities are limited, by employers who are unwilling to hire or train her due to age or related reasons, it follows that there is a lack of suitable work, and it cannot be concluded on that basis, alone, that the individual is not available for or actively seeking work.

In this case, however, the evidence showed that the claimant had long ago and unilaterally determined that there was no suitable work to be had. She made no attempt to contact prospective employers who may in fact have had work for which she qualified, regardless of her age. The claimant's search for work was meager and inadequate and did not constitute the active search for work required by the Act.

ISSUE/DIGEST CODE	**Able and Available/AA 235.1**
DOCKET/DATE	**ABR-85-5799/12-27-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Age**
CROSS-REFERENCE	**AA 160.05, Effort to Secure Employment**

The claimant, a 58-year-old woman with 30 years' experience as a Legal Secretary, sought work in that field by checking the want ads in the *Chicago Daily Law Bulletin* and by registering and maintaining contact with Job Service. She also contacted secretarial agencies, but her efforts, over a 3-month period, to secure general secretarial work were unsuccessful, in part because she lacked word processing skills and in part because employers who had that type of work to offer were seeking an "entry-level girl" and considered the claimant overqualified as a result of her experience as a Legal Secretary.

The claimant was denied benefits under Section 500C, the Referee concluding that, in light of those considerations, the claimant's work search was unrealistic, and she was not genuinely attached to the labor force.

HELD: The reluctance of employers to hire older workers does not make an older worker unavailable for work. Also, it may be that technological advances will result in a more difficult period of adjustment and longer period of unemployment, but this does not necessarily mean that the claimant has imposed undue restrictions upon her availability.

In the instant case, the evidence showed that the claimant was able to work, and that, since she placed no undue restrictions upon her acceptance of work, she was available for work within the meaning of Section 500C.

Emotional or Mental Illness AA 235.15

ISSUE/DIGEST CODE	**Able and Available/AA 235.15**
DOCKET/DATE	**Rogers *v. Department of Employment Security, 2022 IL App (1st) 210468***
AUTHORITY	**Section 500C of the Act**
TITLE	**Emotional or Mental Illness**
SUBTITLE	**General**
CROSS-REFERENCE	**AA 235.05, Health or Physical Condition, PR 380.1, Additional Proof**

From August 2018 to July 2019, Claimant worked as a full-time motor vehicle cashier for the Secretary of State. On May 30, 2019, Claimant was involved in a car accident that reinjured her knee. On July 26, 2019, Claimant tendered a resignation letter stating that she was under the care of several doctors and, due to the aftereffects of the accident, was losing focus, sleep, and unexplained weight. In order to heal properly she was resigning. Claimant filed for benefits. The Local Office requested that Claimant submit a doctor's note attesting to her fitness to work and gave Claimant additional time to produce a letter. Claimant failed to submit a letter. The Local Office found Claimant ineligible for benefits from 8/11/2019 through 8/24/2019 under Section 500C of the Act as Claimant failed to demonstrate that she was able to work. Claimant filed a request for reconsideration and attached letters from two doctors; one from a clinical psychologist stating that Claimant was under her care for clinical depression, and another letter, from Ijaz Ahmad, stating that she was able to work from 8/11/19. This Ahmad letter had a typographical error and was not on a letterhead. The Local Office issued a "Notice of Reconsideration and Appeal" again denying Claimant and scheduled a hearing on the 500C issue.

At the hearing Claimant submitted the Ahmad letter. The ALJ, noting the typographical error and that the formatting of the letter did not "look regular," believed the note did not "look genuine." Claimant agreed that the note looked "homemade." Claimant stated that that she would like "the opportunity to get something more professional" from Dr. Ahmad. That request was denied for purposes of that hearing. The ALJ asked her about the lack of a statement from her psychologist and Claimant answered that Dr. Saafir did not feel comfortable providing that information. The ALJ affirmed the Local Office determination, noting Claimant was previously given extra time to supplement any doctor's notes and that the Dr. Ahmad letter "appears

fabricated." Even if the letter were legitimate, the evidence shows the claimant's medical difficulties primarily stemmed from the psychiatric conditions for which she was consulting a psychologist and, without evidence that this medical professional considered the claimant mentally capable of returning to work, the claimant on these facts did not demonstrate that she was able to work during the period under review. Claimant appealed. The Board affirmed, noting that Claimant sought to present additional information, but it did not consider her request because "she failed to set forth a sufficient explanation showing that for reasons not her fault and outside her control she was unable to introduce the evidence at the hearing before the Referee as required by Section 2720.315(b) of the Benefit Rules." The Board found (1) Claimant left her employment due to a medical condition; (2) during the benefit period Claimant sought treatment from three physicians due to her medical condition; (3) prior to her initial interview, Claimant failed to provide any notes from her physicians regarding her ability to work during the benefit period; (4) the letter she submitted when filing her appeal was "not on letterhead of the provider, has a spelling error, appears unformatted and the person signing it does not give their title"; and (5) Claimant "did not provide documentary evidence from her two other medical providers stating that she was able to work during the benefit period." Claimant appealed. The circuit court reversed the Board, finding two points of error: that the Board erred in discounting the Ahmad letter based on suspicions alone because witness testimony may only be discounted if it was "impeached, contradicted by positive testimony or by circumstances, or found to be inherently improbable"; and that the Board erred in refusing to consider Claimant's request to present additional evidence.

HELD: In reversing the circuit court, the appellate court found the Board's findings were not against the manifest weight of the evidence. The court did not assess the Ahmad letter's authenticity because the Board did not rest its determination solely on that letter. In addition to her knee injury, Claimant suffered from anxiety and depression which also affected her ability to work. When the ALJ asked her about getting a statement from her psychologist, Claimant answered that Dr. Saafir did not feel comfortable providing that information. Without a statement from Dr. Saafir regarding Claimant's ability to work, she cannot show that she "is physically and mentally capable of performing work for which he or she is otherwise qualified." (See Section 2865.105(a) of the Rules). The court further held the Board did not err in declining to consider additional evidence from Claimant as she failed to explain that, for reasons outside her control, she was unable to introduce the evidence at the hearing before the Referee. See Section 803 of the Act and Section 2720.315(b) of the Rules.

Hearing, Speech, or Vision AA 235.2
No decision.

Illness AA 235.25ISSUE/DIGEST CODE Able and Available/AA 235.25

DOCKET/DATE	***Rosenbaum v. Johnson*, 377 N.E. 2d 258 (1978)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Illness or Injury**
CROSS-REFERENCE	**AA 450.4, Time, Part-Time**

For 5 years, the claimant worked in an office, part-time; she also worked as a substitute teacher. She had refused offers of full-time work, citing medical restrictions on her ability to work full-time. When she filed for unemployment benefits, she stated that she suffered from a heart condition, permitting her to work a maximum of 3 days per week.
Without making findings as to whether full-time work would have been suitable work for the claimant, or whether there was a labor market for the part-time services which the claimant stated she was willing to perform, the Agency denied benefits under Section 500C. It was ruled that because the claimant was available for part-time work only, she was ineligible per se.

HELD: The Unemployment Insurance Act does not require as a condition of eligibility that all workers be available for full-time work. There is no inflexible, hard-and-fast rule as to what constitutes availability for work. Availability depends in part on the facts and circumstances in each case. Even though a claimant's physical condition may prevent her from accepting certain types of employment, a labor market may exist for the type of work which she is able to do. Accordingly, in the instant case, the Agency's determination that the claimant was ineligible per se was incorrect.

What should have been resolved was whether the claimant had so limited her availability as to effectively remove herself from both the full-time and part-time labor markets. The first issue to be addressed was, in light of a purported medical restriction, whether, in fact, the claimant was compelled to abstain from full-time work. If the finding was that she was compelled to abstain from full-time work, then the second issue to be addressed was whether a labor market existed for the part-time services which the claimant may have been willing to provide.

Because those issues were not considered, the case was remanded for further findings.

ISSUE/DIGEST CODE	**Able and Available/AA 235.25**
DOCKET/DATE	**ABR-85-5023/6-10-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Illness or Injury**
CROSS-REFERENCE	**None**

The claimant worked as a Transportational Aide in a medical facility, until she suffered a back injury, leading her doctor to impose restrictions and finally recommend that she seek less strenuous work. The claimant became separated from her job on December 27, 1984, and, shortly thereafter, filed a claim for unemployment benefits. She was denied benefits, under Section 500C, for the period January 20 through February 2, 1985, and appealed.

At her appeal hearing, the claimant stated that she was still under her physician's care and that the doctor's restrictions concerning pushing and lifting still applied.

The Referee did not elicit any other evidence with respect to the claimant's availability for work during the period under review (for example, the type of work she was seeking, the employer contacts she had made), and proceeded to issue his decision with respect to her ability to work on the basis of the claimant's medical restriction. The Referee concluded that the claimant was unable to work.

HELD: The existence of an illness or injury does not, in itself, render an individual unable to work in terms of eligibility under Section 500C. Rather, a worker's ability is to be judged solely upon the basis of her personal capability of performing work for which she is qualified, in light of her handicap. In considering the issue of ability to work, the willingness of a previous or prospective employer to retain or hire such an individual is irrelevant.

In the instant case, the Referee concluded that the mere imposition of a medical restriction precluded the claimant from being determined able to work and eligible for benefits. The Referee's conclusion was drawn solely from findings concerning the claimant's experiences as a Transportational Aide with a bad back. Without evidence as to the type of work the claimant sought or the claimant's efforts to seek such work during the period under review, the record was inadequate and the Referee's conclusion unsupported.

The case was remanded for further findings regarding the claimant's ability to work.

Loss of Limb (or use of) AA 235.26
No decision.

Pregnancy AA 235.4

ISSUE/DIGEST CODE	**Able and Available/AA 235.4**
DOCKET/DATE	**83-BRD-15727/12-18-83**
AUTHORITY	**Section-500C**
TITLE	**Health or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant was no longer physically able to perform her regular job duties in a factory because of her pregnancy, and she was placed on a medical leave of absence. She had prior work experience as a cashier and as a file clerk, and, during the one week period under review, she contacted four employers in search of office work. She last earned $5.00 per hour and was seeking a wage of $3.50 per hour.

HELD: In view of her previous work experience and the medical restriction placed on her ability to perform factory work, her work search was reasonable. The claimant was able to work, available to work, and actively seeking work during the period under review and is eligible for benefits.

Incarceration or Other Legal Detention AA 250
General AA 250.05
No decision

Leave of Absence or Vacation AA 285
General AA 285.05
No decision

Length of Unemployment AA 295
General AA 295.05
No decision

Military Service AA 305
General AA 305.05
No decision

New Work AA 315
General AA 315.05
No decision

Notification of Address AA 320
General AA 320.05
No decision

Period of Ineligibility AA 350
General AA 350.05

ISSUE/DIGEST CODE	**Able and Available/AA 350.05**
DOCKET/DATE	**ABR-85-6293/2-25-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Period of Ineligibility**
SUBTITLE	**Day-to-Day as opposed to Week**
CROSS-REFERENCE	**AA 235.05, Health or Physical Condition**

The period under review was April 21 through April 27. The claimant testified that she was ill with influenza on Monday, April 22 and Tuesday, April 23 and was unable to seek or accept work on those days. However, she had recuperated sufficiently to make employer contacts and hold herself ready for work for the remainder of the week.

HELD: Section 500C provides that if an otherwise eligible individual is unable to work or is unavailable for work on any normal workday of the week, she shall remain eligible to receive benefits with respect to such week, but reduced by 1/5 of the weekly benefit amount for each day of such inability or unavailability.
The claimant was eligible to receive benefits for the week April 21 through 27, reduced by 2/5 of her weekly benefit amount.

ISSUE/DIGEST CODE	**Able and Available/AA 350.05**
DOCKET/DATE	***Quincy School District #172*, 471 N.E. 2d 1056 (1984)**
AUTHORITY	**Section 500C-2 of the Act**
TITLE	**Period of Ineligibility**
SUBTITLE	**Holidays**
CROSS-REFERENCE	**MS 95.05, Construction of Statutes**

The employer School District went into recess at the close of the school day on December 18, 1981, and reopened on January 4, 1982. During that period, the claimant, a School District Bus Driver, did not work and was not paid wages. She applied for unemployment benefits for the period December 27, 1981 through January 2, 1982.

The School District contended that the claimant had been unavailable for work, pursuant to Section 500C-2 of the Act:

> An individual shall be considered to be unavailable for work on days listed as whole holidays...and on days which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday.

The Board of Review construed the "holidays" provision of Section 500C-2 to apply only to individual holidays, but not to any period of unemployment which preceded or followed such holidays. It was noted that the reference to "holidays within a trade or occupation" was intended to provide for single, non-legal holidays, such as April 1 for the United Mine Workers or May 1 as celebrated by the International Ladies' Garment Workers' Union.

The Board of Review stated:

> (I)t is evident that the claimant's failure to work during the period under review was a result of the (employer's) shutdown for a vacation period, and not because of the (Christmas) holiday, rendering Section 500C-2 inapplicable...(T)he claimant was subject to a short-term layoff of a definite duration during which she was available to accept suitable employment at any time...(T)he eligibility requirements of Section 500C-2 of the Act have thus been met.

HELD: The court concluded:

> There is perhaps no more widely recognized holiday period than that of the Christmas recess period as observed in Illinois schools, although the precise dates of the recess may vary from year to year and between districts. We therefore conclude that this period falls within the meaning of Section 500C-2 of the Act, as holidays according to the custom of the trade or occupation...clearly distinguishable from a shutdown for inventory or vacation purposes...

The claimant was determined to be unavailable for work and ineligible for benefits during the period under review.

ISSUE/DIGEST CODE	**Able & Available/AA 350.05**
DOCKET/DATE	***Echols v. Board of Review,* 676 N.E.2d 292 (1997)**
AUTHORITY	**Section 500C-2 of the Act**
TITLE	**Period of Ineligibility**
SUBTITLE	**Holidays**
CROSS REFERENCE	**MS 95.1, Construction of Statutes**

The claimant drove a school bus pursuant to a contract between her employer, a private bus company, and a school district. On December 19, she filed a claim for unemployment benefits, which was contested by the employer, on the grounds that she was not available for work because the period for which she sought benefits was the school Christmas break.

HELD: Section 500C-2 provides that an individual shall be considered unavailable for work on days which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday. This case is indistinguishable from *Quincy School District No. 172 v. Board of Review*, 471 N.E.2d 1056 (1984). Although the employer in that case was a school district, and not a private employer, in both cases, the claimant was a school bus driver. The reason for the unemployment status in both situations was the same: the Christmas holidays are non-work periods in that line of work. The claimant was considered unavailable for work, and therefore ineligible for benefits, during the holiday recess period.

ISSUE/DIGEST CODE	**Able & Available/AA-350.05**
DOCKET/DATE	***Leonard v. IDES*, 311 Ill.App.3d 354, 243 Ill.Dec. 937, 724 N.E.2d 536 (3rd Dist., 11/23/99)**
AUTHORITY	**Section 500(C)(2)**
TITLE	**Period of Ineligibility**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant drove a bus for a private bus company. Most of her driving involved busing children to school but she also trained new drivers, taught a defensive driving course and drove charter buses. During previous Christmas and spring break holidays, she had remained employed with these other duties. During the week of spring break for which she had sought benefits and

was denied, she had driven a charter bus on two of the days. The employer required its laid off workers to remain available during break periods in order to accept charter bus assignments. The employer also bused students from schools having break periods different from the claimant's, which allowed it to operate year-round.

HELD: Section 500(C)(2) provides in part that an individual "shall be considered to be unavailable for work...on days which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday." In the instant case, where the facts showed that the claimant had other duties besides busing children to school and had performed other duties during prior holiday periods, the Christmas and spring break periods were not "holidays" within the custom of the claimant's trade. The court distinguished the instant case from *Quincy School District No. 172 v. Board of Review*, 471 N.E.2d 1056 (1984) and *Echols v. Department of Employment Security*, 676 N.E.2d 292 (1997) on the basis that in those cases the claimants/bus drivers' sole function was to bus children to school unlike the claimant in this case who had other duties besides busing school children.

ISSUE/DIGEST CODE	**Able and Available/AA 375.05**
DOCKET/DATE	**ABR-85-5971/1-16-86**
AUTHORITY	**Sections 239 and 500C of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Effect Upon Eligibility**
CROSS-REFERENCE	**AA 10 5.05, Contract Obligation**

The claimant, a Janitor, worked for his employer for 36 years, until his position was eliminated, in March, 1985. Still, the employer intended to keep him on the payroll for 2 months more, during which time the claimant would not be required to sign in or perform any work; this, the employer explained, would be its "farewell gift" to the claimant for his "long and faithful years of service."

When the claimant filed a claim for unemployment benefits, for the period March 10, 1985 through March 30, 1985, the employer asserted that, because the claimant had been and would be kept on the payroll until May, 1985, he was not an unemployed individual; and, accordingly, this would bar eligibility under Section 500C.

HELD: Section 500C of the Act requires, as a condition of eligibility, that a claimant be an "unemployed individual." Section 239 of the Act provides that:

> An individual shall be deemed unemployed in any week with respect to which no wages are payable to him and during which he performs no services...

In the instant case, the evidence established that, subsequent to the elimination of the claimant's position in March, 1985, he performed no services for his employer. Further, he was not under any contractual obligation to perform services for his employer. Because the money which he was to receive was to be paid to him in consideration of services previously rendered -- for which he had already been paid wages, this money did not constitute wages with respect to the weeks under review, but, instead, was, as the employer originally stated, a gift.
Accordingly, because no wages were payable for services performed during the period under review, the claimant was an unemployed individual and the money paid to him by his employer was not a bar to his eligibility under Section 500C. Further, because the claimant was not contractually obligated to perform any future services for his employer, it was not shown that his availability for work was unduly restricted by the employer's arrangement.

Personal Affairs AA 360
General AA 360.05
No decision

Personal Appearance AA 363
General AA 363.05
No decision

Prospect of Work AA 365
General AA 365.05
No decision

Public Service AA 370
General AA 370.05
No decision

Jury Duty AA 370.1
No decision

Public Office AA 370.15
No decision

Receipt of Other Payments AA 375
General AA 375.05
No decision

Disability Compensation AA 375.1
No decision

Old-Age and Survivor's Insurance AA 375.25

ISSUE/DIGEST CODE	**Able and Available/AA 375.25**
DOCKET/DATE	***Teresi v. Dep't of Empl. Sec.*, 2022 IL App (3d) 190560**
AUTHORITY	**Section 500C of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Social Security Disability Benefits**
CROSS-REFERENCE	**None**

Claimant worked for employer as a "facer," which required him to showcase products for customers. Claimant was diagnosed with cancer in 2016. Beginning November 24, 2017, and acting under doctor's orders, Claimant stopped working because of his cancer. Employer requested medical information from the claimant and fired him when he failed to provide the requested documentation. The claims adjudicator determined that Claimant was ineligible for unemployment benefits between March 11, 2018, and March 24, 2018, because he had a medical restriction and was unable to work. Claimant appealed. At the hearing Claimant testified that in March 2018, Claimant's doctor told him that he could return to work without any restrictions. Claimant sought work that would pay him an amount "underneath the cap" he was allowed to earn and still collect the Social Security disability payments he received. The referee denied benefits concluding that if Claimant was receiving Social Security disability benefits, "he cannot claim he was able to work just so he can collect unemployment benefits." Finally, the referee found that Claimant was only seeking part- time work, and under section 500(C) of the Act, an individual must generally be able to obtain full time work to be considered able to work. As a result, the referee found Claimant ineligible for unemployment benefits under the Act. Claimant appealed.

The Board found that Claimant had testified that he was seeking part-time work because he could not earn more than $250 per week in order to continue to receive his Social Security disability payments. Thus, the Board concluded that he was "unavailable for work because he did not want to lose his social security disability pay." The Board also concluded that Claimant was ineligible to receive unemployment benefits as a seeker of part-time work because his desire "to preserve his social security disability pay is not a circumstance which is beyond his control under the Act." The circuit court reversed the Board's decision. In doing so, the circuit court found that the Board's administrative decision was contrary to the manifest weight of the evidence. The Department appealed.

HELD: The appellate court reversed the circuit court, stating that the question presented is whether Claimant's desire to maintain his qualifications for Social Security disability benefits as a condition of employment meant that he was not eligible for unemployment benefits. The court found that there was evidence in the record to support the Board's factual finding that Claimant was seeking only part-time work and not full-time work as required to receive benefits under the Act. The evidence showed that Claimant's employment search was subservient to his desire to continue to receive his Social Security disability benefits. Accordingly, the Board could appropriately find that Claimant was seeking part-time work, and not the full-time work required to receive unemployment benefits under the Act.

Furthermore, the court stated that, under Section 2865.125(a) of the Rules, an individual may seek part-time work and still be eligible to receive unemployment benefits if "circumstances out of his control" restrict his availability to part-time work or he

is qualified for work that "is available only on a part-time basis." The claimant must "prove by a preponderance of the evidence" that he meets the condition for eligibility for part-time work and wanting to preserve his Social Security disability pay is not a circumstance which is beyond Claimant control under the Act. Although Claimant stated that certain employers would only start candidates on a part-time basis for the positions he is seeking, he did not contend that those positions are only available on a part-time basis. His primary concern was to maintain his Social Security disability benefits. The court agreed with the Board's finding that Claimant was not able and available for work because he wanted to maintain his weekly earnings under $250 to qualify for Social Security disability benefits.

Pension AA 375.3

Relief Work or Public Assistance AA 395
General AA 395.05

Self-Employment or Other Work AA 415
General AA 415.05
No Decision
Agricultural AA 415.1
No Decision

Commercial Enterprise AA 415.15
No Decision

Family Enterprise AA 415.2

ISSUE/DIGEST CODE	**Able and Available/AA 415.2**
DOCKET/DATE	***Garland v. DOL* 104 Ill. 2d 383 (1984)**
AUTHORITY	**Sections 500C and 239 of the Act**
TITLE	**Unemployed Individual**
SUBTITLE	**Eligibility of Officers of Closely Held Corporation**
CROSS REFERENCE	**AA 450.45 Seasonal**

Corporate officers of two closely held family-owned businesses applied for benefits. In each case the Department denied benefits contending that since the claimants were corporate officers and had control over the terms of their own employment they were ineligible for unemployment benefits even though they performed no services or received no wages during the period for which they applied. The Circuit Court reversed the Department in each case and, on appeal, the Appellate Court affirmed. The Department appealed and the cases were consolidated for purposes of review.

HELD: The Illinois Supreme Court affirmed the appellate decisions and held that corporate officers are not ineligible for UI benefits merely because of their status as officers. If corporate officers meet the Section 239 definition of an unemployed individual, then they are eligible for benefits unless otherwise disqualified. The Act contains no exclusionary provision which would deny benefits to an otherwise eligible claimant merely because he is an officer of a corporation. In these cases, contributions were made on behalf of the plaintiffs during the periods when they were employed. When the plaintiffs were laid off, they applied for the unemployment benefits which the Act makes available to an “unemployed individual” whose employer has made contributions to the fund for him. An employee is “deemed unemployed in any week with respect to which no wages are payable to him and during which he performs no services. As such, the claimants met the eligibility requirements of the Act.

Professional Work AA 415.25
No Decision

Salesman AA 415.3
No Decision

Time AA 450

General AA 450.05
No Decision

Days of Week AA 450.1
No Decision

Hours AA 450.15
No Decision

General AA 450.151
No Decision

Irregular AA 450.52
No Decision

Long or Short AA 450.153
No Decision

Night AA 450.154
No Decision

Prevailing Standard AA 450.155
No Decision

Statutory or Regular Standard, Compared with AA 450.156
No Decision

Irregular Employment AA 450.2
No Decision

Part Time AA 450.4

ISSUE/DIGEST CODE	**Able and Available/AA 450.4**
DOCKET/DATE	***Rosenbaum v. Johnson*, 377 N.E. 2d 258 (1978)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Time**
SUBTITLE	**Part-Time Work**
CROSS-REFERENCE	**AA 235.25, Health or Physical Condition**

For 5 years, the claimant worked in an office, part-time; she also worked as a substitute teacher. She had refused offers of full-time work, citing medical restrictions on her ability to work full-time, When she filed for unemployment benefits, she stated that she suffered from a heart condition, permitting her to work a maximum of 3 days per week.

Without making findings as to whether full-time work would have been suitable work for the claimant, or whether there was a labor market for the part-time services which the claimant stated she was willing to perform, benefits were denied under Section 500C. It was ruled that because the claimant was available for part-time work only, she was ineligible per se.

HELD: The Unemployment Insurance Act does not require as a condition of eligibility that all workers be available for full-time work. There is no inflexible, hard-and-fast rule as to what constitutes availability for work. Availability depends in part on the facts and circumstances in each case. Even though a claimant's physical condition may prevent her from accepting certain types of employment, a labor market may exist for the type of work which she is able to do. Accordingly, in the instant case, the Agency's determination that the claimant was ineligible per se was incorrect.

What should have been resolved was whether the claimant had so limited her availability as to effectively remove herself from both the full-time and part-time labor markets. The first issue to be addressed was, in light of a purported medical restriction, whether, in fact, the claimant was compelled to abstain from full-time work. If the finding was that she was compelled to

abstain from full-time work, then the second issue to be addressed was whether a labor market existed for the part-time services which the claimant may have been willing to provide.

Because those issues were not considered, the case was remanded for further findings.

Seasonal AA 450.45

ISSUE/DIGEST CODE	**Able and Available/AA 450.45**
DOCKET/DATE	**ABR-85-3125/7-31-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Time**
SUBTITLE	**Seasonal**
CROSS-REFERENCE	**None**

During the period under review, the claimant sought work in the field of lawn care and maintenance, from employers whom he had contacted in the past. The period under review was from December 16, 1984 through January 12, 1985, when such work was off-season. The claimant was denied benefits.

HELD: The seasonal nature of a worker's regular employment is not the factor which determines benefits eligibility. The issue to be decided in each case is whether the worker is able to, available for, and actively seeking work during the period of unemployment for which he is claiming benefits. Under most circumstances, a worker can justifiably restrict himself to off-season work which nearest approaches his customary seasonal work -- provided that there are some prospects of obtaining such work. If there are no prospects of obtaining such work, then the worker must consider other work for which he might be fitted. In the instant case, the claimant had no prospects of obtaining lawn care and maintenance work. Because he considered no other work, he was properly denied benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 450.45**
DOCKET/DATE	***Garland v. DOL* 104 Ill. 2d 383 (1984)**
AUTHORITY	**Sections 500C and 239 of the Act**
TITLE	**Time**
SUBTITLE	**Seasonal**
CROSS REFERENCE	**AA 415.2 Family Enterprise**

Corporate officers of two closely held family-owned businesses applied for benefits. In each case the Department denied benefits contending that since the claimants were corporate officers and had control over the terms of their own employment they were ineligible for unemployment benefits even though they performed no services or received no wages during the period for which they applied. The Circuit Court reversed the Department in each case and, on appeal, the Appellate Court affirmed. The Department appealed and the cases were consolidated for purposes of review.

HELD: The Illinois Supreme Court affirmed the appellate decisions and held that corporate officers are not ineligible for UI benefits merely because of their status as officers. If corporate officers meet the Section 239 definition of an unemployed individual, then they are eligible for benefits unless otherwise disqualified. The Act contains no exclusionary provision which would deny benefits to an otherwise eligible claimant merely because he is an officer of a corporation. In these cases, contributions were made on behalf of the plaintiffs during the periods when they were employed. When the plaintiffs were laid off, they applied for the unemployment benefits which the Act makes available to an “unemployed individual” whose employer has made contributions to the fund for him. An employee is “deemed unemployed in any week with respect to which no wages are payable to him and during which he performs no services. As such, the claimants met the eligibility requirements of the Act.

ISSUE/DIGEST CODE **Able and Available/AA 450.45**
DOCKET/DATE ***Estella Galarza v. IDOL*, No. 2-87-0186 (1987)**
AUTHORITY **Section 500C of the Act**
TITLE **Time**
SUBTITLE **Temporary**
CROSS-REFERENCE **AA 160.05, Efforts; AA 450.55, Time Seasonal**

The claimant was a Migrant Farm Worker who was laid off every spring for approximately 6 weeks between crops. When she was laid off in March, 1982, she sought vegetable packing and other types of field work only for the duration of that interim period because she knew she would be recalled to work at her regular job.

The Referee found that, despite the claimant's 17 job contacts during the 6-week period, she was ineligible for benefits because she failed to show that "the work search conducted was reasonably designed for a return to the permanent full-time labor force."

Upon further appeal, the claimant argued that she was not required to look for or accept permanent full-time employment which would jeopardize her chances of returning to her regular job.

HELD: Section 500C of the Unemployment Insurance Act requires that an individual be able to, available for, and actively seeking suitable work. This is a flexible standard: what constitutes "suitable" work or an "active search" for work varies with the circumstances. Courts have held that:

> a ruling that a claimant must be available for full-time work per se was inconsistent with the flexible standard above;
>
> alternate work is not necessarily "suitable" where a reasonable possibility exists of the claimant being recalled to his previous job;
>
> if an applicant presents sufficient evidence to establish as a fact that there are prospects of returning to work in his own trade within a reasonable time, then work in some other trade for which he should otherwise be available and which would otherwise be deemed suitable becomes unsuitable.

In this case, the court stated:

> While we do not necessarily agree...that a claimant who has been temporarily laid off need not conduct any work search, the principles noted above are relevant in determining the scope of the search (the claimant) in the instant case was required to make...
>
> It seems clear that the Referee...applied the wrong legal standard...
>
> The Hearing Referee applied an improper standard in determining that (the claimant) was required to seek permanent employment. The claimant was allowed benefits under Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 450.45**
DOCKET/DATE ***Winnie Kelley v. IDOL*, 513 N.E. 2d 988 (1987)**
AUTHORITY **Section 500C of the Act**
TITLE **Time**
SUBTITLE **Seasonal**
CROSS-REFERENCE **AA 160.05, Efforts to Secure Employment**

The claimant worked for the police department as a school crossing guard. She worked every regular school term for 15 years and was laid off every summer. She filed for, and was initially denied, benefits during her most recent layoff period.

At an appeal hearing, she testified that, although she expected to return to her regular job in the fall, she was looking, and always had looked, for work during the summer. She had held a summer job, in a city streets cleanup program, 4 years earlier. During the current period, she was seeking a sales job. One week, she contacted 2 department stores in the same shopping mall, the contacts being on consecutive days; in another week, she made 1 employer contact in person and a telephone contact 3 days

later; in 2 other weeks, she made 2 telephone contacts. She never made more than 3 contacts in any week, and, in that instance, all 3 were made on the same date.

HELD: A seasonal worker is not per se ineligible for benefits during the off-season of her regular employment. Still, she must meet the same eligibility requirements as all other claimants.

In general, whether one is available for work depends to a great extent upon the individual's mental attitude as evidenced by the effort put forth in the search for work.

In this case, the claimant's search constituted a perfunctory effort to secure employment. It indicated that she had made a career choice to remain in a field which involved a summer layoff and to remain detached from the labor market.

Benefits were denied.

Shift AA 450.5

ISSUE/DIGEST CODE	**Able and Available/AA 450.5**
DOCKET/DATE	**83-BRD-13734/11-23-83**
AUTHORITY	**l./S-500C**
TITLE	**Time, Shift**
SUBTITLE	**No Search After Recall**
CROSS-REFERENCE	**None**

The claimant worked as a press packer on the employer's second shift and was laid off due to lack of work. She named numerous employers she contacted during the four weeks under review, seeking factory or key punch work. She sought second or third shift hours so that her husband could care for their two children at the end of his work day. Also, these hours permitted her the use of the family automobile. In the last week under review, the claimant received a telegram from her former employer requesting that she return to work one week later. She stated that she stopped seeking work after receiving the telegram, and she returned to her former job when requested.

HELD: The claimant conducted an active search for work. The claimant's search for second or third shift work did not unduly restrict her availability for work because work which she is qualified to perform customarily exists on these shifts. Additionally, the claimant had previously worked second shift hours and was not required to expand her work search outside her usual hours of work during the initial weeks of her claim for benefits. During the last week under review, the claimant had knowledge that she would be returning to work one week later and was, therefore, on a short term layoff of a definite duration. It would be unrealistic to require the claimant to search for other work during this week; and, since she was otherwise available for work, she is eligible to receive benefits.

Temporary AA 450.55

ISSUE/DIGEST CODE	**Able and Available/AA 450.55**
DOCKET/DATE	***Estella Galarza v. IDOL*, No. 2-87-0186 (1987)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Time**
SUBTITLE	**Temporary**
CROSS-REFERENCE	**AA 160.05, Efforts; AA 450.45, Time Seasonal**

The claimant was a Migrant Farm Worker who was laid off every spring for approximately 6 weeks between crops. When she was laid off in March, 1982, she sought vegetable packing and other types of field work only for the duration of that interim period because she knew she would be recalled to work at her regular job.

The Referee found that, despite the claimant's 17 job contacts during the 6-week period, she was ineligible for benefits because she failed to show that "the work search conducted was reasonably designed for a return to the permanent full-time labor force."

Upon further appeal, the claimant argued that she was not required to look for or accept permanent full-time employment which would jeopardize her chances of returning to her regular job.

HELD: Section 500C of the Unemployment Insurance Act requires that an individual be able to, available for, and actively seeking suitable work. This is a flexible standard: what constitutes "suitable" work or an "active search" for work varies with the circumstances. Courts have held that:

> a ruling that a claimant must be available for full-time work per se was inconsistent with the flexible standard above;
>
> alternate work is not necessarily "suitable" where a reasonable possibility exists of the claimant being recalled to his previous job;
>
> if an applicant presents sufficient evidence to establish as a fact that there are prospects of returning to work in his own trade within a reasonable time, then work in some other trade for which he should otherwise be available and which would otherwise be deemed suitable becomes unsuitable.

In this case, the court stated:
While we do not necessarily agree...that a claimant who has been temporarily laid off need not conduct any work search, the principles noted above are relevant in determining the scope of the search (the claimant) in the instant case was required to make...

> It seems clear that the Referee...applied the wrong legal standard...
>
> The Hearing Referee applied an improper standard in determining that (the claimant) was required to seek permanent employment. The claimant was allowed benefits under Section 500C.

Union Relations AA 475
General AA 475.05

ISSUED/DIGEST CODE	**Able and Available/AA 475.05**
DOCKET/DATE	**ABR-87-5445/3-23-88**
AUTHORITY	**Section 500C of the Act**
TITLE	**Union Relations**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant, a theatrical wardrobe worker, worked for 9 months until a layoff that would last 1 month. During this period of unemployment, she sought theatrical wardrobe work paying, at a minimum, her previous wage, $13.25 per hour. Her sole method of seeking work was to contact, and remain on 24-hour call, with her union's business manager.
The claimant was a member in good standing of the Theatrical Wardrobe Attendants Union, Local 769. Members of the union obtained most if not all of their work through the union's hiring facilities. The union had been certified under Department Rule 2865.55.

HELD: Section 500C provides that an individual must demonstrate an active work search by listing, on a form provided by the Department, the places at which she has sought work. Ordinarily, an individual demonstrates an active work search by listing a variety of job contacts that she has made directly and independently.

Section 500C also provides that the Director may approve alternate methods of demonstrating an active work search, based upon regular reporting to a trade union office. Department Rule 2865.50 further provides that a claimant meets the active work search requirement if, belonging to a job classification of workers represented by a certified union, she reports to that union's placement service.

In this case, the claimant established that she belonged to a classification of workers represented by a certified union and that she reported to that union's placement service. This demonstrated an active search for work.

Membership AA 475.5
No decision

Remuneration AA 475.65
No decision

Restriction as to Type of Work AA 475.85
No decision

Working Permit AA 475.97
No decision

Wages AA 500
General AA 500.05

ISSUE/DIGEST CODE	**Able and Available/AA 500**
DOCKET/DATE	**83-BRD-13747/11-23-83**
AUTHORITY	**Section-500C**
TITLE	**Wages**
SUBTITLE	**Preference Or Restriction**
CROSS-REFERENCE	**None**

The claimant last worked as a bank teller at a final wage of $5.75 per hour. After four months of unemployment, the claimant stated that she could accept work that paid a minimum of $8.00 per hour during the period under review. Two weeks later, the claimant stated that she would accept work that paid a wage of $5.75 per hour.

HELD: In view of her previous wages, the claimant unduly restricted the wage she was willing to accept during these weeks. She did not lower the minimum wage she was willing to accept until after the two week p claimant meets ew. She is held to be unavailable for work within the meaning of the Act during the period under review because of the restriction and is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 500**
DOCKET/DATE	**ABR-85-4128/10-28-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Wages**
SUBTITLE	**Imposing a Condition Not Related to the Work**
CROSS-REFERENCE	**AA 155.15, Domestic Circumstances**

The claimant's work experience consisted of 2 years of various assignments, obtained through a temporary employment placement agency, for which she was paid $5.25 per hour. The claimant stated that, during the period under review, she would accept similar work only if it paid $7 or $8 per hour, so that she could afford a baby sitter for her 3 young children.

HELD: When a worker imposes wage demands which materially reduce her possibilities of obtaining suitable work, such demands constitute an undue restriction, and render her unavailable for work. Generally, a worker's personal financial problems bear no relationship to the suitability of work.

In the instant case, the claimant placed an undue restriction upon her employability by stipulating a minimum acceptable wage, which bore no relationship to her training or experience and which she could not reasonably expect to receive. She was unavailable for work within the meaning of Section 500C.

ISSUE/DIGEST CODE	**Able And Available/AA 500.05**
DOCKET/DATE	***Eddings (and Lee) v. IDOL*, 146 Ill. App. 3d 62**
AUTHORITY	**Section 500C of the Act**
TITLE	**Wages**
SUBTITLE	**Reduction**
CROSS-REFERENCE	**AA 160.25, Effort to Secure Employment, Refusal of Work**

The claimant was laid off from her job as a High School Teacher with the Chicago Board of Education. During the ensuing weeks, she directly contacted private and public educational institutions, as well as the Chicago Board of Education's personnel department, in the hope of obtaining suitable work as a Teacher.

She did not contact the Chicago Board of Education's Substitute Teaching Center. A representative of the Chicago Board of Education testified that, from a list of 5,000 substitute teachers, an average of 2,000 were called for work each day. Day-to-day substitute teachers were paid at an approximately 40% reduction in salary.

A Referee denied benefits, concluding that, although the claimant had otherwise conducted a good work search, she had failed to contact the Sub Center where work was available.

HELD: Whenever an individual fails to apply for work as directed by an employer, a determination must be made with respect to her availability, giving consideration to the suitability of the job opportunity. Work in the individual's usual occupation or work for which she is reasonably qualified by prior training or experience is suitable work, provided the conditions of the work are not substantially less favorable than those prevailing on her last job or for similar work in the locality.
Here, the claimant should not have been denied benefits, because the school system would have committed her to the uncertain status of a day-to-day substitute at an approximately 40% reduction in salary. That employment was substantially less favorable than the claimant's previous employment as a higher-salaried full-time teacher. Because the claimant otherwise actively sought work, she met the eligibility requirements of Section 500C.

Work, Nature of AA 510
General AA 510.05
No decision

Customary AA 510.1
No decision

Essential AA 510.15
No decision

Home Work AA 510.25
No decision

Inside or Outside AA 510.3
No decision

Light or Heavy AA 510.35
No decision

Preferred Employer or Employment AA 510.4
No decision

Veteran's Reemployment AA 510.5
No decision

Working Conditions AA 515
General AA 515.05
No decision

Fellow Employee AA 515.4
No decision

Morals AA 515.5
No decision

Prevailing; or Consistent with Labor Standards AA 515.55
No decision

Safety AA 515.65
No decision

Seniority AA 515.75
No decision

Temperature or Ventilation AA 515.85
No decision

Weather or Climate AA 515.95
No decision

MISCELLANEOUS

Miscellaneous MS 5
General MS 5.05

ISSUE/DIGEST CODE	**Miscellaneous/MS 5**
DOCKET/DATE	**ABR-86-9198/5-21-87**
AUTHORITY	**Section 240 of the Act**
TITLE	**Miscellaneous**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was disqualified for benefits under Section 601A, Voluntary Leaving. In support of his appeal to the Board of Review, he stated:

> I can't understand why I am not going to receive my unemployment compensation. I paid into it, but can't get it when I need it.

HELD: In response to the point often raised by claimants, that benefits should be allowed because they, as workers, paid into the unemployment insurance fund, it must be pointed out that deductions made from workers' wages in Illinois are made pursuant to the Old Age and Survivors Insurance program of the Federal Social Security Act, and for Federal and State Income Tax purposes, and have no connection with Illinois' Unemployment Insurance program.

The Unemployment Insurance program is paid for by employers' "contributions." Contributions are the money payments required from employers for the purpose of paying benefits. Benefits are then paid to individuals who meet all the statutory requirements.

Benefit Computation Factors MS 60
General MS 60.05

ISSUE/DIGEST CODE	**Miscellaneous/MS-60.05**
DOCKET/DATE	**ABR-07-4472**
AUTHORITY	**Section 900 of the Act; Trade Act of 1974-Trade Readjustment Assistance (TRA)**
TITLE	**Construction of Statutes**
SUBTITLE	**Benefit Computation Factors/General**
CROSS-REFERENCE	**MS-95.15: Construction with Reference to Other Statutes; MS-340.2: Misrepresentation/Overpayments or Restitution**

The claimant was laid off from work on July 14, 2005, filed a claim for unemployment benefits the next day, and was awarded weekly benefits of $208.00, including a dependents' allowance. After returning to work, the claimant was again laid off on April 7, 2006, filed for benefits on April 12, 2006, and was granted weekly unemployment benefits of $449.00, including dependents' allowance. The claimant collected her regular unemployment benefits until she exhausted them during the week ending October 14, 2006. Pursuant to the Trade Act of 1974, the claimant began collecting Trade Readjustment Assistance (TRA) benefits of $449.00 weekly, including dependents' allowance, on October 15, 2006 and continued receiving them through December 23, 2006. The claimant's employer was first certified as an affected employer under the Trade Act of 1974 on March 22, 2005.

HELD: Under the Trade Act of 1974, an individual's weekly TRA benefit payment is based on the individual's first qualifying separation from work after the impact date cited in the petition certification covering the adversely affected worker. Here, the claimant's first qualifying separation from employment with the impacted employer occurred on July 14, 2005, which was after the impact date cited in the certification dated March 22, 2005. When she applied for benefits after that first separation from work, she received a weekly benefit amount of $208.00, including dependents' allowance. This is the amount she should have received when she began receiving TRA benefits, rather than $449.00 per week which she, in fact, received. Therefore, the claimant was overpaid.

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.05**
DOCKET/DATE	***The Western and Southern Life Insurance Company v. Edmonson, et. al,* 397 Ill.App.3d 146, 337 Ill.Dec. 556, 922 N.E.2d 1133 (1st Dist., 2009); Leave to Appeal Denied at 236 Ill.2d 547, 341 Ill.Dec. 206, 930 N.E.2d 416 (Table) (3/24/10)**
AUTHORITY	**Section 228 of the Act**
TITLE	**Benefit Computation Factors**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimants were discharged from their positions as insurance sales agents by the employer and subsequently applied for, and received, unemployment benefits. In its appeal to the Referee, the employer argued that the claimants were not eligible for benefits because they could not be considered employees pursuant to Section 228 of the Illinois Unemployment Insurance Act (the "Act"), which states that "[T]he term 'employment' shall not include services performed by an individual as an insurance agent or insurance solicitor, if all such services performed by such individual are performed for remuneration solely by way of commission." The Referee, finding that the claimants received remuneration in the form of guaranteed minimum payments, paid holiday, vacation and sick days, health and retirement benefits, and bonuses and prizes, were not remunerated "solely by way of commission" and, thus, were not prohibited by Section 228 from receiving benefits. The employer appealed this decision to the Board of Review and the circuit court, both of which affirmed the Referee. The employer then appealed the matter to the appellate court.

HELD: The appellate court found that: (1) the guaranteed minimum payments to the claimants were remuneration other than commission, which removed the their services from the Section 228 exemption, even though the payments were made prior to the claimants' applicable base periods; (2) the paid holidays, vacation and sick days constituted remuneration other than commission, regardless of whether the payments they received during their time off was from a commission pool and not from the employer, itself; (3) the health and retirement benefits constituted remuneration other than commission, even if these payments did not qualify as "wages" under the Act; and, (4) the bonuses and prizes constituted remuneration other than commission, irrespective of whether such gifts were made before the agents' respective base periods, or were obtained from their sales managers, instead of being directly obtained from the employer. Consequently, the appellate court held that the claimants were not exempt pursuant to Section 228 of the Act and were properly granted benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.05**
DOCKET/DATE	***Unity Christian School of Fulton, Illinois v. Rowell*, 6 N.E.3d 845, 379 Ill.Dec. 517 (3rd Dist. 2014)**
AUTHORITY	**Section 211.3(A) of the Act**
TITLE	**Miscellaneous**
SUBTITLE	**Coverage under the UI Act**
CROSS-REFERENCE	**None**

The employer operates a private school that provides Christian-based education. The employer is incorporated as a separate not-for-profit corporation, rather than being incorporated as part of a church. The Department determined that the employer and its employees were covered under the UI Act. The employer claims to be exempt from coverage under Section 211.3(A) because it operates primarily for religious purposes and is supervised, controlled for principally supported by a church or convention or association of churches.

The Director held that the exemption under Section 211.3 did not apply to the employer because the school was separately incorporated apart from the church and the curriculum is primarily secular in nature. The circuit court reversed the Director's decision and the Department appealed.

HELD: The primary purpose of the school is to teach secular subjects in a faith-based environment. Therefore, the Appellate Court held that the employer operated for primarily religious purposes. However, the employer failed to prove that it was operated, supervised, controlled, or principally supported by a church because the employer failed to provide evidence that the school is still principally supported by the churches. The Director's decision was confirmed and the case was remanded to the circuit court for further proceedings.

Base Period MS 60.1

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.1**
DOCKET/DATE	**ABR-88-2910/8-25-88**
AUTHORITY	**Sections 500E and 614 of the Act**
TITLE	**Benefit Computation Factors**
SUBTITLE	**Base Period**
CROSS-REFERENCE	**MS 70.05, Citizenship or Residence Requirements**

The claimant entered the United States illegally. On June 23, 1987, he applied for amnesty under the Immigration Reform and Control Act.

The claimant had worked throughout his base period: October 1, 1986 through September 30, 1987. His wages for the period June 23 through September 30 totaled more than $1600. His wages for the period June 23 through June 30 totaled less than $440.

HELD: Section 614 provides that an alien is ineligible for benefits based upon wages unless he was lawfully admitted for permanent residence or was permanently residing in the United States under color of law. In this case, the claimant was not residing in the United States under color of law until he applied for amnesty on June 23. Therefore, only his wages from that date forward could be used to establish benefit rights.

Section 500E provides that an individual is ineligible for benefits unless, during his base period, he was paid wages for insured work totaling at least $1600, with at least $440 being outside his highest paid quarter. In this case, the claimant's base period wages totaled more than $1600. But wages were paid in only 2 quarters. The higher quarter was July 1 through September 30. Outside that quarter, the claimant did not earn at least $440. Consequently, he was monetarily ineligible for benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.1**
DOCKET/DATE	***Charles F. Hlinka v. IDES*, No. 87-1239 (1988)**
AUTHORITY	**Sections 500E of the Act**
TITLE	**Benefit Computation**
SUBTITLE	**Base Period**
CROSS-REFERENCE	**MS 95.1/.2, Construction of Statutes**

The claimant was the president and sole stockholder of a corporation. Though he worked throughout the calendar year, he did not determine what his salary would be or draw any salary until the 4th quarter. In the 4th quarter of 1984, he drew a salary of $10,000. During the 4th quarter of 1985, the corporation was dissolved, after which the claimant filed for unemployment benefits.

The claimant's base period consisted of the last 2 quarters of 1984 and the first 2 quarters of 1985.

HELD: Section 500E of the Act provides that an individual shall be eligible for benefits only if:

(1) during his base period, he was paid wages totaling at least $l,600, and

(2) outside the quarter of his base period in which wages paid were highest, he was paid wages totaling at least $440.

The plain unambiguous language of Section 500E requires that wages be paid at a certain level during at least 2 quarters of a claimant's base period. Section 500E does not permit wages to be prorated over an entire base period. Section 500E does not permit engrafting any exception which would allow a claimant to avoid the two-fold requirement. A court is not warranted in reading into the statute an exception which the legislature did not see fit to make.

In this case, the claimant was paid $10,000 during his base period; this was more than the $l,600 required during the base period. However, the $10,000 was paid entirely during 1 quarter. The claimant was not paid wages outside that highest quarter. Therefore, he did not meet the Section 500E eligibility requirements and was not entitled to unemployment benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.1**
DOCKET/DATE	***Castillo v. Jackson*, 594 N.E.2d 323 (1992)**
AUTHORITY	**Section 500E and 614 of the Act**
TITLE	**Benefit Computation Factors**
SUBTITLE	**Base Period**
CROSS-REFERENCE	**MS 70.05, Citizenship or Residence Requirements**

The claimants sought judicial review of a decision of the Board of Review. The Board found that the claimants were not monetarily eligible for benefits under Section 500E of the Act due to the operation of Section 614. Section 614 provides that an alien is ineligible for benefits based upon wages earned in a period unless he was lawfully admitted for permanent residence or was permanently residing in the United States under color of law during that period. The Board found that the claimants were not residing in the United States under color of law until they formally applied for amnesty under the Immigration and Reform and Control Act (IRCA). The circuit court affirmed. The appellate court reversed, holding that aliens who applied for and established prima facie cases of entitlement to amnesty pursuant to IRCA were permanently residing in the United States under color of law as of November 6, 1986, the effective date of IRCA. The Illinois Supreme court affirmed.

HELD: The court stated that the amendment to Section 614 disqualifying aliens living in Illinois was enacted to conform with federal requirements. It adopted the interpretation of "permanently residing in the United States under color of law" (PRUCOL) given by leading federal appellate court decisions in interpreting Section 614. It rejected the interpretation of PRUCOL given by the United States Department of Labor and to the Department's adherence to the Department of Labor's interpretation. The court accordingly included wages earned by the claimants for periods after November 6, 1986, the effective date of IRCA. If these wages were included, the claimants were monetarily eligible under Section 500E. The Department of Employment Security had excluded all wages earned during the period before the claimants had formally applied for amnesty under IRCA on the grounds that they did not satisfy the PRUCOL criteria.

ISSUE/DIGEST CODE	**Miscellaneous/MS-60.1**
DOCKET/DATE	**AR 78-L-159**
AUTHORITY	**Section 237 of the Act**
TITLE	**Benefit Computation Factors**
SUBTITLE	**Base Period**
CROSS-REFERENCE	**None**

On January 24, 1978, shortly before closing time, the claimant visited a Local Office of the Department of Employment Security and asked the claims taker when the base period would change. The claims taker responded that she did not know and that it is not known when they change. When he asked to speak with someone who might give him more information, he was advised that the Claims Adjudicators had left for the day and there was nobody with whom he could speak. He proceeded to file a claim at that time and was assigned a base period running from July 1, 1976 through June 30, 1977 and granted a weekly benefit amount of $37 plus a $13 dependents' allowance. Early in February, 1978, he spoke with a Claims Adjudicator who told him that base periods change the first day of February, May, August and November of each year. The claimant appealed the base period and weekly benefit amount of his claim filed on January 24, 1978 when he learned that a different base period and a higher weekly benefit amount would have been assigned to him, if he had filed his claim on February 1, 1978. In his appeal, the claimant asserted that the Local Office personnel had an obligation to advise him that he would receive a higher weekly benefit amount if had file his claim on February 1, 1978.

HELD: The Board of Review found that neither the UI Act, nor the rules issued thereunder, impose an obligation on the agency to advise a claimant as to the most monetarily advantageous claim-filing date. The only obligation the agency has is to correctly determine the benefit year, the base period and the weekly benefit amount, in accordance with Sections 237, 242 and 500(E) of the Act, based on the date a claimant files a valid claim for benefits. This was done in the instant case.There is no provision in the Act which would authorize the agency to ignore the date the claimant validly filed a claim for benefits and substitute another date merely to allow a claimant to be eligible for higher weekly benefit amount. The claimant is bound by the date, January 24, 1978, and to the benefit year, base period and consequent weekly benefit amount specified by the UI Act as applicable to that filing date.

ISSUE/DIGEST CODE **Miscellaneous/MS-60.1**
DOCKET/DATE **AR 78-L-216**
AUTHORITY **Section 237 of the Act**
TITLE **Benefit Computation Factors**
SUBTITLE **Base Period**
CROSS-REFERENCE **None**

The claimant was released from his job on May 15, 1977. Under the union contract, grievances had to be resolved within 90 days, but the employer delayed the procedure until January 16, 1978, when an arbitrator decided in the claimant's favor and he was reinstated in his job without back pay. The claimant contends that this delay, which was not his fault, resulted in him receiving a smaller weekly benefit amount because it prevented him from being reinstated sooner and earning wages in the third and fourth quarters of his base period. On appeal, he contends that he is entitled to the higher weekly benefit amount he would have gotten had he been reinstated sooner and, if necessary for that purpose, his base year should be moved back to a period when he was working full time. The claimant filed his claim for benefits on September 11, 1978.

HELD: A claimant's benefit year and base period are determined in accordance, respectively, with Sections 242 and 237 of the UI Act. The date a claimant files a valid claim for benefits sets in motion these two provisions. Here, the claimant filed his claim on September 11, 1978. Based on this date, the evidence in the record shows that the agency properly determined the claimant's benefit year and base period and correctly calculated the claimant's weekly benefit amount. The agency had no authority to use a different filing date other than the date on which the claimant filed his valid claim for benefits.

ISSUE/DIGEST CODE **Miscellaneous/MS-60.1**
DOCKET/DATE **AR 81-L-213**
AUTHORITY **Section 237 of the Act**
TITLE **Benefit Computation Factors**
SUBTITLE **Base Period**
CROSS-REFERENCE **None**

The claimant was laid off from her job on Friday, September 5, 1980. Over the weekend, she started a part time job with a hospital on an on-call basis. On Monday, September 8, 1980, she went to the Local Office to inquire as to what benefits she might draw if she were to be called for only one or two days per week. The claimant testified at the hearing that she informed the claims taker that she did not wish to file a claim for benefits but only wished to inquire as to possible benefits. Nonetheless, the claimant signed a claim application form which established a benefit year beginning September 7, 1980. The claimant subsequently quit her part time hospital job in January, 1981, to accompany her husband to South Dakota, where he was starting a new job. The claimant filed a claim for benefits and was told that she had been assigned a benefit year and attendant base period as of September 7, 1980. In her appeal, the claimant asserted that her benefit year should have begun in January, 1981, with an attendant base period from July 1, 1979 to June 30, 1980.

HELD: The Board of Review rejected the claimant's assertion. According to the Board, the claimant commenced a claim by filling out and signing a claim for benefits on September 8, 1980, notwithstanding her statement to the claims taker that she did not wish to file a claim. Her claim was valid because, within the base period assigned to her under Section 237 of the UI Act, the claimant had sufficient wages to make her monetarily eligible for benefits pursuant to Section 500(E) of that UI Act. The claim, benefit year and base period were properly established in accordance with the Act and rules promulgated thereunder.

ISSUE/DIGEST CODE **Miscellaneous/ MS-60.1**
DOCKET/DATE ***Martin v. Department of Employment Security*, 376 Ill.App.3d 853, 315 Ill.Dec. 790, 877 N.E.2d 1119 (5th Dist., 2007)**
AUTHORITY **Section 611 of the Act**
TITLE **Receipt of Other Payments**
SUBTITLE **Benefit Computation Factors/Base Period**
CROSS-REFERENCE **MS-375.25: Old-Age and Survivors Insurance**

The claimant began receiving social security retirement income in 1999. From September 19, 2004 until August 17, 2005, the plaintiff was employed by Wal-Mart. Following her discharge, she applied for unemployment insurance benefits. Pursuant to Section 611(A)(2) of the Act, the claims adjudicator found the claimant ineligible for benefits because the plaintiff was receiving 50% disqualifying income in the form of social security retirement benefits. The claims adjudicator's determination was affirmed by the Referee and the Board of Review. The Board's decision was affirmed by the circuit court and the claimant

appealed, asserting that her social security retirement payments should not be considered disqualifying income because Wal-Mart was not her Abase-period employer since (1) the social security benefits she received were based upon her employment with other employers prior to her retirement in 1999, and (2) her social security benefits did not change as a result of her employment with Wal-Mart in 2004.

HELD: The court held that the claimant's argument was based on the mistaken premises that (1) the term base period encompasses only the years during which an employee worked prior to beginning to receive social security retirement benefits and (2) that a base-period employer can only be an employer that contributed to an employee's future social security retirement benefits prior to that employee becoming eligible for those benefits. The court noted that the term Abase period is defined in Section 237(A) of the Act as the period of time examined to determine whether the claimant earned sufficient wages to qualify for unemployment benefits and, if so, the amount of those benefits. It was undisputed that Wal-Mart was the employer who paid the claimant wages during the claimant's base period and, thus, was the plaintiff's base-period employer. Since the claimant received wages from Wal-Mart during her base period and Wal-Mart paid Social Security taxes on these wages, Section 611(A)(2) mandated that half of the claimant's social security retirement benefits be deemed disqualifying income, which thereby rendered the claimant ineligible for unemployment benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.1**
DOCKET/DATE	**ABR-24-20538/7-30-24**
AUTHORITY	**Sections 500E and 612 of the Act**
TITLE	**Chargeability**
SUBTITLE	**Base Period**
CROSS-REFERENCE	**Miscellaneous/MS 95.2 Construction of Statutes**

Claimant worked for a private employer during her entire base period. She was monetarily eligible for unemployment benefits, pursuant to Section 500E of the Act, based upon wages paid to her by the private employer during the qualifying quarters of her base period. On or about 04/29/2024, Claimant was hired to work as an Administrative Assistant for the employer, an educational institution, during the 2024-2025 academic school year; hence, she had a reasonable assurance of returning to work after the scheduled summer vacation period. On 05/28/2024, the school went on summer break and the claimant applied for unemployment benefits. Claimant was allowed by the Local Office and the administrative law judge, and the employer appealed.

HELD: Section 612 of the Act provides that when an individual has employment in an educational institution or educational service agency in the first of two successive academic years or terms or immediately prior to a vacation period or holiday recess, and the individual has reasonable assurance of returning to such employment in the second year or term or immediately following the vacation or holiday period, the individual shall be ineligible to receive benefits during the intervening period between academic years or terms, or during the vacation period or holiday recess. However, the foregoing provisions do not apply when the claim for benefits is based on wages for insured work in non-educational employment during the applicable base period. In the instant case, Section 612 of the Act would have applied to disqualify the claimant from benefits in between terms if she had wages paid to her by an educational institution during her base period. Since the claimant was not paid wages by an educational institution during her base period, Section 612 does not apply in this matter and the claimant is entitled to benefits under the Act.

It is also noted that, under Section 2765.333 of the Rules, whenever the individual's last employer is an educational institution, then the educational institution shall not be liable for benefit charges on the basis of benefits paid to that individual during the period between two consecutive academic years or terms if the individual has a reasonable assurance that he or she will perform service in any capacity for any educational institution or educational service agency in the second of the academic years or terms. Since the claimant briefly worked for the employer immediately prior to summer break, the employer is not liable for the benefit charges paid to the claimant in between academic years or terms, if the claimant has a reasonable assurance that she will continue to perform services for the employer in the next academic year or term.

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.1**
DOCKET/DATE	***Campbell v. Board of Review*, 570 N.E. 2d 812 (1991)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Benefit Computation**
SUBTITLE	**Academic Personnel**
CROSS-REFERENCE	**MS 410.05, Seasonal Employment; PR 380.25, Review**

The claimant worked as a part-time teacher at Prairie State College in fall, 1984; at Chicago State University in fall, 1984, and in spring, 1985; and at Columbia College in spring, 1983 through 1985, and in fall, 1984.

He filed a claim for unemployment benefits during the summer, 1985. In order to show that he could not be held ineligible under Section 612, he submitted a post-dated letter from Columbia College, which indicated that, generally, there was no guaranteed work for part-time teachers; *e.g.*, there would be no work if there was no full enrollment in a course; if a full-timer did not have full enrollment, he could bump a part-timer who did; etc.

HELD: Section 612 of the Act provides, in pertinent part, that an individual will be ineligible between terms if there is a reasonable assurance that he will perform work for any educational institution in the upcoming term.

Section 612 makes no distinction between full-time and part-time teachers. Section 612 refers to "any" educational institution and is not limited to consideration of work at one particular institution. Further, whether there is a reasonable assurance depends upon facts as well as representations.

The claimant, even though he was a part-time teacher, was subject to Section 612. The facts showed that, despite the lack of guaranteed work, he had always been able to obtain work during fall terms, at one educational institution or another. Therefore, he had a reasonable assurance of working the next fall.

The claimant was ineligible for benefits during the summer between terms.

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.1**
DOCKET/DATE	***Christine Doran v. IDOL*, 452 N.E. 2d 118 (1983)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Benefit Computation**
SUBTITLE	**Academic Personnel**
CROSS-REFERENCE	**MS 95.2, Construction of Statutes; MS 410.05, Seasonal**

From 1970 through 1980, the claimant taught during her school's 39-week academic term then through its 8-week summer session. Then, on June 26, 1980, at the end of 39 weeks, she was told that, due to budgetary considerations, the school would not be offering the 8-week summer session and her services would not be needed until the following autumn. So the claimant filed for unemployment benefits for that 8-week period.

The Department held that, because the claimant filed for benefits for a period between academic terms, she was ineligible under Section 612. The claimant contended that this was not a period between terms, but a portion of what would have been her customary 47-week term.

HELD: Section 612 provides, in pertinent part, that an individual shall be ineligible for benefits between "regular academic terms." What constitutes a regular academic term is determined by the legislature, not by a claimant's particular circumstances.

The legislature has defined regular academic term - not in the Unemployment Insurance Act, but in the School Code. The School Code provides that each school board shall prepare a calendar for the school term (consisting of a required number of school days, or, at this time, 39 weeks). Pursuant to its delegated authority, the claimant's school board adopted a calendar that complied with the definition by providing for 39 weeks of school. The fact that the school board did or did not offer a summer session was immaterial; the 39-week period was the regular academic term intended by the legislature.

The claimant worked until the end of the regular academic term. She filed for benefits for a period between that term and her next regularly scheduled term. Therefore, she was ineligible under Section 612.

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.1**
DOCKET/DATE	***Brent Davis v. Board of Review*, 477 N.E. 2d 842 (1985)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Benefit Computation**
SUBTITLE	**Academic Personnel**
CROSS-REFERENCE	**MS 95.1, Construction of Statutes; MS 410.05, Seasonal**

The claimant was employed as a School Teacher during the 1981-1982 school year. In June, 1982, when the school term ended, he did not have a contract with the district to teach during the upcoming 1982-1983 school year. He applied for and began receiving unemployment benefits. Although, on July 18, 1982, he signed a contract to teach in the district during the 1982-1983 school year, he continued to receive unemployment benefits until he actually started teaching on August 23, 1982.

The issue presented was whether the claimant was entitled to the benefits he received after his contract had been approved.

HELD: section 612 of the Act states, in pertinent part:

> An individual shall be ineligible for benefits, on the basis of wages for service in employment...for an educational institution, *for any week*...during a period between academic years...if the individual performed such service in the first of such academic years...and if there is a contract or a reasonable assurance that the individual will perform service in any such capacity...in the second of such academic years...(court's emphasis.)

Section 612 is clear and unambiguous. A teacher's eligibility is determined on a weekly basis. During any week in which a teacher has a contract or reasonable assurance of employment during the upcoming school year, the teacher is not eligible to receive unemployment benefits.

Therefore, as soon as the claimant's contract for the 1982-1983 school year was approved, he was not entitled to receive unemployment compensation. Accordingly, the benefits he received thereafter were subject to recoupment.

Base Period, Alien Wage Credits MS 60.12

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.12**
DOCKET/DATE	**ABR-85-9661/6-3-86**
AUTHORITY	**Section 614 of the Act**
TITLE	**Benefit Computation**
SUBTITLE	**Base Period, Alien wage Credits**
CROSS-REFERENCE	**MS 70.05, Citizenship or Residence Requirements**

In a proceeding under the Immigration and Nationality Act, the claimant, who was not a United States citizen, was determined to be a deportable person. She applied for voluntary departure in lieu of deportation and was directed to depart the United states by October, 1979. The claimant was then granted extensions: first, until November, 1979, then until May, 1980, then until November, 1980, then until May, 1981, and, finally, until March, 1982.

The claimant filed a claim for benefits for the period September 1, 1985 through September 15, 1985.

HELD: Section 614 of the Act provides, in pertinent part, that:

An alien shall be ineligible for benefits...on the basis of wages for services performed...unless the alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law.

In the instant case, since the claimant filed a claim for benefits effective September 1, 1985, she would have had to have earned qualifying wages for services performed between July, 1984 and June, 1985 (the base period). However, during that base period, the claimant was in the United States illegally and was not authorized to work. Therefore, the claimant did not earn qualifying wages. She was ineligible for benefits under Section 614.

Benefit Year MS 60.15

ISSUE/DIGEST CODE	**Miscellaneous/MS-60.15**
DOCKET/DATE	**ABR-84-9829**
AUTHORITY	**Section 242 of the Act**
TITLE	**Benefit Computation Factors**
SUBTITLE	**Benefit Year**
CROSS-REFERENCE	**None**

The claimant was laid off from his job and filed a claim for benefits on June 28, 1984. It was determined at that time that his benefit year commenced on July 1, 1984, with a corresponding base period extending from February, 1983 through January, 1984. Based on his wages during his base period, he was awarded a weekly benefit of $51.00. At the hearing before the Referee, the claimant testified that there were rumors that the employer would institute massive layoffs in October, 1984 and, had he known the manner his weekly benefit amount was derived, he would have waited to file his claim because it would have resulted in a higher weekly benefit amount. In his appeal, the claimant asked that his claim filed on June 28, 1984 be deleted and that he be allowed to refile a new claim which would commence a more advantageous benefit year for his unemployment insurance.

HELD: The Board of Review refused the claimant's request to be allowed to refile his claim because his claim filed on June 28, 1984 was a valid claim since he met the monetary eligibility requirements established in the UI Act. Based on the date that he filed a valid claim, Section 242 of the Act required that his benefit year begin on July 1, 1984. Since the designation of the beginning of an individual's benefit year is made by statute, there is no authority or discretion to fix any other date other than that specified in the Act. Local Office personnel are not required to advise individuals as to which date should be chosen for the filing of a claim.

Disqualification Period MS 60.2
No decision

Duration of Benefits 60.25
No decision

ISSUE/DIGEST CODE	**Miscellaneous/MS 60.4**
DOCKET/DATE	**84-BRD-295/1-10-84**
AUTHORITY	**Section 607B of the Act**
TITLE	**Benefit Computation Factors**
SUBTITLE	**Work Requirements for Second Benefit Year**
CROSS-REFERENCE	**None**

The claimant exhausted his benefits and filed for a second benefit year, indicating that during the prior benefit year he had been paid cash, with no deductions for FICA or income taxes, for repairing his friends' automobiles. The payments totaled more than 3 times his current weekly benefit amount.

HELD: Section 607B provides, in pertinent part, that an individual shall be ineligible for benefits unless he earns 3 times his current weekly benefit amount from bona fide work. The term "bona fide work" does not necessarily require an employer-employee relationship or that services constitute "employment" under the Act, but it does mean work performed in good faith, not merely to requalify for unemployment benefits. Here, the claimant performed work on a casual basis for friends and it is reasonable to conclude it was solely for the purpose of requalifying for benefits. Therefore, it was not bona fide work and he did not requalify for benefits.

$241.00 per week while receiving TRA benefits and this overpayment was subject to recoupment and/or recovery.

Citizenship of Residence Requirements MS 70
General MS 70.05

ISSUE/DIGEST CODE	**Miscellaneous/MS 70.05**
DOCKET/DATE	**ABR-85-3327/9-20-85**
AUTHORITY	**Section 614 of the Act**
TITLE	**Citizenship or Residence Requirements**
SUBTITLE	**Evidentiary Standard**
CROSS-REFERENCE	**None**

The claimant entered the United States from Mexico in 1972 and became employed in the United States in 1973. The claimant worked as a Machine Operator for 11 years until her employer went out of business in 1984. The claimant then filed for unemployment benefits. Benefits were denied to the claimant, under Section 614 of the Act, because of the claimant's alien status: The claimant had been an alien during the base period of the benefit year for which her benefit claim had been filed.

At her appeal hearing, the claimant presented a *Silva* letter, dated September, 1977, which had granted her permission to remain in the United States and which had authorized her employment. The claimant testified that subsequent to the issuance of the *Silva* letter she never received any notification that the permission or authorization granted by the *Silva* letter had been revoked.

HELD: The Illinois Unemployment Insurance Act provides that an alien shall be ineligible for benefits on the basis of wages for services performed by such alien, unless the alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law. The Act further provides that no determination shall be made that such individual is ineligible for benefits pursuant to this Section because of the individual's alien status except upon a preponderance of the evidence.

In the instant case, although the evidence showed that the claimant was an alien during the base period of her benefit year, the claimant produced acceptable documentation which was apparently valid on its face and apparently authorized the claimant's employment. Therefore, it was not established by a preponderance of the evidence that the claimant was not permanently residing in the United States under color of law. Accordingly, the claimant was not subject to a disqualification.

ISSUE/DIGEST CODE	**Miscellaneous/MS 70.05**
DOCKET/DATE	**ABR-85-9661/6-3-86**
AUTHORITY	**Section 614 of the Act**
TITLE	**Citizenship or Residence Requirements**
SUBTITLE	**Qualifying Wages During Base Period**
CROSS-REFERENCE	**MS 60.12, Benefit Computation, Alien Wage Credits**

In a proceeding under the Immigration and Nationality Act, the claimant, who was not a United States citizen, was determined to be a deportable person. She applied for voluntary departure in lieu of deportation and was directed to depart the United States by October, 1979. The claimant was then granted extensions: first, until November 1979, then until May, 1980, then until November, 1980, then until May, 1981, and, finally, until March, 1982.

The claimant filed a claim for benefits for the period September 1, 1985 through September 15, 1985.

HELD: Section 614 of the Act provides, in pertinent part, that:

> An alien shall be ineligible for benefits...on the basis of wages for services performed...unless the alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law.

In the instant case, since the claimant filed a claim for benefits effective September 1, 1985, she would have had to have earned qualifying wages for services performed between July, 1984 and June, 1985 (the base period). However, during that base period, the claimant was in the United States illegally and was not authorized to work. Therefore, the claimant did not earn qualifying wages. She was ineligible for benefits under Section 614.

ISSUE/DIGEST CODE	**Miscellaneous/MS 70.05**
DOCKET/DATE	**ABR-88-2910/8-25-88**
AUTHORITY	**Sections 500E and 614 of the Act**
TITLE	**Citizenship or Residence Requirements**
SUBTITLE	**General**
CROSS-REFERENCE	**MS 60.1, Benefit Computation Factors, Base Period**

The claimant entered the United States illegally. On June 23, 1987, he applied for amnesty under the Immigration Reform and Control Act.

The claimant had worked throughout his base period: October 1, 1986, through September 30, 1987. His wages for the period June 23 through September 30 totaled more than $1600. His wages for the period June 23 through June 30 totaled less than $440.

HELD: Section 614 provides that an alien is ineligible for benefits based upon wages unless he was lawfully admitted for permanent residence or was permanently residing in the United States under color of law. In this case, the claimant was not residing in the United States under color of law until he applied for amnesty on June 23. Therefore, only his wages from that date forward could be used to establish benefit rights.

Section 500E provides that an individual is ineligible for benefits unless, during his base period, he was paid wages for insured work totaling at least $1600, with at least $440 being outside his highest paid quarter. In this case, the claimant's base period wages totaled more than $1600. But wages were paid in only 2 quarters. The higher quarter was July 1 through September 30. Outside that quarter, the claimant did not earn at least $440. Consequently, the claimant was monetarily ineligible for benefits.

Claims and Regulations MS 75
General MS 75.05

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.05**
DOCKET/DATE	***Williams v. Board of Review*, 395 Ill.App.3d 337, 335 Ill.Dec. 30, 917 N.E.2d 1094 (1st Dist., 2009); Rehearing Denied, 11/10/2009**
AUTHORITY	**Section 500(B) of the Act; Trade Act of 1974 [19 USC 2101] and 2002 Amendments; Code of Federal Regulations [20 CFR 617.10(b)]**
TITLE	**Claims and Registration**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

After her company closed down, the claimant applied for unemployment benefits on April 23, 2006, and began receiving benefits shortly thereafter. In October 2006, she learned from of friend about the federal Trade Readjustment Allowance (TRA) authorized by the Trade Act of 1974, as amended in 2002. TRA is available to a qualified worker who is enrolled in an approved training program by "the last day of the 16th week after the worker's most recent total separation from adversely affected employment [or] the last day of the 8th week after the week in which the Secretary [*i.e*. of the U.S. Department of Labor (USDOL)] issues a certification covering the worker." [19 USC 2291(a)(5), (2002 Supp.)] USDOL issued the requisite certification regarding the claimant's former employer on June 21, 2006. In Illinois, the Illinois Department of Employment Security (IDES) administers the TRA program as the USDOL's agent and, as a consequence, has the duty to advise workers about TRA benefits and the application deadlines. IDES never informed the claimant of these benefits. On December 12, 2006, the claimant applied for the TRA benefits and job training but was denied because her application was filed beyond the 8-week and 16-week deadlines described above.

HELD: Pursuant to 20 CFR 617.10(b), the appellate court found that IDES's failure to notify the claimant of TRA benefits provided the claimant with "good cause" for missing the application deadlines and held that the claimant was entitled to TRA benefits. The court remanded the matter back to the claims adjudicator to determine the amount of the claimant's TRA benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.05**
DOCKET/DATE	**ABR-09-11293/10-7-09**
AUTHORITY	**Section 500(B) of the Act; 56 Ill. Adm. Code 2720.120(b)**
TITLE	**Claims and Registration**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claims adjudicator issued a determination rejecting the claimant's request to backdate his claim certification and the claimant appealed. 56 Ill. Adm. Code 2720.112 provides allows a claimant to certify for benefits using the Department's "Teleserve" phone system. In the instant case, the claimant testified that he could not certify for benefits over the telephone because each time he called "Teleserve" he got a "busy" signal. According to Question 4 on Page 3 of the "Adjudication Summary" completed on April 19, 2009, *e.g*., "On what day did the circumstances no longer exist that prevented you calling in or certifying?", the claimant responded "March 9, 2009". The Referee found that the claimant failed to comply with 56 Ill. Adm. Code 2720.120(b) and affirmed the claims adjudicator. The claimant filed an appeal with the Board of Review.

HELD: 56 Ill. Adm. Code 2720.120(b) provides , in pertinent part, that "[I]f the Claim Certification is filed more than two weeks late but less than one year late, the Agency will process it if the claimant shows ...he filed his claim within 14 days after the reasons for the failure to file no longer existed." Here, the claimant learned on March 9, 2009 that the reasons for failure to certify no longer existed but did not file his Claim Certification until April 19, 2009, which was more than 14 days beyond the time period allowed by the Rule. Consequently, the Board of Review affirmed the Referee's decision not allowing the claimant to backdate his claim certification.

Backdating MS 75.1

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.1**
DOCKET/DATE	**ABR-87-4404/8-31-87**
AUTHORITY	**Section 500B of the Act**
TITLE	**Claims and Registration**
SUBTITLE	**Backdating**
CROSS-REFERENCE	**None**

The claimant, after being laid-off, did not file a claim for unemployment insurance benefits for 6 months. He was denied backdating of his claim covering that 6 month period.

At an appeal hearing, the claimant stated that he had been receiving severance pay during that 6 month period, and assumed he was thereby precluded from filing a claim for benefits. He testified that he had not contacted his Local Office to inquire about benefit entitlement. He testified that his former employer had not represented to him that he could not file a claim for unemployment benefits.

He did testify, however, that, at the time of his separation from work, he had requested that the employer's personnel director set forth his entitlement in writing, and that no mention was made of any entitlement to unemployment insurance benefits, further, he testified that when he asked the personnel director for his opinion as to whether the claimant would be eligible for unemployment benefits, the personnel director responded, "No."

HELD: Under Section 500B of the Unemployment Insurance Act, and Benefit Rule 2720.105, backdating of a claim will be allowed if the claimant's failure to file in a timely fashion was due to "Any act of any employing unit in coercing, warning, or instructing the individual not to pursue his benefit rights...."

The distinction must be made between an individual being advised not to file a claim for benefits, and that individual's knowledge or lack of same as to whether he could qualify for benefits. In this case, it was not shown that the employer conditioned the claimant's receipt of severance pay upon his promise not to file a claim for unemployment benefits. The personnel manager's statement that the claimant was not eligible for benefits was an opinion, offered in response to a question concerning qualifying for benefits, and did not amount to coercion, a warning, or an instruction to the claimant not to pursue his benefit rights. As the claimant testified, the employer had not represented to him that he could not file a claim for benefits.

Because the employer had not coerced, warned, or instructed the claimant not to pursue his benefit rights, the circumstances of the claimant's untimely benefit claim did not fall within the purview of conditions enumerated in Benefit Rule 2720.105 and did not allow for further consideration of his benefit claim during the period. Backdating was denied.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.1**
DOCKET/DATE	***Quinones v. Board of Review*, 432 N.E. 2d 894 (1982)**
AUTHORITY	**Section 500B of the Act**
TITLE	**Claims and Registration**
SUBTITLE	**Backdating**
CROSS-REFERENCE	**PR 430.15, Taking and Perfecting Proceedings for Review**

As a result of a class-action suit settlement, the claimant was to receive notice that she could file for extended unemployment insurance benefits. A letter dated June 30, instructing the claimant to report to her Local Office on July 12, was properly addressed but misdelivered, so that the claimant did not actually receive the letter until late July or August, after the report date had passed. Moreover, upon receiving the letter, the claimant did not understand it; she was Spanish-speaking and could not read English. It was not until October, after the substance of the letter had been explained to her by Legal Assistance Foundation, that the claimant reported to her Local Office, where she requested backdating of her claim so that she might file for extended benefits.

Regulation 17F (later promulgated as Benefit Rules 2720.105 and 2720.120) provided that backdating would be allowed, subject to enumerated conditions, if the claimant filed her claim within 14 days after the reason for failing to file no longer existed. The question then arose: Did the 14-day period begin to run from the claimant's receipt of the letter in late July or early August, in which case the claimant could not be allowed backdating; or did the 14-day period begin to run only from the time of the claimant's actual comprehension or interpretation of the letter, in October, in which case backdating would be allowed?

HELD: The narrow legal question before the appellate court was whether an inability to understand English excused late filing.

In *Hernandez v. IDOL*, 416 N.E. 2d 263 (1981) (*Digest of Adjudication Precedents*, PR 405.15), the Illinois Supreme Court ruled that an inability to understand English did not excuse an individual's failure to file an appeal in a timely fashion. Similarly, the appellate court held, the inability to understand English did not excuse late filing or permit backdating.

Moreover, an effective unemployment compensation system requires a measure of certainty in the application of its rules. Regulation 17F, itself a good-cause exception to the requirement that a claimant file on time, could not reasonably be expanded to include a further exception.

The receipt of the letter, notwithstanding the language problem, constituted effective notice. The claimant failed to file within the mandatory 14-day period, from the date of such effective notice. Backdating was denied.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.1**
DOCKET/DATE	**ABR-85-3897/10-17-85**
AUTHORITY	**Section 500B of the Act and 56 Ill. Adm. Code 2720.120**
TITLE	**Claims and Registration**
SUBTITLE	**Backdating**
CROSS-REFERENCE	**None**

The claimant became separated from work in January. By reason of that work separation, he was disqualified for benefits. He appealed his disqualification. While his appeal was pending, he received a Claim Certification form (for the weeks ending February 9 and February 16), containing the instruction:

> (C)ontinue to mail in certifications if you filed an appeal, even though you will not receive benefits until the appeal is decided --

and bearing a "Date to Mail" of February 17.

The claimant did not submit his Claim Certification form to the Agency until March 11, at which time he also completed forms for the period from February 17 to March 9. He stated that he had been unaware that he had been required to submit such certification forms during a period of disqualification.

HELD: Section 500B of the Unemployment Insurance Act requires, as a condition of eligibility, that a claimant make "a claim for benefits with respect to such week in accordance with such regulations as the Director may prescribe." Agency Rule 2720.120 provides, in pertinent part:

b) If the Claim Certification is filed more than two weeks late but less than one year late, the Agency will process it if the claimant shows:

1) The individual's unawareness of his rights under the Act; or,

2) Failure of either the employing unit or the Agency to discharge its responsibilities or obligations under the Act or the rules; or,

3) Any act of any employing unit in coercing, warning or instructing the individual not to pursue his benefit rights; or,

4) Other circumstances beyond the individual's control;

and the claimant shows he filed his claim within 14 days after the reasons for the failure to file no longer existed.

In the instant case, for the period February 3 through February 23, the claimant submitted his certification forms more than two weeks late. Because the date to mail and instructions had been issued to the claimant, he either knew -- or should have known -- how to pursue his benefit rights. Therefore, his failure to file a timely benefit claim was not due to "unawareness" as contemplated by the Rule, but due to his failure to proceed as a reasonably prudent person would under the same or similar

circumstances. As such, the circumstances of the claimant's untimely benefit claim did not fall within the purview of conditions enumerated in Rule 2720.120(b) which would allow for further processing of the claimant's benefit claim during the period.

However, with respect to the period from February 24, through March 9, the claimant submitted his certification form within two weeks of the due date and, as such, the Agency was empowered to process his benefit claim for that period.

ISSUE/DIGEST CODE **Miscellaneous/MS 75.1**
DOCKET/DATE **ABR-87-2114/2-24-88**
AUTHORITY **Section 500B of the Act**
TITLE **Claims and Registration**
SUBTITLE **Backdating**
CROSS-REFERENCE **None**

As part of the terms of his layoff, the claimant was entitled to receive 13-1/2 weeks of severance pay. The claimant testified that the employer's personnel manager told him not to file for unemployment insurance benefits until such time as the 13-1/2 weeks had expired and he had exhausted his severance pay. Consequently, the claimant did not file a claim for benefits immediately after his layoff but waited 13-1/2 weeks. Later, he learned that he could have filed for benefits immediately upon his separation from work and requested backdating of his claim.

HELD: Under Section 500B of the Unemployment Insurance Act, and Benefit Rule 2720.105, backdating of a claim will be allowed if the claimant's failure to file in a timely fashion was due to "Any act of any employing unit in coercing, warning, or instructing the individual not to pursue his benefit rights..."

In this case, the claimant's failure to file a timely benefit claim was due to reliance upon remarks made by his employer's personnel manager. The personnel manager's remarks were more than a mere opinion as to whether the claimant might or might not be eligible for benefits and were an instruction not to file what otherwise would have been a timely claim. (Compare: ABR-87-4404, this *Digest*, MS 75.1.)

The claimant's reason for failing to file a timely claim fell within the conditions set forth in Benefit Rule 2720.105. Accordingly, backdating was allowed.

ISSUE/DIGEST CODE **Miscellaneous/MS 75.1**
DOCKET/DATE **ABR-87-6431/1-5-88**
AUTHORITY **Section 500B of the Act**
TITLE **Claims and Registration**
SUBTITLE **Backdating**
CROSS-REFERENCE **None**

During his claim series, the claimant worked and was paid more than his weekly benefit amount. He became unemployed again. Instead of reporting to his local office immediately, he waited nearly 3 weeks before filing a claim for that period. This was despite instructions on his claim certification forms:

> If you worked during the two weeks shown on the certification and earned...more than your weekly benefit amount...and then became unemployed...you must report to your local office immediately. The claimant stated that he did not understand the instructions because he did not read very well. He contended that this should have excused his failure to report and file on time.

HELD: Section 500B requires that individuals file claims in accordance with the Director's rules. The Director's rules permit backdating only when an individual's failure to file is beyond his control. In this case, it was not beyond the claimant's control to seek assistance or take other reasonable measures to compensate for reading problems. Backdating was denied.

ISSUE/DIGEST CODE **Miscellaneous/MS 75.1**
DOCKET/DATE ***Bellan v. IDES*, 520 N.E. 2d 653 (1987)**
AUTHORITY **Section 500B of the Act and 56 Ill. Adm. Code 2720.120**
TITLE **Claims and Registration**
SUBTITLE **Backdating**
CROSS-REFERENCE **None**

In June, the claimant filed for unemployment benefits and was held ineligible. He appealed. While his appeal was pending, the Department did not mail him any claim certification forms, so he did not certify for benefits.

In September, the determination denying him benefits was reversed. He then went into his Local Office and requested backdating for the period from June through September.

HELD: Department Rule 2720.120 permits backdating in cases where the Department fails to discharge its responsibilities under the Act or the rules.

Department Rule 2720.115 provides that the Department will mail a claim certification form every 2 weeks.

In this case, the Department did not mail certification forms, as required. Because the Department did not discharge its responsibilities under the rules, backdating was allowed.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.1**
DOCKET/DATE	**ABR-24-27732-1-16-25**
AUTHORITY	**Section 500B of the Act**
TITLE	**Claims and Registration**
SUBTITLE	**Backdating**
CROSS-REFERENCE	**None**

Following the claimant's separation from work the claimant was told by her supervisor not to file for unemployment because she would soon be receiving a call or letter to return to work. The claimant waited to be called back to work and repeatedly called Human Resources every week to see about returning to work. She was repeatedly told that her return was up to her supervisor. After waiting a month with no word from her supervisor and no call or letter to return to work, the claimant applied for unemployment benefits and requested backdating her claim. Claimant was denied benefits and appealed. Denied by the administrative law judge the claimant appealed to the Board of Review.

HELD: Under Section 500B of the Unemployment Insurance Act, and Benefit Rule 2720.105, backdating of a claim will be allowed if the claimant's failure to file in a timely fashion was due to "Any act of any employing unit in coercing, warning, or instructing the individual not to pursue his benefit rights...."

In this case the claimant's delay in filing her initial claim for benefits was due to her being instructed not to file a claim for benefits by her supervisor. That she relied on her supervisor's statements and waited over a month to file for benefits expecting to be returned to work was not unreasonable. As soon as the claimant realized she was not going to return to work as advised by her supervisor, she filed her claim for benefits and requested backdating. Since the claimant produced a statutory reason for her delay in filing her initial claim for benefits, the claimant's request for backdating should be granted.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.1**
DOCKET/DATE	***Perez v. Dep't of Emp. Sec.*, 2023 IL App (1st) 221928-U**
AUTHORITY	**Section 500B of the Act**
TITLE	**Claims and Registration**
SUBTITLE	**Backdating**
CROSS-REFERENCE	**PR 275.05, Jurisdiction and Powers of Tribunal, PR 430.15, Taking and Perfecting Proceedings for Review**

Claimant was laid off on March 18, 2020, and filed for benefits. On March 27, 2020, IDES sent claimant a UI finding letter noting that she needed to certify for benefits. The letter indicated that the first certification date would be April 6, 2020. The letter contained instructions regarding how to certify using the internet or by calling the office. On December 8, 2020, claimant completed a backdating questionnaire for three certification dates that she missed in April and May 2020, explaining that she began certifying on May 18, 2020, and did not certify earlier because she did not know she needed to certify online every two weeks beginning on April 6, 2020. The local office denied the late certification. Claimant appealed. At the hearing claimant informed the referee that she called IDES before May but never reached anyone. Claimant stated that an IDES representative finally contacted her in December 2020, and told her to file a backdating questionnaire. Claimant also informed the referee that she initially believed the process for obtaining her unemployment benefits was automatic and she did not know that she needed to certify for the benefits until May. The referee affirmed the claims adjudicator's decision. Claimant appealed to the Board. The Board noted that IDES was not required to process claimant's late claim certification because her failure to certify for

benefits was not due to her unawareness of her rights any failure of IDES or her employer to discharge its responsibilities, any coercion, warning, or instruction not to pursue her rights, or circumstances beyond her control. Claimant appealed and the circuit court affirmed. Claimant appealed, asserting that she was unable to reach a representative of IDES by phone or receive assistance in person because the office was closed due to the COVID-19 pandemic. Claimant argued that the requirement to file her claim certification within 14 days after the reasons for the failure to file no longer existed should not apply due to the pandemic. Additionally, claimant argued that the UI finding letter did not specify a two-week "time limit" to file for back benefits, and she only learned about that rule "almost a year" later from the referee.

HELD: Under the Illinois Administrative Code, after the claimant has filed her initial claim, she must certify her continuing eligibility for each week she expects payment. IDES will send the claimant a claim certification form every two weeks, which the claimant must complete and file on the "Date to Mail" established by the form. If the claimant files a claim certification more than two weeks but less than one year late, IDES will still process the claim if the claimant shows:
1) The individual's unawareness of his or her rights under the Act;
2) Failure of either the employing unit or [IDES] to discharge its responsibilities or obligations under the Act or the rules;
3) Any act of any employing unit in coercing, warning or instructing the individual not to pursue his or her benefit rights; or
4) Other circumstances beyond the individual's control if the claimant shows he or she filed his or her claim within 14 days after the reasons for the failure to file no longer existed."

At the hearing before the referee, claimant asserted that she first believed the process for certifying was "automatic" and did not understand she needed to answer a questionnaire online. The initial UI finding letter contradicts claimant's claim, since it instructs her to certify for benefits using the Internet or by calling the office. Claimant also filed for unemployment benefits shortly after she was laid off, which establishes that she understood her right to request benefits. Additionally, the record contains no evidence that IDES and claimant's employer did not discharge their responsibilities under the Act. As noted, claimant filed for unemployment benefits, and IDES sent her the UI finding letter which instructed her about the process for obtaining the benefits, which included certifying online or by telephone. Similarly, claimant presented no evidence establishing that her employer coerced, warned, or instructed her not to pursue her unemployment benefits. Lastly, evidence established that claimant began certifying on May 18, 2020. As the claims adjudicator noted, on that day, the reasons for the failure to file no longer existed. Claimant did not file for back benefits until December 2020, well beyond the 14-day deadline in the regulation.

Claimant argued that the "time limit" should not apply due to the extraordinary circumstances of the COVID 19 pandemic. However, the Board did not have the ability to extend the deadline for filing. IDES is limited to powers granted by the legislature in its enabling statute. The Act does not outline extenuating circumstances which could extend the deadline. Had the Board extended the deadline without authority, it would have lacked jurisdiction and the decision would have been void. The Board determined that claimant was not eligible for unemployment benefits for the certification dates she missed, because she was ineligible for backdating. Thus, claimant could not claim benefits for the missed weeks in accordance with IDES's regulations. There was no definite and firm conviction that a mistake had been committed.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

Construction of Statutes MS 95
General MS 95.05

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.05**
DOCKET/DATE	**ABR-87-6554/11-3-87**
AUTHORITY	**Sections 602A, 702 and 801 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant acknowledged that he was warned repeatedly and then discharged for tardiness. The Claims Adjudicator determined that he was ineligible for benefits, under Section 602A, Discharge for Misconduct. After a hearing, a Referee affirmed that determination.

In his appeal to the Board of Review, the claimant pointed out that the employer did not file a protest to his claim and did not appear at the hearing. The claimant contended that, because the employer did not contest benefits, he was eligible.

HELD: The applicable provisions of the Unemployment Insurance Act, and not whether an employer contests benefits, determine whether benefits will be allowed or denied.

Some sections of the Act require that an employer file a protest before a claimant can be held ineligible (e.g., Section 602B, Felony or Theft, or Section 610B, Vacation Pay). But most sections of the Act, including Section 602A, do not require that an employer file a protest.

Under Section 801, the failure of a party, other than the party that brings the appeal, to appear at a hearing will not preclude a decision in its favor, if it is supported by the record.

In this case, the issue was Discharge for Misconduct, under Section 602A. The employer was not required to submit a protest. The employer did not bring the appeal so it was not required to appear at the hearing. The record contained the claimant's acknowledgment that he was repeatedly tardy. The record was sufficient to support a decision denying benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.05**
DOCKET/DATE	**ABR-87-9148/3-21-88**
AUTHORITY	**Section 612 of the Act**
TITLE	**Statutory Construction**
SUBTITLE	**Academic Personnel**
CROSS-REFERENCE	**MS 410.05, Seasonal Employment**

The claimant, a teacher, was dismissed at the end of the academic term (end of May) because his school district wished to decrease the number of teachers and services. He filed a claim for benefits for the period May 31 through June 13.

On July 29, at his appeal hearing, he established that, through the period he claimed benefits, he had no contract or reasonable assurance that he would be working the next term. However, he testified that, the week of the hearing, he accepted a contract from a different school to teach the next term. The Referee disqualified him for the period May 31 through June 13.

HELD: Section 612 provides that an individual is ineligible between successive academic terms if he performed service in the first term and there is a contract or reasonable assurance that he will perform service in the second term.

The contract or reasonable assurance must exist prior to or during the period for which the individual is claiming benefits. A later contract or assurance will not operate retroactively.

In this case, as of June 13, the claimant had no contract or reasonable assurance. He could not be denied benefits through that date based upon a contract or assurance that did not yet exist. (However, he could be denied benefits for weeks later than the date of acceptance of the contract.)

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.05**
DOCKET/DATE	***Minifee v. Doherty*, 333 Ill. App. 3d 1086 (1st Dist. 2002)**
AUTHORITY	**Section 611 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Section 611**
CROSS-REFERENCE	**MS 375.3, Receipt of Other Payments, Pension**

The claimant was employed by the employer for 27 years. She accepted an early retirement package, choosing a lump-sum payment of $153,297.08 rather than payments of $864.07 per month for the rest of her life. The claimant took another job, then after a few months left the job and filed for unemployment insurance benefits. After several appeals to the circuit court followed by remands to the Board, the circuit court reversed the Board's decision calculating disqualifying income based on the claimant's lump-sum retirement payment per Department rule 2920.75(d). The circuit court ruled that Department rule 2920.75(d) was invalid because it was inconsistent with Section 611B of the Act, and again remanded the case to the Board directing it to calculate the disqualifying income under Department rule 2920.75(c) based on the claimant's life expectancy.

HELD: Reversed. Section 611 of the Act is silent with respect to lump-sum retirement payments. Department rule 2920.75(d) was promulgated to provide a method of calculating disqualifying income when a claimant receives a lump-sum retirement payment. When the legislature expressly or implicitly delegates to an agency the authority to clarify and define a statute, administrative interpretations of the statute should be given substantial weight unless they are arbitrary, capricious, or manifestly contrary to the statute. The statutory language contained in Section 611B of the Act is irrelevant to this case because that language encompasses periodic payments, not lump-sum payments. By its very nature, a lump-sum does not involve any "period," and the claimant's lifetime cannot serve as a "period" because it is unknown. Department rule 2920.75(d) is a reasonable construction of Section 611 of the Act and is not arbitrary, capricious, or contrary to the statute. The Board's order applying Department rule 2920.75(d) to determine the claimant's disqualifying income is reinstated and affirmed.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.05**
DOCKET/DATE	***Weinberg v. Department of Employment Security,* 2015 IL App (1st) 140490, 33 N.E.3d 205, 392 Ill.Dec. 656 (1st Dist., 2015)**
AUTHORITY	**Sections 204 & 205**
TITLE	**Wages**
SUBTITLE	**Partnerships**
CROSS-REFERENCE	**Section 234**

The claimant began working for William Blair and Company (WBC) as an equity sales representative. After several years, he accepted their invitation to become a principal in the company. WBC underwent a restructuring in which it became a limited partnership and the claimant became 1 of 170 principals or partners. The claimant separated from the firm and filed for unemployment benefits. The claims adjudicator initially allowed benefits and then reversed its determination, finding that the claimant's compensation did not fall under the Act's definition of wages. The claimant appealed and, following a hearing, the referee affirmed the adjudicator's determination. The referee found that the claimant performed services in the sales department "as a part of a venture for the common benefit" of the partnership and received commissions and a distribution of profits as a partner. The referee found those payments were not wages under the Act but rather were profits paid into the partnership. The claimant appealed to the Board. The Board affirmed, finding that the claimant's pay was based on his share of partnership profits, as opposed to wages, and that the claimant was paid from the profits of the firm based upon his sales and his percentage points of ownership in the firm. The Board found WBC operates as a partnership, not a corporation, for purposes of unemployment insurance and that the claimant could not show that he was an employee. The Board concluded that the claimant did not receive any "wages" as defined by section 234 of the Act The claimant appealed. Following a remand by the circuit court, the Board again affirmed the referee. The claimant appealed and the circuit court reversed the Board.

The circuit court found that the claimant's income was based on both commissions and company profits and that his commissions constituted wages under section 234 of the Act. The circuit court remanded the case to the Board for a calculation of the amount of wages earned by the claimant and the amount of unemployment benefits he should receive. The Department appealed that ruling.

HELD: The appellate court reversed the circuit court, noting that the Act defines an "employing unit" to include a partnership. However, partners themselves are not employees of the partnership. Thus, in the case of partnership and partner, there is neither an employing unit nor an individual rendering service to the employing unit, both of which are required under the Act. A person cannot be an employee and a partner at the same time in the same business. The court noted that the claimant became a principal in WBC, and later, a principal/partner in WBC Holdings. The claimant's compensation consisted of a guaranteed payment derived from partnership profits, another monthly amount based on his client base, and a quarterly share of the profits based on the points he had and the $200,000 in capital he invested in the company. Further evidence of partnership status included the reporting of the claimant's remuneration for tax purposes on an Internal Revenue Service Schedule K–1, which pertains to partners. The claimant also was required to pay his own income tax and self-employment tax. The evidence introduced in the record supported the Board's decision that the claimant had not received "wages" as defined by the Act, and therefore, he was not eligible for benefits.

Common Meaning MS 95.1

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1**
DOCKET/DATE	***Quincy School District #172*, 471 N.E. 2d 1056 (1984)**
AUTHORITY	**Section 500C-2 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Section 500C-2**

CROSS-REFERENCE **AA 350.05, Period of Ineligibility**

The employer School District went into recess at the close of the school day on December 18, 1981 and reopened on January 4, 1982. During that period, the claimant, a School District Bus Driver, did not work and was not paid wages. She applied for unemployment benefits for the period December 27, 1981 through January 2, 1982.

The School District contended that the claimant had been unavailable for work, pursuant to Section 500C-2 of the Act:

> An individual shall be considered to be unavailable for work on days listed as whole holidays...and on days which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday.

The Board of Review construed the "holidays" provision of Section 500C-2 to apply only to individual holidays, but not to any period of unemployment which preceded or followed such holidays. It was noted that the reference to "holidays within a trade or occupation" was intended to provide for single, non-legal holidays, such as April 1 for the United Mine Workers or May 1 as celebrated by the International Ladies' Garment Workers' Union.

The Board of Review stated:

> (I)t is evident that the claimant's failure to work during the period under review was a result of the (employer's) shutdown for a vacation period, and not because of the (Christmas) holiday, rendering Section 500C-2 inapplicable...(T)he claimant was subject to a short-term layoff of a definite duration during which she was available to accept suitable employment at any time...(T)he eligibility requirements of Section 500C-2 of the Act have thus been met.

HELD: The court concluded:

There is perhaps no more widely recognized holiday period than that of the Christmas recess period as observed in Illinois schools, although the precise dates of the recess may vary from year to year and between districts. We therefore conclude that this period falls within the meaning of Section 500C-2 of the Act, as holidays according to the custom of the trade or occupation...clearly distinguishable from a shutdown for inventory or vacation purposes...

The claimant was determined to be unavailable for work and ineligible for benefits during the period under review.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1**
DOCKET/DATE	**ABR-85-2592/10-4-85**
AUTHORITY	**Sections 601, 602, 603 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning (of "Work" Separation)**
CROSS-REFERENCE	**VL 425.05, Suitability of Work; VL 500.5, Wages**

The claimant saw an advertisement in a newspaper for work as a Sales Representative. From the advertisement, the claimant concluded that, if he applied himself, he could earn $980 per month. After attending training sessions at his own expense, the claimant, on a regular basis, would drive to facilities where he would pick up merchandise and obtain sales leads. Then he would proceed to homes where he would give demonstrations of the vacuum cleaners he hoped to sell. After performing this work for 5 weeks, the claimant had made only 1 sale, which paid him $75 commission. Since this was substantially less than he had hoped to earn, he quit.

The employer protested the allowance of unemployment benefits to the claimant, on the basis that the claimant had never been its employee. The employer contended that the claimant had been an independent contractor, and, as such, was ineligible for any benefits under the Unemployment Insurance Act.

HELD: In connection with a work separation under Section 601A, it is to be noted that the statute reads, in pertinent part:

An individual shall be ineligible for benefits for the week in which he has left work...

The Act uses the term "work" in its popularly understood sense, and not as a word of art (such as "employment" or "insured work"). Thus, in determining whether an individual has become separated from work under disqualifying or non-disqualifying circumstances, it is immaterial whether the work was or was not work for which the employing unit may eventually be required to pay contributions or reimbursement. That issue might be adjudicated at a later date, if the claimant should file a claim for benefits at a time when the money (commission) paid to him would be in his base period.

Accordingly, in the instant proceeding, it was not germane to determine whether the services the claimant rendered as a Sales Representative constituted "employment" or "insured work" within the meaning of the Act.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1**
DOCKET/DATE	***Brent Davis v. Board of Review*, 477 N.E. 2d 842 (1985)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning**
CROSS-REFERENCE	**MS 60-10, Benefit computation; MS 410.05, Seasonal**

The claimant was employed as a School Teacher during the 1981-1982 school year. In June, 1982, when the school term ended, he did not have a contract with the district to teach during the upcoming 1982-1983 school year. He applied for and began receiving unemployment benefits. Although, on July 18, 1982, he signed a contract to teach in the district during the 1982-1983 school year, he continued to receive unemployment benefits until he actually started teaching on August 23, 1982.

The issue presented was whether the claimant was entitled to the benefits he received after his contract had been approved.

HELD: Section 612 of the Act states, in pertinent part:

> An individual shall be ineligible for benefits, on the basis of wages for service in employment...for an educational institution, for any week...during a period between academic years...if the individual performed such service in the first of such academic years...and if there is a contract or a reasonable assurance that the individual will perform service in any such capacity...in the second of such academic years...(Court's emphasis.)

Section 612 is clear and unambiguous. A teacher's eligibility is determined on a weekly basis. During any week in which a teacher has a contract or reasonable assurance of employment during the upcoming school year, the teacher is not eligible to receive unemployment benefits.

Therefore, as soon as the claimant's contract for the 1982-1983 school year was approved, he was not entitled to receive unemployment compensation. Accordingly, the benefits he received thereafter were subject to recoupment.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1**
DOCKET/DATE	**ABR-85-5351/12-19-85**
AUTHORITY	**Section 602B of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MC 602.05, Theft**

The claimant worked as Office Manager for a Dentist. In her statement to the Adjudicator, the claimant admitted that she had knowingly filed a false insurance claim -- for dental services allegedly performed upon her by her employer. The claim for those non-existent services was filed against the claimant's husband's insurance policy. The claimant had used, without authorization, her employer's signature stamp, in order to ensure that the claim would be processed without question. The claimant stated that she had filed the false claim because she needed the money.

The claimant received payment from her husband's insurance company. When her employer learned what had transpired, he discharged the claimant for "insurance fraud."
The issue presented was whether the claimant had committed a theft within the meaning of section 602B, since, technically, she had committed a theft against the insurance company and not her employer.

HELD: The disqualifying provisions of Section 602B of the Act do not require that the theft for which the claimant is discharged be committed against the employer, but only that the theft be connected with her work.

In the instant case, the claimant's unauthorized use of the employer's signature stamp implicated the employer in the fraud, even if only to the extent that it required the employer to take time away from his work to deal with the matter by accounting for his services. There was also the potential for damage to the employer's reputation and business.

The claimant's actions were sufficiently material to the employer's interests as to be connected with her work. The claimant was properly subject to the disqualifying provisions of Section 602B.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1**
DOCKET/DATE	***Echols v. Board of Review*, 676 N.E.2d 292 (1997)**
AUTHORITY	**Section 500C-2 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Section 500C-2**
CROSS REFERENCE	**AA 350.05, Period of Ineligibility**

The claimant drove a school bus pursuant to a contract between her employer, a private bus company, and a school district. On December 19, she filed a claim for unemployment benefits, which was contested by the employer, on the grounds that she was not available for work because the period for which she sought benefits was the school Christmas break.

HELD: Section 500C-2 provides that an individual shall be considered unavailable for work on days "which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday." This case is indistinguishable from *Quincy School District No. 172 v. Board of Review*, 471 N.E.2d 1056 (1984). Although the employer in that case was a school district, and not a private employer, in both cases, the claimant was a school bus driver. The reason for the unemployment status in both situations was the same: the Christmas holidays are non-work periods in that line of work. The claimant was considered unavailable for work, and therefore ineligible for benefits, during the holiday recess period.

ISSUE/DIGEST CODE	**Miscellaneous/ MS 95.1**
DOCKET/DATE	***C.R. England, Inc. v. Department of Employment Security*, 2014 IL App (1st) 122809, 7 N.E.3d 864 (1st Dist. 2014)**
AUTHORITY	**Sections 212 and 602(A) of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning**
CROSS-REFERENCE	**MC 300.1, Manner of Performing Work, Accident**

The claimant hauled fright for the employer pursuant to an "independent contractor operating agreement" that provided that the contract would be governed by Utah law. The claimant leased a truck from a subsidiary of the employer. The claimant worked exclusively hauling trailers for the employer's customer, Walmart, until he struck a utility pole while pulling a Walmart's trailer. The employer was required to pay for the damage to Walmart's trailer and as a result terminated the "independent contractor operating agreement" with the claimant.

The Board of Review decided that the claimant was an employee and that he was discharged for a reason other than misconduct. The Director also found that the employer was chargeable for the claim. On appeal, the employer argued, in part, that Utah law should apply pursuant to the choice of law provision in the employment contract; the claimant was an independent contractor under Section 212 of the Act; and the claimant was discharged for work-related misconduct under Section 602(A).

HELD: While the employment contract provides that Utah law governs the parties contractual rights; unemployment insurance benefits is not a contractual right but a statutory one; therefore, the Director correctly looked at Illinois law to determine whether the employer was the chargeable employer.

In regard to Section 212, the employer failed to prove that the claimant had performed his service outside of all of the employer's places of business because the claimant was representing the employer's interest whenever the claimant picked up or delivered freight for Walmart on behalf of the employer. Accordingly, the employer's place of business extended to all the locations where the claimant provided their freight-hauling services. Therefore, the Appellate Court held that since the employer failed to establish Section 212(B), the Director's decision that the claimant was an employee of the employer is not clearly erroneous.

In regard to misconduct, the employer failed to show that the claimant's actions in hitting the utility pole constituted an act of misconduct. The decision of the circuit court was reversed, and the Department's decision was affirmed.

ISSUE/DIGEST CODE	**Miscellaneous/ MS 95.1**
DOCKET/DATE	***By the Hand Club for Kids, NFP, Inc. v. Dep't of Empl. Sec.*, 2020 IL App (1st) 181768**
AUTHORITY	**Sections 212 and 602(A) of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning**
CROSS-REFERENCE	**None**

Claimant was employed as the employing unit's human resources manager. Claimant subsequently filed for unemployment insurance. The employing unit protested, claiming that the services performed for the employing unit were exempt from "employment" under the Act by virtue of Section 211.3(A)(2). Additionally, the employing unit alleged that the claimant left the job voluntarily. The Local Office determined that the claimant's employment was "insured work" and held the Claimant eligible under Section 500E of the Act. The employing unit appealed. At the hearing it was established that the employing unit is a separately incorporated not-for-profit entity, created by the Moody Church to provide free afterschool programs for economically disadvantaged school age children. The employing unit was operated, supervised, controlled or principally supported by The Moody Church, a church or convention or association of churches. Testimony indicated that the afterschool programs provided meals, tutoring and field trips, and that the participants were offered Bibles, if allowed by their parents, and were subjected to Christian based teachings and models for faith-based learning. At the conclusion of the hearing the Administrative Law Judge determined that the employing unit was operated, supervised, controlled, or principally supported by the Moody Church, but could not qualify for the exemption because it was not operating primarily for religious purposes. The Administrative Law Judge relied on *St. Augustine's Center for American Indians, Inc. v. Department of Labor,* 114 Ill. App. 3d 621, 449 N.E.2d 246, 70 Ill. Dec. 372 (1983) to look at the functions and activities of the employing unit's afterschool program and concluded that the religious activities are secondary to the primary purpose of helping city youths get a decent afternoon meal, get help with their homework, and improve their reading skills. The Board affirmed the decision, reasoning that a stated religious purpose or mission did not preclude the Board from examining what By The Hand was actually doing and that "the insertion of evangelism into every facet of its program did not change the [secular] nature of the program." The Board stated that while evangelism occurs throughout the program, the actual functions and activities, such as providing meals, homework help, vocabulary building as well as dental and vision help are not changed by the evangelism incorporated into these activities. The employing unit appealed. The circuit court reversed the Board and IDES appealed.

HELD: The appellate court affirmed the circuit court decision. In its argument, IDES relied on *St. Augustine's Center for American Indians, Inc. v. Department of Labor*, 114 Ill. App. 3d 621, 449 N.E.2d 246, 70 Ill. Dec. 372 (1983). The Court distinguished *St. Augustine's Center* as its primary purpose was to offer social services, and the religious attributes were only a secondary purpose. The Court stated that By The Hand differs significantly from the St. Augustine's Center program, as there is no indication that staff at the American Indian center had to be Episcopalian, annually certify their adherence to the standards of an Episcopalian Bible, or regularly attend a local Episcopalian church. There was no expectation that the staff would be Christian role models or conduits into the Episcopalian faith. Nor is there an indication that anyone at the American Indian center preached to the community members, mandated daily chapel attendance, coached the memorization of Bible passages, or played Christian music on the premises. The religious aspects of the social services center, such as chapel attendance, were secondary and avoidable, unlike the religious aspects of the afterschool program here that has the admitted and obvious purpose to spread the influence of evangelical faith and Moody Church. The appellate court held that the By the Hand afterschool program exists to teach children about an evangelical Christian religion and indoctrinate them into that faith. Religion pervades every aspect of the program, and income from donors enables the employing unit to operate entirely free-of-charge to the children. The fact that the employing unit uses the medium of homework assistance, literacy improvement, and dinner, and occasionally assists with dental and vision care does not defeat its primarily religious purpose. There was a dissent in the *By The Hand* case. The dissent stated that By The Hand had multiple purposes, of which the religious purpose was one, but not the primary one; that the question before the court was debatable; and since the question was debatable, under the legislative intent and policy goals of the Act, the court should have found that the employing unit had not met its burden in establishing an exemption from Act-insured "employment."

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1/.2/.3**
DOCKET/DATE	***Woodliff v. Ill. Dept. of Labor*, 487 N.E. 2d 645 (1985)**
AUTHORITY	**Section 601 of the Act**

TITLE **Construction of Statutes**
SUBTITLE **Common Meaning/Legis. Intent/Statute as a Whole**
CROSS-REFERENCE **VL 365.05, Prospect of Other Work, Self-Employment**

The claimant, a Carpenter with 18 years' experience – which included self-employment – worked for a company from January, 1981 until June, 1982, when he quit to again become self-employed. From that self-employment, the claimant earned $1,160 in June, $1,442 in July, $925 in August, and $704 in September. In October, he filed for unemployment benefits.

The sole issue in the instant case was whether the claimant's leaving the company to become a self-employed carpenter was a leaving to "accept other bona fide work" within the meaning of Section 601B-2.

HELD: Section 601B-2 of the Act provides an exception to the disqualifying provisions of Section 601A, where an individual voluntarily leaves work to "accept other bona fide work."

The court determined that "accept" and "work" should have their popularly understood meanings; neither requires that a strict employer-employee relationship exist; "acceptance of work" would include individual tasks undertaken by a self-employed person, for the people who hired that person (e.g., the carpentry jobs the claimant accepted and performed while self-employed).

The court stated that, if the legislature had intended to limit "accept other bona fide work" to situations involving an employer-employee relationship, it could have done so very easily, by requiring that the work be "for an employer other than the individual applying for benefits." Even more simply, the legislature could have used the word "employment" rather than work, since the statute (Section 206 of the Act) defines "employment" to require an employer-employee relationship. The legislature's failure to draft Section 601B-2 in such a fashion was a further indication that the statutory exception at issue included self-employment such as the claimant's.

More importantly, the "bona fide" requirement was to safeguard against individuals who might leave one job to accept another which was a sham. In the instant case, the court examined the claimant's self-employment to determine if it was genuine:

(1) The claimant had experience in the occupation; and
(2) He had a history of self-employment; and
(3) He had been relatively successful at his self-employment.

Because the claimant's self-employment was genuine it was concluded that he had accepted other bona fide work within the meaning of Section 601B-2 and was entitled to the exception.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.1/.2**
DOCKET/DATE ***Charles F. Hlinka v. IDES*, No. 87-1239 (1988)**
AUTHORITY **Section 500E of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Common Meaning/Legislative Intent**
CROSS-REFERENCE **MS 60.1, Benefit Computation**

The claimant was the president and sole stockholder of a corporation. Though he worked throughout the calendar year, he did not determine what his salary would be or draw any salary until the 4th quarter. In the 4th quarter of 1984, he drew a salary of $10,000. During the 4th quarter of 1985, the corporation was dissolved, after which the claimant filed for unemployment benefits.

The claimant's base period consisted of the last 2 quarters of 1984 and the first 2 quarters of 1985.

HELD: Section 500E of the Act provides that an individual shall be eligible for benefits only if:
(1) during his base period, he was paid wages totaling at least $1,600, and

(2) outside the quarter of his base period in which wages paid were highest, he was paid wages totaling at least $440.

The plain unambiguous language of Section 500E requires that wages be paid at a certain level during at least 2 quarters of a claimant's base period. Section 500E does not permit wages to be prorated over an entire base period. Section 500E does not

permit engrafting any exception which would allow a claimant to avoid the two-fold requirement. A court is not warranted in reading into the statute an exception which the legislature did not see fit to make.

In this case, the claimant was paid $10,000 during his base period; this was more than the $1,600 required during the base period. However, the $10,000 was paid entirely during 1 quarter. The claimant was not paid wages outside that highest quarter. Therefore, he did not meet the Section 500E eligibility requirements and was not entitled to unemployment benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1 & .3**
DOCKET/DATE	**ABR-86-5729/3-13-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning & Statute as a Whole as an Aid**
CROSS-REFERENCE	**None**

The claimant was employed by X and worked 30-40 hours per week. During the same period, she was also employed by Y and worked 35-40 hours per week. On May 22, 1986, the claimant quit her job with X, for personal reasons. On June 13, 1986, she was laid off from her job at Y.

The claimant contended that, although her separation from X might otherwise have been disqualifying (since she left that job without good cause attributable to the employer)/ only the work separation from Y, which was non-disqualifying (a layoff), should have been considered to determine benefits eligibility, since, only at that time did she become unemployed.

HELD: If a worker leaves 1 job and does not become unemployed, there is no separation issue to resolve. To hold otherwise would be inconsistent with the common meaning of "unemployment insurance;" with the rationale applied to benefits eligibility – determining whether an individual became or remained "unemployed d" due to the lack of suitable work or for some other reason; with accompanying requalification provisions, which require a period of reemployment. The Unemployment Insurance Act does not require that an individual work at 2 full-time jobs.

In this case, because the claimant was not an unemployed individual after she left her job at X, there was no issue to consider on the basis of that separation. Because her layoff from Y resulted in unemployment, that was the appropriate separation to consider. A layoff is not disqualifying. The claimant was not disqualified for benefits.

ISSUE/DIGEST CODE	**Miscellaneous/ MS 95.1**
DOCKET/DATE	***E-Z Movers, INC., v. Jay Rowell, Director of Employment Security, and The Department of Employment Security,* 2016 IL App (1st) 150435, 61 N.E.3d 955 (1st Dist., 2016)**
AUTHORITY	**Sections 212 and 602(A) of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Independent Contractor**
CROSS-REFERENCE	**None**

E-Z Movers is a furniture moving company that hires drivers and helpers to perform physical labor. Following a claim for benefits, the Department audited E–Z Movers for 2007 and 2008. The Department determined that E–Z Movers failed to establish the section 212 exemption for its drivers and helpers. The Department found that the workers were “employees” and not “independent contractors” and issued an assessment for unpaid contributions. The Director upheld the assessment and the employer appealed. The circuit court reversed the Director and concluded that the drivers and helpers were “independent contractors” and not “employees” under section 212 of the Act. The Department appealed.

HELD: The Appellate Court reversed the Circuit Court and analyzed this case under all three subsections of section 212 of the Act.

Section 212(A)
The appellate court found E–Z Movers exercised direction and control over the workers. E–Z Movers had the right to hire and fire the workers, E–Z Movers provided the workers with the moving truck, which was the most important tool needed for the job, the drivers and the helpers could not assign their obligations to other persons without E–Z Movers’ approval, and E–Z Movers scheduled the jobs with customers and limited the workers’ use of its trucks without its permission. The court noted

that the Illinois Administrative Code contains a list of 25 factors used to determine whether direction or control exists. However, not all 25 factors must be examined in every case. The 25 factors are considered in light of the type of business subject to review and the relationship being examined. Furthermore, the result will be determined by "the business reality or totality of circumstances," not by the answer to any particular question or group of questions.

Section 212(B)
The Appellate Court only addressed the first prong of section 212(B) as E-Z Movers forfeited the argument that the workers' services were performed outside of all places of business of the enterprise by failing to raise it previously. Regarding the determination of whether services fell outside the employer's usual course of business, the court stated that "the key to this inquiry is whether the services are necessary to the business of the employing unit or merely incidental." In holding the drivers and helpers were not outside the usual course of business for a moving company, the court stated that the drivers and helpers represented E– Z Movers interests when they wear their E–Z Movers uniforms and use the trucks owned by E–Z Movers that bear the E–Z Movers logo.

Section 212(C)
In examining whether the workers were engaged in independently established trades, occupations, or businesses, the court found that E-Z Movers failed to show that its drivers and helpers could operate without its involvement. The relevant inquiry is whether the individual workers had businesses or occupations that were capable of operation independent of a relationship with the employing unit. E–Z Movers did not present evidence that the drivers and helpers could operate in the absence of it or a similar company that would furnish a moving truck and that would procure customers. E–Z Movers owned all the trucks. E–Z Movers had been granted the license to haul goods, and no evidence suggested that any individual drivers and helpers had been granted licenses or that they could operate without licenses. E–Z Movers procured all the customers, set the prices, determined the drivers' and helpers' commissions, provided the assignments, billed the customers, set the commissions, and paid the drivers and helpers.

Construction with References to other Statutes MS 95.15

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.15**
DOCKET/DATE	**84-BRD-825/1-20-84**
AUTHORITY	**Section-612B1 and S-500C**
TITLE	**Construction of Statutes**
SUBTITLE	**Construction With Reference To Other Statutes**
CROSS-REFERENCE	**None**

The claimant has experience as a commercial artist and worked as a substitute teacher during the 1982-1983 school year. Although she had a teaching certificate in another state, she lacked certain qualifications which were required for an Illinois certificate. She had been working with a provisional certificate but failed to qualify for a regular certificate in the required two year period. Therefore, she could not return to teaching in this state in the upcoming year.

HELD: The evidence established that the claimant did not qualify for an Illinois teaching certificate and could not continue to work as a substitute teacher. She, therefore, did not have reasonable assurance of returning to work as a teacher and was not subject to disqualification under the Act.

The claimant, who has other work experience, must, however, seek work in fields other than teaching to be available for work.

ISSUE/DIGEST CODE	**Miscellaneous/MS-95.15**
DOCKET/DATE	**ABR-07-4472**
AUTHORITY	**Section 900 of the Act; Trade Act of 1974-Trade Readjustment Assistance (TRA)**
TITLE	**Construction of Statutes**
SUBTITLE	**Construction with Reference to Other Statutes**
CROSS-REFERENCE	**MS-60.05: Benefit Computation Factors/General; MS-340.2: Misrepresentation/ Overpayments or Restitution**

The claimant was laid off from work on July 14, 2005, filed a claim for unemployment benefits the next day, and was awarded weekly benefits of $208.00, including a dependents' allowance. After returning to work, the claimant was again laid off on April 7, 2006, filed for benefits on April 12, 2006, and was granted weekly unemployment benefits of $449.00, including dependents' allowance. The claimant collected her regular unemployment benefits until she exhausted them during the week

ending October 14, 2006. Pursuant to the Trade Act of 1974, the claimant began collecting Trade Readjustment Assistance (TRA) benefits of $449.00 weekly, including dependents' allowance, on October 15, 2006 and continued receiving them through December 23, 2006. The claimant's employer was first certified as an affected employer under the Trade Act of 1974 on March 22, 2005.

HELD: Under the Trade Act of 1974, an individual's weekly TRA benefit payment is based on the individual's first qualifying separation from work after the impact date cited in the petition certification covering the adversely affected worker. Here, the claimant's first qualifying separation from employment with the impacted employer occurred on July 14, 2005, which was after the impact date cited in the certification dated March 22, 2005. When she applied for benefits after that first separation from work, she received a weekly benefit amount of $208.00, including dependents' allowance. This is the amount she should have received when she began receiving TRA benefits, rather than $449.00 per week which she, in fact, received. Therefore, the claimant was overpaid $241.00 per week while receiving TRA benefits and this overpayment was subject to recoupment and/or recovery.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.15**
DOCKET/DATE	***Lyte v. Department of Employment Security*, 937 N.E.2d 1197, 344 Ill.Dec. 856 (1st Dist. 2010)**
AUTHORITY	**Federal Unemployment Compensation Extension Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Construction with Reference to Other Statutes**
CROSS-REFERENCE	**None**

The claimant applied for and received UI benefits. Eventually, the claimant applied for Emergency Unemployment Compensation, 2008 (EUC08) benefits. A claims adjudicator found the claimant ineligible because the claimant did not meet the eligibility requirements for earned wages under the EUC08 program. A Referee affirmed the claims adjudicator's determination and explained that under the EUC08 program the claimant must have earned wages during the base period that are at least 1.5 times the amount of wages received during the quarter with the highest earnings. Based on this formula, the Referee calculated that the claimant's total base period wages were only 1.49 times the wages he earned during the quarter with the highest earning. The Board adopted the Referee's decision and the trial court affirmed the Board's decision.

HELD: The Appellate Court held that the claimant did not offer any support for his argument that the Board erred in finding that he was ineligible for EUC08 and the Board's decision was neither against the manifest weight of the evidence nor contrary to law. The decision of the Board was affirmed.

Legislative Intent MS 95.2

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.2**
DOCKET/DATE	**ABR-24-20538/7-30-24**
AUTHORITY	**Section 612 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Legislative Intent**
CROSS-REFERENCE	**Miscellaneous/MS 60.1**

Claimant worked for a private employer during her entire base period. She was monetarily eligible for unemployment benefits, pursuant to Section 500E of the Act, based upon wages paid to her by the private employer during the qualifying quarters of her base period. On or about 04/29/2024, Claimant was hired to work as an Administrative Assistant for the employer, an educational institution, during the 2024-2025 academic school year; hence, she had a reasonable assurance of returning to work after the scheduled summer vacation period. On 05/28/2024, the school went on summer break and the claimant applied for unemployment benefits. Claimant was allowed by the Local Office and the administrative law judge, and the employer appealed.

HELD: Section 612 of the Act provides that when an individual has employment in an educational institution or educational service agency in the first of two successive academic years or terms or immediately prior to a vacation period or holiday recess, and the individual has reasonable assurance of returning to such employment in the second year or term or immediately following the vacation or holiday period, the individual shall be ineligible to receive benefits during the intervening period between academic years or terms, or during the vacation period or holiday recess. However, the foregoing provisions do not apply when the claim for benefits is based on wages for insured work in non-educational employment during the applicable

base period. In the instant case, Section 612 of the Act would have applied to disqualify the claimant from benefits in between terms if she had wages paid to her by an educational institution during her base period. Since the claimant was not paid wages by an educational institution during her base period, Section 612 does not apply in this matter and the claimant is entitled to benefits under the Act.

It is also noted that, under Section 2765.333 of the Rules, whenever the individual's last employer is an educational institution, then the educational institution shall not be liable for benefit charges on the basis of benefits paid to that individual during the period between two consecutive academic years or terms if the individual has a reasonable assurance that he or she will perform service in any capacity for any educational institution or educational service agency in the second of the academic years or terms. Since the claimant briefly worked for the employer immediately prior to summer break, the employer is not liable for the benefit charges paid to the claimant in between academic years or terms, if the claimant has a reasonable assurance that she will continue to perform services for the employer in the next academic year or term.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.2**
DOCKET/DATE	***Highway Drivers v. Ward*, 559 N.E. 2d 158 (1990)**
AUTHORITY	**Section 604 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Legislative Intent**
CROSS-REFERENCE	**None**

Clerical workers of B.N. Transport went on strike. The clerical workers belonged to Local 710 of the International Brotherhood of Teamsters. Non-striking dock workers of Local 710 did not walk the picket line, but they honored it and refused to cross it. The dock workers received strike pay.

The issue was whether the dock workers "participated" in the strike and were ineligible for benefits under Section 604.

HELD: Section 604 provides that an individual shall be ineligible for benefits if his unemployment is due to a labor dispute, but Section 604 does not apply if he is not "participating" in the dispute.

The legislature intended the Unemployment Insurance Act to safeguard unfortunate individuals from economic insecurity due to involuntary unemployment. The participation provision in Section 604 was intended to alleviate what would be an unfair disqualification of innocent victims involuntarily unemployed due to labor disputes.

The legislature also intended that the refusal to cross a picket line would not mean that unemployment is voluntary. It is expressly stated in the statute and undisputed that an individual has a right not to cross a picket line. However, the statute provides that the failure to cross a picket line, by itself, does not constitute participation. Therefore, the right not to cross a picket line is only one factor to consider. Coupled with other factors, it may result in participation.
Here, the dock workers had the right not to cross the picket line and not be penalized for exercising that right. However, their refusal to cross did not require a conclusion of no participation.

The dock workers' refusal to cross the picket line - coupled with the receipt of strike pay - constituted participation. The strike pay would enable the striking members to prolong the work stoppage and delay settlement of the dispute. This would render their unemployment voluntary. Permitting them to collect benefits for voluntary unemployment would thwart the legislature's intent.

Further, to permit the dock workers to collect both strike benefits and unemployment insurance benefits would effectively place the employer (whose contributions to the unemployment insurance fund are compulsory) in the position of subsidizing the strike. Such a result would be unsound and contrary to the intent of the legislature.

The dock workers were ineligible for benefits.

(Note: The court stated that "participation" must be decided on a case-by-case basis. Therefore, the receipt of strike pay per se does not constitute participation. Had the dock workers presented evidence of reasons for receiving strike pay that were not indicia of participation, the result in this case might have been different.)

ISSUE/DIGEST CODE **Miscellaneous/MS 95.2**
DOCKET/DATE ***Sonja I. James v. IDOL*, 465 N.E. 2d 879 (1983)**
AUTHORITY **Section 500C-4 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Legislative Intent**
CROSS-REFERENCE **AA 40.05, Attendance at School**

The claimant worked as a psychological consultant. After 2 years at the job, she executed an employment agreement. The agreement provided that she would work only 16-20 hours per week. This would allow her to pursue a doctorate in psychology during off-hours. She needed the doctorate to become a registered psychologist and eventually obtain a better job.

The claimant enrolled in 3 courses that she attended 2 evenings per week. She also enrolled in a clinical training program in a Chicago hospital, from 9 a.m. to 4 p.m., 2 days per week. In addition to devoting 18-20 hours to attending classes and training, it was necessary for the claimant to study 6-8 hours each week.
The claimant became separated from employment, and, shortly thereafter, during a vacation between semesters, she filed for unemployment benefits. She told the Claims Adjudicator that any employer would have to be flexible in order to accommodate the requirements of her educational program.

HELD: The fact that a student also works does not mean she is automatically available for work and eligible for benefits. The issue is not simply availability under Section 500C.

The legislature has considered the common circumstance of a claimant who is employed on a part-time basis while attending school and has unambiguously declared, under Section 500C-4, that, if she is principally occupied as a student, she shall be "deemed" unavailable for work, irrespective of Section 500C.

In this case, the claimant contended that, because she could balance both work and continuing education, she was available for work under Section 500C. But, as stated, that was not the issue. The issue was whether her principal occupation was that of a student. The time requirements of her work were less than those necessary for her studies. The evidence showed that any employment would be geared around and subordinated to her educational program. Therefore, her principal occupation was that of a student. Because her principal occupation was that of a student, she was deemed unavailable for work, and was ineligible for benefits, under Section 500C-4.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.2**
DOCKET/DATE ***Christine Doran v. IDOL*, 452 N.E. 2d 118 (1983)**
AUTHORITY **Section 612 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Legislative Intent**
CROSS-REFERENCE **MS 60.10, Benefit Computation; MS 410.05, Seasonal**

From 1970 through 1980, the claimant taught during her school's 39-week academic term then through its 8-week summer session. Then, on June 26, 1980, at the end of 39 weeks, she was told that, due to budgetary considerations, the school would not be offering the 8-week summer session and her services would not be needed until the following autumn. So the claimant filed for unemployment benefits for that 8-week period.

The Department held that, because the claimant filed for benefits for a period between academic terms, she was ineligible under Section 612. The claimant contended that this was not a period between terms, but a portion of what would have been her customary 47-week term.

HELD: Section 612 provides, in pertinent part, that an individual shall be ineligible for benefits between "regular academic terms." What constitutes a regular academic term is determined by the legislature, not by a claimant's particular circumstances.

The legislature has defined regular academic term - not in the Unemployment Insurance Act, but in the School Code. The School Code provides that each school board shall prepare a calendar for the school term (consisting of a required number of school days, or, at this time, 39 weeks). Pursuant to its delegated authority, the claimant's school board adopted a calendar that complied with the definition by providing for 39 weeks of school. The fact that the school board did or did not offer a summer session was immaterial; the 39-week period was the regular academic term intended by the legislature.

The claimant worked until the end of the regular academic term. She filed for benefits for a period between that term and her next regularly scheduled term. Therefore, she was ineligible under Section 612.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.2**
DOCKET/DATE	***Frederick Siler v. IDES*, No. 1-89-0149 (1989)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Legislative Intent**
CROSS-REFERENCE	**MC 5.05, Misconduct, Definition**

The claimant was a maintenance worker for 7-1/2 years. During the last 1-1/2 years, his work performance deteriorated. Despite warnings, he continued to violate his employer's sanitation and safety rules, until he was fired.

Neither the Referee nor Board of Review made a finding that the violations were deliberate or willful. Still, both held that "not following correct procedures" and "disregarding the employer's requirements" constituted misconduct.

The claimant sought judicial review.

HELD: Effective January 1, 1988, a definition of misconduct was added to Section 602A of the Act. That definition provides, in pertinent part: "Misconduct" means the deliberate and willful violation of a reasonable rule or policy....

The definition includes the terms "deliberate" and "willful" and makes no reference to "carelessness or negligence" of any degree. This indicates that the legislature intended that persons discharged for incapacity, inadvertence, negligence or inability to perform assigned tasks should receive benefits.

Terms such as "not following correct procedures" or "disregarding the employer's requirements" do not suffice to comply with the statutory definition. It is necessary to show that a worker's non-compliance was deliberate and willful.

In this case, there being no finding of any "deliberate" or "willful" violation of rules, there could be no misconduct under Section 602A. Benefits were allowed without disqualification.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.2**
DOCKET/DATE	***Davis Bancorp, Inc. v. Board of Review*, 911 N.E.2d 1125, 331 Ill.Dec. 895 (1st Dist. 2009)**
AUTHORITY	**Section 212.1 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Legislative Intent**
CROSS-REFERENCE	**None**

The employer appealed the Board's decision that held, in part, that a former driver's four-door passenger vehicle, a Toyota Corolla, was not a "truck" under Section 212.1 and as such the service rendered by the former driver was not exempted from employment.

HELD: The legislative history of Section 212.1 shows that the exemption was intended to apply to the trucking industry and in the trucking industry a truck is built for the transportation of goods on its own chassis. Therefore, the Appellate Court held that a passenger vehicle, such as a Toyota Corolla, is not a truck pursuant to Section 212.1 of the Act.

Retroactive Operation MS 95.25
No decision

Statute as a Whole as an Aid to Construction MS 95.3

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.3**
DOCKET/DATE	***Hart v. Jackson*, 600 N.E.2d 932**
AUTHORITY	**Section 601A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Statute as a Whole as an Aid to Construction**

CROSS-REFERENCE **VL 450.4, Time, Part-time or Full-time**

The claimant became separated from full-time work, upon which his claim for benefits could be based. He then quit his part-time job, located near the full-time job, because his travel expenses were now excessive in relation to his part-time wages (which were less than one-half what his weekly benefit amount would be). He was denied benefits, under Section 601A, for voluntarily leaving his last job.

The claimant argued that, even though he quit work for reasons not attributable to his part-time employer, he should not be denied benefits under Section 601A.

HELD: Section 601A applies whether a claimant leaves full-time or part-time work. (See *Minfield v. Bernardi*, this Digest, VL 450.4.)

However, the term "work" in Section 601A does not mean work upon which no claim is made and which has no effect upon entitlement to or the amount of benefits. Therefore, Section 601A does not apply where the following conditions exist:

1) the claimant becomes separated from primary full-time work upon which his claim is based;

2) the claimant's entitlement and benefit amount would be unaffected by whether or not he remained at the secondary part-time job; that is, if he remained at the part-time job, he would still be unemployed under Section 239 and would not have his benefits reduced under Section 402.

Here, the claimant left his part-time job under those circumstances. He was not ineligible under Section 601A.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.3**
DOCKET/DATE	***Dolores Weingart v. IDOL*, No. 64344 (1988)**
AUTHORITY	**Sections 703 and 900 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Statute as a Whole as an Aid to Construction**
CROSS-REFERENCE	**MS 375.2. Receipt of Other Payments**

The claimant was employed by Advo-Systems, Inc., until August 21, 1980, after which she filed for and received unemployment benefits: $116 per week from August, 1980 through June, 1981, totalling $4,408.
The Advo-Systems plant had closed shortly after the employees elected to have a union act as their collective-bargaining agent. The union representatives filed a complaint before the NLRB against Advo-Systems. A year-and-a-half after Advo-System's plant closing, the company entered into an out-of-court settlement to end the pending NLRB litigation. Pursuant to that settlement, the claimant received a payment of $8,140 in two installments, the first on January 20, 1982 and the second on February 16, 1982.

In September, 1982, a Department of Labor (Employment Security) Adjudicator issued to the claimant a reconsidered determination and recoupment decision, under Section 900(D) of the Act. The claimant was informed that she had been found retroactively ineligible to receive benefits due to the back pay award.

The claimant appealed, citing Section 703 of the Act, which permitted a Claims Adjudicator to "reconsider his determination at any time within one year..." The claimant argued that the Adjudicator's reconsidered determination and recoupment decision were void.

The Department argued that the intent of Section 900(D) of the Unemployment Insurance Act was to prevent a double recovery of both back pay and unemployment benefits for the same week(s). The Department also argued that the reconsidered determination of ineligibility based on a back pay award was of a different nature than reconsidered determinations based on other factors: the back pay award triggered an initial and original determination, predicated upon the nature of the award and not upon a renewed evaluation of the facts that led to an original determination.

HELD: Section 900(D) is not a special category of recoupment in and of itself, but must be read in conjunction with all of Section 900. Further, Section 900 incorporates Section 703. Section 900(D) provides, in relevant part:

> Whenever, by reason of a back pay award...an individual has received wages for weeks with respect to which he has received benefits, the amount of such benefits may be recouped...as herein provided.

Because Section 900(D) contains no procedures, the term "herein provided" must refer to other provisions of Section 900. Section 900(A) provides, in pertinent part, that recoupment be "pursuant to a...reconsidered determination." Section 703 provides that determinations may not be reconsidered after 1 year. In this case, the Claims Adjudicator's reconsidered determination and its accompanying recoupment decision, having been made more than 1 year after an original determination of eligibility, were void.

Also, the Department's interpretation of the intent of the legislature, with respect to double-recovery, was much too narrow. Section 900(A) contemplates waiver of recoupment even when a determination is reconsidered within 1 year. That being so, it could not be said that there were no equitable considerations which would have allowed the legislature to determine that any recoupment after 1 year would always be inequitable or unconscionable.

Recoupment was disallowed.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.3**
DOCKET/DATE	**ABR-85-5139/11-27-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Statute as a Whole as an Aid to Construction**
CROSS-REFERENCE	**VL 350.5, Period of Disqualification**

The claimant had worked part-time, on a commission basis, as a Jewelry Salesperson. When she quit that job, she was disqualified for benefits under Section 601A.

Subsequently, an appeal hearing was held to consider the claimant's contention that she had requalified for benefits pursuant to the requalification provisions of Section 601A. At that hearing, the claimant stated that, since leaving her Jewelry Salesperson job, she had worked for more than the required 4 weeks, earning more than her weekly benefit amount in each week. She stated that she had been working 8 to 10 hours per week, as a Bartender, in a tavern owned by her husband.

The tavern did not list the claimant as an employee. The claimant testified that this was because she had been paid in cash, without any withholding for Federal or State taxes. At the time she had certified for benefits, she did not report any earnings from her work as a Bartender.

HELD: Section 601A of the Act requires, for requalification, that an individual become reemployed, and have earnings equal to or in excess of her weekly benefit amount in each of 4 calendar weeks. Such earnings -

> must be for services in employment, or have been or will be reported pursuant to the provisions of the Federal Insurance Contributions Act...

It would be inconsistent with the purpose of the Act if the phrase "services in employment" was to be interpreted to include work which was a sham. In the instant case, the claimant failed to establish that, upon leaving her work as a Jewelry Salesperson, she had performed bona fide work as a Bartender. Therefore, it could not be concluded that she had earned wages from services in employment.

Further, the claimant's earnings had not and would not be reported pursuant to the provisions of the Federal Insurance Contributions Act.

Because the claimant did not show that she had earned wages from services in employment or that her earnings had or would be reported pursuant to the provisions of the Federal Insurance Contributions Act, she did not requalify for benefits.

Strict or Liberal Construction MS 95.4

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Bandemer v. IDES*, 562 N.E. 2d 6 (1990)**
AUTHORITY	**Section 602A of the Act**

TITLE **Construction of Statutes**
SUBTITLE **Strict or Liberal Construction**
CROSS-REFERENCE **MC 5.05, Misconduct, Definition**

The claimant was sales manager for a retail store. She had the keys and was responsible for opening the store at 9:30 a.m. The employer had a rule requiring the claimant to call in if she would be absent. One morning, the claimant felt ill. She failed to contact the employer and the store did not open for business when scheduled.

The claimant argued that her actions did not constitute misconduct, because, among other elements of misconduct, the employer did not prove that it suffered any harm.

HELD: Potential financial loss caused by the conduct of an employee is harmful to an employer. Here, because of the claimant's actions, the employer was unable to open the store as scheduled and potential customers were therefore unable to shop at the store resulting in financial loss.

The statutory element of harm was proven.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.4**
DOCKET/DATE **ABR-86-6422/5-27-87**
AUTHORITY **Section 612 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Strict or Liberal Construction**
CROSS-REFERENCE **None**

The claimant was employed as a childcare worker and teacher's aide in a Head Start day care center. The claimant worked with children, ages 3-5, assisting in their social development, as well as in the teaching process. In May, 1986, she was laid-off from her job; there was some prospect that she would be recalled to work in September, when the day care center reopened; Head Start operated on the same 9-month schedule as the local school district.

The Head Start program was funded by the Federal government, the day care center was operated by a community and economic development association, and its purpose was to bring about a greater degree of social competence in children, particularly children of low-income families, to prepare them for entrance into the public school system.

The issue presented was whether the claimant's work for this Head Start project came within the purview of Section 612 of the Unemployment Insurance Act.

HELD: The "between terms" ineligibility provisions of Section 612 of the Unemployment Insurance Act apply to benefits which would be based upon wages for services in employment performed for an educational institution.

If an individual's services are not performed for an educational institution, then the "between terms" ineligibility provisions of Section 612 cannot apply.
The term "educational institution" refers to an educational institution of the State of Illinois, and not to social agencies. In this case, the Head Start program was a day care facility, a social agency, not under the supervision or control of any board of education or school authority, and not an educational institution within the meaning of the Unemployment Insurance Act.

Accordingly, the claimant was not ineligible for benefits on the basis of the wages she earned performing services for the Head Start program.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.4**
DOCKET/DATE ***Flex v. Board of Review*, 466 N.E. 2d 1050 (1984)**
AUTHORITY **Section 601 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Strict or Liberal Construction of Section 601B(1))**
CROSS-REFERENCE **VL 155.35, Domestic Circumstances; VL 235.25**

The claimant was employed as a Stenographer until July, 1981, when she went on maternity leave, which was to expire in September, 1981. During that time, the claimant gave birth to a son whose spinal cord was damaged. The claimant was granted

an extended leave of absence until January, 1982, because of the child's condition. No further extension was granted. On January 15, 1982, the claimant's supervisor informed her that if she did not return to work as scheduled, the employer would have to hire someone to replace her. The claimant explained that she needed more time off in order to provide care for her child. When the claimant did not report to work as scheduled, she was replaced.

The claimant then filed a claim for unemployment benefits. The Claims Adjudicator determined that the claimant was ineligible for benefits pursuant to Section 601A of the Act, because she had left work voluntarily without good cause attributable to her employer. A Referee affirmed the Claims Adjudicator's determination.

In support of her appeal to the Board of Review, the claimant presented a letter from her son's pediatrician. The letter stated that the claimant's son suffered from "a right Erb's palsy, spinal cord lesion and hypospadias" and that he needed "physical therapy and infant stimulation." In addition, the letter stated:

> It is important that his mother spend as much time with the child as possible. She is a very good mother and the child shows the results of her time.

The claimant contended that based upon the doctor's letter she was entitled to a medical exception to the disqualifying provisions of Section 601A, in that she had left work upon the advice of a licensed and practicing physician, who had determined that the claimant's assistance was necessary for the purpose of caring for her child who was in poor physical health, and such assistance would not have allowed the claimant to perform the usual and customary duties of her employment.

The Agency's position was that the doctor's letter did not specifically state that caring for her child made it impossible for the claimant to continue her employment: The statement "It is important that his mother spend as much time...as possible" was insufficient to show that she could not have continued working.

HELD: Section 601B(1) provides an exception to the disqualifying provisions of Section 601A, provided that an individual shows that she left work:

> ...upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for her child who is in poor physical health...

In the instant case, the doctor's letter clearly indicated that the claimant's child suffered severe and disabling injuries at birth. The doctor was an expert on the type of assistance necessary to care for an ill child. Accordingly, the first provision of Section 601B(1) was satisfied.

> ...and such assistance will not allow the claimant to perform the usual and customary duties of her employment...

Although a physician is an expert on the type of assistance necessary to care for an ill child, her opinion on how such assistance will affect the parent's job duties is wholly outside her area of expertise and should not be required as a predicate for the award of benefits. A physician cannot be expected to know the implications of her advice for the receipt of unemployment insurance. Therefore, it would be unreasonable to require that a physician employ the exact wording of Section 601B(1). In the instant case, independent of the doctor's express language, the advice "spend as much time as possible" could properly have been interpreted to have precluded the continuation of full-time employment. Accordingly, the second provision of section 601B(1) was satisfied. The claimant was entitled to an exception under Section 601B(1) of the Act.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Dubinin v. Ward*, et al., 484 N.E. 2d 870 (1985)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction (of Section 601B(1))**
CROSS-REFERENCE	**VL 235-25, Health or Phys. Cond.; (Compare with *Flex*)**

In 1981, the claimant was hired as a Tool Grinder. Between 1981 and 1983, his job duties were increased to include the tasks of an Equipment Washer and Tool Room Attendant. His work load was further increased when his apprentice left the company in March, 1983. Two months later, the claimant quit, citing concerns for his health, among other reasons. The claimant was disqualified for benefits under Section 601A.

At an appeal hearing, the claimant explained that the employer's actions in increasing his job duties adversely affected his health. He presented a medical report from the Veterans Administration, indicating that he had very high blood pressure. When asked about his doctor's advice, the claimant stated:

> All doctor told me was that I was mainly, it was mainly up to me. That I am working there and that I should know if I should continue to work or should not work. If I can handle the pressure or not.

Upon further appeal, the claimant cited *Flex v. Board of Review* (See VL 155.35, VL 235.25, and MS 95.4). The claimant argued that his physician's statement should have been interpreted as an indication that he was physically unable to perform his work, thereby entitling the claimant to an exemption under Section 601B(1).

HELD: Section 601B(1) provides, in pertinent part, that the provisions of Section 601A shall not apply to an individual who has left work because "he is deemed physically unable to perform his work by a licensed and practicing physician..."

In *Flex v. Board of Review*, it was held that "since a physician cannot be expected to know the implications of his advice for the receipt of unemployment insurance, it is unreasonable to require that he employ the exact wording of the statute." Therefore, such advice is subject to interpretation in the context of whether a claimant is entitled to unemployment benefits. However, *Flex* does not stand for the proposition that any statement by a physician, no matter how ambiguous or equivocal, will satisfy the statutory requirement.

In the instant case, the doctor's statement was ambiguous and equivocal and was insufficient to establish that the claimant left work upon the advice of a physician. Accordingly, the claimant was not entitled to an exemption under Section 601B(1).

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Mattson v. Dept. of Labor*, 455 N.E. 2d 278 (1983)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Liberal Construction (Discharge/Suspension)**
CROSS-REFERENCE	**MC 5.05-1, Misconduct**

The claimant was employed as a maintenance worker in a hospital. On August 29, 1981, he appeared on the employer's premises after hours and under the influence of alcohol. On September 3, he was warned that if there was another such incident he would be discharged. On September 30, the claimant was seen, after hours, departing the kitchen of the hospital's dietary department, where the freezer had been tampered with and meat had been left sitting outside a food locker. The claimant's hasty exit had been observed by a security guard. It was also reported that the claimant had been drinking that night. The following day, October 1, the claimant was arrested at work on a theft charge. He was also suspended from duty and advised that he would not be allowed to return to work, pending the outcome of court action.

While the court action was still pending, on October 18, the claimant filed an application for unemployment insurance benefits. The claimant had not yet returned to work when, on January 22, 1982, he was tried and acquitted by a jury on the theft charges. Still, he was told he could not return to work, pending the employer's internal investigation. On February 18, a Claims Adjudicator issued a determination which disqualified the claimant for benefits, not on the basis of theft, but for misconduct connected with his work, because the claimant had been in an unauthorized area outside of his usual working hours and under the influence of alcohol. On March 9, a Referee issued a decision which affirmed the Claims Adjudicator's determination, that the claimant had been discharged for misconduct connected with his work. On July 16, the Board of Review affirmed the Referee's decision.

The claimant appealed, pointing out that Section 602A of the Act imposed a disqualification only when an individual had been "discharged" for misconduct connected with his work, and that, during the period in question, he had been serving a suspension -- which was not tantamount to a discharge. The Agency's policy was that a suspension from work for 7 or more days, or of indefinite duration, was tantamount to a discharge.

HELD: Although Section 602A is not ambiguous on its face, its literal application could lead to an ambiguous result: If "discharge" is not read to include "suspension," then an employee could commit an act of work connected misconduct and be compensated for it.

Courts will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with its administration and enforcement. In the instant matter, the Agency's policy was that a suspension from work of 7 or more days, or of indefinite duration, was a discharge, and, whether such suspension constituted a discharge for misconduct connected with work was decided by principles generally applicable to discharges. The Agency policy of including suspensions within the term "discharge" for the purpose of benefits disqualification did not extend the statute beyond its fair and reasonable meaning.

Because the record supported a finding of misconduct by the claimant, and because the claimant's indefinite suspension was tantamount to a discharge within the reasonable meaning of Section 602A, the Board of Review was correct in determining that the claimant had been discharged for misconduct connected with his work.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	**ABR-85-4487/2-6-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction (of Section 601B(1))**
CROSS-REFERENCE	**VL 155.35, Domestic Circumstances**

The claimant quit his job to move to California, where his brother, who suffered from a cardiac condition, resided. The claimant testified that, because of the cardiac condition, his brother could not live alone and needed someone with him in case of an emergency. The claimant testified that he had notified the employer that he was quitting work because of his brother's illness and because of the necessity of providing care for him.

HELD: Section 601B(1) of the Act provides an exception to the disqualifying provisions of Section 601A, provided that a licensed and practicing physician has determined that -

> assistance is necessary for the purpose of caring for a spouse, child, or parent who is in poor physical health...

Because the statute has delineated certain classes of individuals concerning whom an exception might be made, and "brother" does not fall within any classification, the claimant's reason for leaving work did not fall within the purview of Section 601B(1). Accordingly, he was not entitled to an exemption.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Carol Rodgers v. IDES*, 542 N.E. 2d 168 (1989)**
AUTHORITY	**Sections 239, 402, and 601A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction**
CROSS-REFERENCE	**VL 450.4, Time, Part-time or Full-time**

The claimant held 2 jobs, 1 full-time, 1 part-time. On December 31, she was laid off from her full-time job. She continued to work at her part-time job, 10 hours per week, at $4 per hour.

On January 6, she filed a claim for unemployment benefits.
Because she was working less than full-time and earning less than her weekly benefit amount ($142), she was "unemployed" within the meaning of Section 239 of the Act and eligible for benefits.
On January 11, she quit her part-time job, for reasons not attributable to the part-time employer.
The Referee and Board of Review held that, because the claimant left work for reasons not attributable to her employer, Section 601A required that she be held ineligible. The circuit court reversed and the Department appealed.

HELD: The appellate court made the following observations:

The Act is designed to provide some form of economic security to persons involuntarily unemployed. When the claimant was involuntarily laid off from full-time work, she became unemployed, under Section 239. No part of her part-time earnings of $40 per week exceeded 50% of her weekly benefit amount, so whether or not she continued working part-time, there would have been no reduction in her weekly benefit amount, under Section 402. The part-time employer would not have been charged as a result of the claimant receiving benefits. To deny benefits would work in favor of her former full-time employer, which would have been charged.

The court held that, in this case, the Department's "literal and rigid" interpretation of Section 601A did not serve the Act's purpose and was "unnecessarily harsh." Benefits were allowed.

(See *Minfield v. Bernardi*, this Digest, VL 450.4.)

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Winklmeier v. Board of Review*, 450 N.E. 2d 353 (1983)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction**
CROSS-REFERENCE	**MC 5.05, Def. of Misconduct; MC 85.05, Connection with Work**

Over a two-year period, the claimant submitted 13 medical insurance claims to his employer. Each claim was for medical treatment for his wife. On each claim he knowingly and falsely stated that his wife was unemployed and had no insurance of her own. His practice of filing false claims could result in higher insurance costs to his employer.

HELD: Section 602A provides that misconduct must be connected with work. However, misconduct need not have a direct connection with work. This would be too narrow an interpretation of the statutory language. Instead, the connection with work is determined in light of the facts of each case.

Here, the claimant's behavior arose out of duties and obligations owed his employer, was directed at his employer's insurer, and could have resulted in a substantial financial loss to his employer.
This was misconduct connected with work.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***White v. IDES* (1994)**
AUTHORITY	**56 Ill. Adm. Code 2720.5 and 2720.335**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction**
CROSS-REFERENCE	**PR 400.05, Representation**

The claimant retained counsel and notified IDES. Despite this, IDES mailed notices and decisions to the claimant and not to her attorney. The attorney's receipt of decisions denying the claimant benefits was delayed, and, consequently, when the attorney filed a complaint for administrative review, the complaint was untimely. IDES argued that the case should be dismissed because direct notice to the principal constituted adequate notice.

HELD: 56 Ill. Adm. Code 2720.5 provides that a person may designate an agent to receive notices and decisions. 56 Ill. Adm. Code 2720.335 provides that the Board of Review shall mail decisions to a party or the party's representative. To construe 56 Ill. Adm. Code 2720.335 narrowly to permit the Board to choose to mail notices to either a party or the party's representative leads to an absurd, illogical, and unfair result; *i.e.*, the Department would provide for agents, then could disregard their status, penalizing a claimant. Therefore, when a party properly designates an agent, notices and decisions must be sent to that agent.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	**ABR-94-11626/2-8-95**
AUTHORITY	**Section 601 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction (of Section 601B(1))**
CROSS-REFERENCE	**VL 235.25, Health or Physical Condition**

The claimant took a leave of absence, then resigned, saying it was at the recommendation of his therapist, a licensed clinical psychologist. The psychologist had said that the claimant needed time off to deal with anxiety and stress management issues.

HELD: Section 601B(1) of the Act provides an exception to the disqualifying provisions of Section 601A. However, the exception only applies if the leaving is predicated upon the statements of a "licensed and practicing physician." Psychologists may be licensed professionals, but they are not physicians. Accordingly, the claimant's leaving was not within the purview of Section 601B(1) and he was not entitled to an exception from disqualification under Section 601A.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Community and Economic Development Association of Cook County v. Board of Review*, 697N.E.2d 1180 (1998)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction**
CROSS REFERENCE	**None**

The claimants worked for a Head Start program from September through May, then filed claims for unemployment benefits. The Head Start program was licensed by the Illinois Department of Children and Family Services as a childcare institution under the state Childcare Act. Employees were required to possess a child development associate credential, not a teacher's certificate from the State Board of Education, nor was the Head Start program regulated or administered by the State Board of Education in any manner.

HELD: The "between terms" ineligibility provisions of Section 612 apply to benefits based upon wages for services performed for an educational institution. 56 Ill. Adm. Code 2915.1 defines an "educational institution" as having "for its primary function the presentation of formal instruction ..." While there is an educational component to the Head Start program, it is incidental to the primary function of the program, which is to provide social development services. The Head Start program did not for its primary function provide formal instruction, and, therefore, was not an educational institution. The claimants were not ineligible under Section 612.

Deceased Claimants, Disposition of Unpaid Benefits of MS 115
No decision

General MS 115.05
No decision

Dependents Allowances MS 120
No decision

General MS 120.05

ISSUE/DIGEST CODE	**Miscellaneous/MS 120.05**
DOCKET/DATE	**84-BRD-126/1-6-84**
AUTHORITY	**Section-401C**
TITLE	**Dependency**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant's wife filed a claim for benefits effective September 13, 1982. Her benefit year ran from September 12, 1982 through September 11, 1983. The claimant's wife claimed the couple's two children as dependents, and she received dependents' allowance for them.

On January 18, 1983 the claimant filed an initial claim for benefits, and he also claimed the couple's two children for dependents' allowance benefits. The claimant argued that, even though her benefit year had not expired, his wife had returned to work and was no longer receiving unemployment insurance benefits at the time he filed his claim.

HELD: Section 401C of the Illinois Unemployment Insurance Act states, in part;

> ...provided that no person who has been determined to be a child of an individual who has been allowed benefits with respect to a week in such individual's benefit year shall be deemed to be a child of the other parent and no other person shall be determined to be a child of such other parent, during the remainder of that benefit year.

The claimant's wife filed a proper claim for benefits effective September 13, 1982 and claimed the couple's two children as dependents at that time. Because she did so, those two children remained her dependents for the remainder of her benefit year

which extended through September 11, 1983. The claimant is not entitled to dependents' allowance for either child until his wife's benefit year ends.

ISSUE/DIGEST CODE	**Miscellaneous/MS 120.05**
DOCKET/DATE	**85-BRD-04675/6-25-85**
AUTHORITY	**Section 401C of the Act**
TITLE	**Dependents' Allowance**
SUBTITLE	**Support in a Medium Other Than Cash**
CROSS-REFERENCE	**None**

The claimant, a divorcee, had an eight year old son who was residing with his remarried mother. In compliance with a court order, the claimant had been paying child support of $40 per week, which the court had determined to be one-half the cost of the child's support. In addition, the claimant regularly purchased clothing for his son.

HELD: An individual may be eligible for a dependent's allowance. This is determined by a number of factors, including whether the individual has furnished more than one-half the cost of his child's support. Support may be in a medium other than cash. In the instant case, the claimant established that one-half the cost of support for his child was $40 per week. The claimant established that he paid that amount, and more, in the form of clothing directly purchased for the child. Accordingly, the claimant was eligible for a dependent's allowance.

Discrimination MS 139
General MS 139.05
No decision

Health or Physical Condition MS 235
General MS 235.05
No decision

Pregnancy MS 235.4
No decision

Incarceration or Other Legal Detention MS 250
General MS 250.05
No decision

Interstate Relations MS 260
General MS 260.05
No decision

Misrepresentation MS 340
General MS 340.05
No decision

Fraudulent MS 340.1

ISSUE/DIGEST CODE	**Miscellaneous/MS 340.1**
DOCKET/DATE	**84-BRD-206/1-9-84**
AUTHORITY	**Section-901 and S-402**
TITLE	**Misrepresentation**
SUBTITLE	**Fraudulent**
CROSS-REFERENCE	**None**

The claimant worked part-time while drawing benefits for an extended period of time. He notified the local office of his employment when he filed for benefits but did not report it on his certification forms for a period of fifteen weeks. He concluded that, since he had been told that he could work part-time and still draw benefits, it was not necessary for him to report his earnings.

The claimant admitted that he had read the item on the certification which instructed "If you do any work during the calendar week listed, enter the information below" and which also provided space for entering the gross amount of wages by day or by week.

HELD: The claimant's contention that he was unaware of his responsibility to report such wages is not credible because the certification forms clearly state that he must report any work performed during the calendar weeks covered by the certification forms. The claimant knowingly failed to disclose a material fact under Section 901 and, as a result, obtained benefits for which he was not eligible for the period from December 7, 1980 through August 1, 1981.

Non-fraudulent MS 340.15
No decision

Overpayments or Restitution MS 340.2

ISSUE/DIGEST CODE	**Miscellaneous/ MS-340.2**
DOCKET/DATE	**ABR-07-4472**
AUTHORITY	**Section 900 of the Act; Trade Act of 1974-Trade Readjustment Assistance (TRA)**
TITLE	**Construction of Statutes**
SUBTITLE	**Misrepresentation/Overpayments or Restitution**
CROSS-REFERENCE	**MS-60.05: Benefit Computation Factors/General; MS-95.15 Construction with Reference to Other Statutes**

The claimant was laid off from work on July 14, 2005, filed a claim for unemployment benefits the next day, and was awarded weekly benefits of $208.00, including a dependents' allowance. After returning to work, the claimant was again laid off on April 7, 2006, filed for benefits on April 12, 2006, and was granted weekly unemployment benefits of $449.00, including dependents' allowance. The claimant collected her regular unemployment benefits until she exhausted them during the week ending October 14, 2006. Pursuant to the Trade Act of 1974, the claimant began collecting Trade Readjustment Assistance (TRA) benefits of $449.00 weekly, including dependents' allowance, on October 15, 2006 and continued receiving them through December 23, 2006. The claimant's employer was first certified as an affected employer under the Trade Act of 1974 on March 22, 2005.

HELD: Under the Trade Act of 1974, an individual's weekly TRA benefit payment is based on the individual's Afirst qualifying separation from work after the impact date cited in the petition certification covering the adversely affected worker. Here, the claimant's Afirst qualifying separation from employment with the impacted employer occurred on July 14, 2005, which was after the impact date cited in the certification dated March 22, 2005. When she applied for benefits after that first separation from work, she received a weekly benefit amount of $208.00, including dependents' allowance. This is the amount she should have received when she began receiving TRA benefits, rather than $449.00 per week which she, in fact, received. Therefore, the claimant was overpaid $241.00 per week while receiving TRA benefits and this overpayment was subject to recoupment and/or recovery.

Receipt of Other Payments MS 375
General MS 375.05
No decision

ISSUE/DIGEST CODE	**Miscellaneous/MS 375.05**
DOCKET/DATE	***Hmelyar v. Phoenix Controls*, 339 Ill. App. 3d 700 (2nd Dist. 2003)**
AUTHORITY	**Section 239 of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Stock Options, Group Insurance, Severance Pay**
CROSS-REFERENCE	**None**

The claimant was terminated by the employer on November 9, 2000, and was given a severance package through July 12, 2001. The severance package included weekly severance payments equal to his weekly salary and continued health and dental insurance benefits. Six days after his termination the claimant signed an employment agreement with MyIndoorAir, Inc., a company owned by the employer's former owner which was once a unit of the employer. The agreement provided for compensation in three components: salary, two contingent bonuses, and incentive stock options with a "current purchase price" of $1.75/share. The agreement also provided that the claimant would be covered by MyIndoorAir's group life and disability

insurance benefits. The agreement noted that the claimant's salary and health and dental insurance benefits would be paid for by the employer through July 9, 2001. The claimant filed a claim for unemployment insurance benefits for the week of December 3, 2000, which included a work search record. The claimant worked approximately 16 hours for MyIndoorAir during the week of December 3rd, and approximately 20 hours during the week of December 10th. The claimant received no "W-2 wages" from MyIndoorAir. The contingent bonuses were not paid because the contingencies were not met. In addition, the stock options did not vest until November 15, 2001, and would not have value until MyIndoorAir received venture capital funding.

The Board denied the claimant's claim for unemployment insurance benefits finding the claimant was not an "unemployed individual" under Section 239 of the Act. The Board reasoned the claimant received "wages" for purposes of Section 239 because (1) the stock options the claimant received from MyIndoorAir had a value of at least $1.75/share, and the fact the stock options had not vested was irrelevant since the claimant had been given the rights to the stock options; and (2) the claimant received group life and disability insurance benefits from MyIndoorAir. The Board concluded it did not matter that the claimant had not received a base salary from MyIndoorAir. The circuit court affirmed.

HELD: Reversed and remanded. Neither the group life and disability insurance nor the stock options are "wages" for purposes of Section 239. First, Section 235(B) specifically excludes life and disability insurance from the definition of "wages." Even so, under the claimant's agreement with MyIndoorAir the claimant's benefits were tied to his salary, and his salary was zero. Second, unvested and unexercised stock options do not constitute "wages." A stock option's value is speculative and unascertainable when it is granted. Since the value of remuneration is critical to determining whether a claimant is entitled to unemployment insurance benefits and, if so, their amount, when a remuneration's value is speculative and unascertainable the remuneration cannot constitute "wages" under the Act. In addition, the grant of stock options by MyIndoorAir to the claimant was contingent upon board of director approval, and there is no indication this contingency was met.

In addition, the Board contends on appeal that the claimant's claim should be denied because he failed to prove (1) he was not employed less than full-time; and (2) his severance payments were not really salary. However, it is undisputed the claimant worked no more than 20 hours during either week and he spent time searching for other work. In addition, a claimant may be unemployed even though he receives severance payments from a former employer because the payments are not payable "with respect to" the period after employment ceased. Whether severance payments are really salary depends on whether the payments are fixed with a view toward the employee's future conduct or needs. Here, the severance payments paid by the employer were not really payments of the claimant's salary with MyIndoorAir because the employer neither exercised any role in arranging or drafting the claimant's agreement with MyIndoorAir nor considered the severance payments to be salary from MyIndoorAir.

ISSUE/DIGEST CODE	**Miscellaneous/MS 375.05**
DOCKET/DATE	***Murphy v. Board of Review of the Department of Employment Security*, 394 Ill.App.3d 834, 334 Ill.Dec. 733, 917 N.E.2d 559 (1st Dist., 2009)**
AUTHORITY	**Sections 220(D)(1)(a), 234 and 239 of the Act**
TITLE	**Receipt of Other Benefits**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was discharged from his job with a grocer in January, 2006. He applied for and was granted unemployment benefits of $350.00 per week from February 2, 2006 until June 24, 2006, at which time the Department learned that he had been receiving weekly compensation of $519.23 as an elected Township Supervisor during this period. The Department determined that he was not an "unemployed person" pursuant to Section 239 of the Act since his weekly wages as a Township Supervisor exceeded his weekly benefit amount and terminated his benefits.

HELD: The claimant argued, first, that he was entitled to benefits because his services as a Township Supervisor were not "in employment" because of Section 220(D)(1)(a) of the Act, which excludes from "employment" services performed for a governmental entity by an elected official in the exercise of his official duties. He also argued that, even if his services were not excluded from employment by Section 220(D)(1)(a), his services as a Township Supervisor were not "wages" as defined in Section 234 of the Act because he would have received compensation for holding that position, even if he did not perform any services.

The appellate court rejected both of the claimant's arguments, finding that the claimant's services were "wages" under Section 234, which provides, in part, that "'wages' means every form of remuneration for personal services", because the claimant had,

in fact, personally performed services required by statute in his position as the Township Supervisor and received remuneration for doing so. The court also rejected the claimant's contention that his services were excluded from being "in employment" pursuant to Section 220(D)(1)(a), finding that this argument was irrelevant since it was not the issue decided by the Board of Review. The issue before the Board was whether or not the claimant was an "unemployed person" pursuant to Section 239. Since the wages received by the claimant as a Township Supervisor exceeded his weekly benefit amount, the Board of Review was correct in determining that the claimant was not an "unemployed person" and, thus, was not entitled to benefits under Section 239.

Disability Compensation MS 375.1
No decision

Lieu of Notice, Remuneration MS 375.15
No decision

Loss of Wages, Compensation for MS 375.2

ISSUE/DIGEST CODE	**Miscellaneous/MS 375.2**
DOCKET/DATE	***Dolores Weingart v. IDOL*, No. 64344 (1988)**
AUTHORITY	**Sections 703 and 900 of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Loss of Wages, Compensation for**
CROSS-REFERENCE	**MS 95.3, Construction of Statutes, Statute as a Whole**

The claimant was employed by Advo-Systems, Inc., until August 21, 1980, after which she filed for and received unemployment benefits: $116 per week from August, 1980 through June, 1981, totaling $4,408.

The Advo-Systems plant had closed shortly after the employees elected to have a union act as their collective-bargaining agent. The union representatives filed a complaint before the NLRB against Advo-Systems. A year-and-a-half after Advo-System's plant closing, the company entered into an out-of-court settlement to end the pending NLRB litigation. Pursuant to that settlement, the claimant received a payment of $8,140 in two installments, the first on January 20, 1982 and the second on February 16, 1982.

In September, 1982, a Department of Labor (Employment Security) Adjudicator issued to the claimant a reconsidered determination and recoupment decision, under Section 900(D) of the Act. The claimant was informed that she had been found retroactively ineligible to receive benefits due to the back pay award.

The claimant appealed, citing Section 703 of the Act, which permitted a Claims Adjudicator to "reconsider his determination at any time within one year ...." The claimant argued that the Adjudicator's reconsidered determination and recoupment decision were void.

The Department argued that the intent of Section 900(D) of the Unemployment Insurance Act was to prevent a double recovery of both back pay and unemployment benefits for the same week(s). The Department also argued that the reconsidered determination of ineligibility based on a back pay award was of a different nature than reconsidered determinations based on other factors: the back pay award triggered an initial and original determination, predicated upon the nature of the award and not upon a renewed evaluation of the facts that led to an original determination.

HELD: Section 900(D) is not a special category of recoupment in and of itself, but must be read in conjunction with all of Section 900. Further, Section 900 incorporates Section 703.

Section 900(D) provides, in relevant part:

> Whenever, by reason of a back pay award...an individual has received wages for weeks with respect to which he has received benefits, the amount of such benefits may be recouped...as herein provided.
>
> Because Section 900(D) contains no procedures, the term "herein provided" must refer to other provisions of Section 900. Section 900(A) provides, in pertinent part, that recoupment be "pursuant to a ... reconsidered determination." Section 703 provides that determinations may not be reconsidered after 1 year. In this case,

the Claims Adjudicator's reconsidered determination and its accompanying recoupment decision, having been made more than 1 year after an original determination of eligibility, were void.

Also, the Department's interpretation of the intent of the legislature, with respect to double-recovery, was much too narrow. Section 900(A) contemplates waiver of recoupment even when a determination is reconsidered within 1 year. That being so, it could not be said that there were no equitable considerations which would have allowed the legislature to determine that any recoupment after 1 year would always be inequitable or unconscionable.

Recoupment was disallowed.

Old-Age and Survivors Insurance MS 375.25

ISSUE/DIGEST CODE	**Miscellaneous/MS-375.25**
DOCKET/DATE	***Martin v. Department of Employment Security*, 376 Ill.App.3d 853, 315 Ill.Dec. 790, 877 N.E.2d 1119 (5th Dist., 2007)**
AUTHORITY	**Section 611 of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Old-Age and Survivors Insurance**
CROSS-REFERENCE	**MS-60.1: Benefit Computation Factors/Base Period**

The claimant began receiving social security retirement income in 1999. From September 19, 2004 until August 17, 2005, the plaintiff was employed by Wal-Mart. Following her discharge, she applied for unemployment insurance benefits. Pursuant to Section 611(A)(2) of the Act, the claims adjudicator found the claimant ineligible for benefits because the plaintiff was receiving 50% disqualifying income in the form of social security retirement benefits. The claims adjudicator's determination was affirmed by the Referee and the Board of Review. The Board's decision was affirmed by the circuit court and the claimant appealed, asserting that her social security retirement payments should not be considered disqualifying income because Wal-Mart was not her Abase-period employer since (1) the social security benefits she received were based upon her employment with other employers prior to her retirement in 1999, and (2) her social security benefits did not change as a result of her employment with Wal-Mart in 2004.

HELD: The court held that the claimant's argument was based on the mistaken premises that (1) the term Abase period encompasses only the years during which an employee worked prior to beginning to receive social security retirement benefits and (2) that a base-period employer can only be an employer that contributed to an employee's future social security retirement benefits prior to that employee becoming eligible for those benefits. The court noted that the term base period is defined in Section 237(A) of the Act as the period of time examined to determine whether the claimant earned sufficient wages to qualify for unemployment benefits and, if so, the amount of those benefits. It was undisputed that Wal-Mart was the employer who paid the claimant wages during the claimant's Abase period and, thus, was the plaintiff's base-period employer. Since the claimant received wages from Wal-Mart during her base period and Wal-Mart paid Social Security taxes on these wages, Section 611(A)(2) mandated that half of the claimant's social security retirement benefits be deemed disqualifying income, which thereby rendered the claimant ineligible for unemployment benefits.

Pension MS 375.3

ISSUE/DIGEST CODE	**Miscellaneous/MS 375.3**
DOCKET/DATE	**ABR-89-2980**
AUTHORITY	**Section 611 and Interpretation by Employment and Training Administration**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Pensions**
CROSS-REFERENCE	**None**

The claimant worked for his last employer as a carpenter. The claimant was entitled to a retirement pension. Contributions to the pension fund were made directly by the various contractors for whom the claimant worked. No corresponding deduction or withholding for pension purposes was made from the claimant's paycheck, and the claimant did not otherwise make any direct payments to the fund. However, the claimant argued that he, in fact, made contributions to the pension fund because the contractors' payments to the fund were in lieu of salary increases that would otherwise have been negotiated through collective bargaining. The claimant further argued that the contractors were merely acting as agents for the remittance of his salary increases into the union's pension fund.

The issue presented by this appeal is whether the entire amount received by the claimant in the form of retirement payments constitutes "disqualifying income" deductible from benefits to which the claimant might otherwise be entitled.

HELD: The Board found that the evidence did not establish that the contractors' payments to the pension resulted in the claimant receiving less remuneration than that to which he was entitled or that deductions from his earned remuneration were made to pay the cost of the pension program. Therefore, the claimant did not make any contributions to the pension fund, and the retirement pay was 100-percent deductible from benefits to which the claimant might otherwise be entitled.

Note: The U.S. Department of Labor's Employment and Training Administration (ETA), in a letter dated April 9, 2002, reiterates that Section 3304(a)(15) of the Federal Unemployment Tax Act (FUTA) generally requires state law to provide that a claimant's weekly benefit amount be reduced by the amount of any retirement pension attributable to the week. While the federal statute does not require that the benefit be reduced by the full amount of the pension if the claimant contributed to the pension fund, the letter states the key consideration in determining whether the claimant contributed to the pension fund is whether he or she actually made any contributions - not whether the claimant's collective bargaining representative might have made certain wage concessions in exchange for part or all of the employer's contributions to the pension fund. The letter concludes that ETA does not regard a claimant as having contributed to the pension fund simply because the claimant's union agreed to forego previously negotiated wage increases in exchange for increased employer contributions to the fund

ISSUE/DIGEST CODE	**Miscellaneous/MS-375.3**
DOCKET/DATE	**ABR-06-6539**
AUTHORITY	**Section 611**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Pension**
CROSS-REFERENCE	**None**

The claimant retired from his job with the Federal Reserve Bank of San Francisco, also known as the 12th District, and began receiving monthly retirement payments of $2,608.00 beginning June 1, 2004 and continuing through the benefit period at issue, March 19, 2006 through April 1, 2006. From June 1, 2005 until December 17, 2005, the claimant was employed as a consultant with the Federal Reserve Bank of Chicago, also known as the 7th District. He did not accrue or receive any pension benefits from his employment with the 7th District. The claimant applied for unemployment benefits on March 22, 2006. He was granted weekly benefits of $393.46. However, pursuant to Section 611(A)(2) of the Illinois Unemployment Insurance Act (the Act), one-half of his monthly pension payment was considered disqualifying income, which reduced his weekly benefit payment to $43.46. The claimant contended that Section 611(A)(2) was inapplicable because the 7th District Bank, to which the benefits he received were charged, was a different corporation from the 12th District bank, the bank from which he received the pension payments.

HELD: The Board of Review rejected the claimant's contention. The Board first noted that Section 611(A)(2) does not use more restrictive words like Aemploying unit or employer, which are defined in the Act, or the word corporation, but rather the term organization in describing the source of the pension payment. The Board found that all of the Federal Reserve Banks were created by the Federal Reserve Act as instrumentalities of the federal government intended to establish a centralized national banking system. All the banks are subject to the oversight of the Board of Governors which has enumerated powers to control the operations of the banks. Thus, although each of the Federal Reserve Banks is an independently managed corporation, they are all part of one organization for the purposes of Section 611(A)(2). Consequently, the pension payments were disqualifying income which reduced the claimant's weekly benefit amount.

Public Assistance MS 375.35
Railroad Retirement Benefits MS 375.4
Relief Project Wages MS 375.45
Unemployment Compensation under another Law MS 375.5
Workmen's Compensation MS 375.55

Seasonal Employment MS 410
General MS 410.05

ISSUE/DIGEST CODE	**Miscellaneous/MS 410.05**
DOCKET/DATE	***Brent Davis v. Board of Review,* 477 N.E. 2d 842 (1985)**

AUTHORITY **Section 612 of the Act**
TITLE **Seasonal Employment**
SUBTITLE **Academic Personnel**
CROSS-REFERENCE **MS 60.10, Benefit Computation; MS 95.1, Constr. Stat.**

The claimant was employed as a School Teacher during the 1981-1982 school year. In June, 1982, when the school term ended, he did not have a contract with the district to teach during the upcoming 1982-1983 school year. He applied for and began receiving unemployment benefits. Although, on July 18, 1982, he signed a contract to teach in the district during the 1982-1983 school year, he continued to receive unemployment benefits until he actually started teaching on August 23, 1982.

The issue presented was whether the claimant was entitled to the benefits he received after his contract had been approved.

HELD: Section 612 of the Act states, in pertinent part:

> An individual shall be ineligible for benefits, on the basis of wages for service in employment...for an educational institution, *for any week*...during a period between academic years...if the individual performed such service in the first of such academic years...and if there is a contract or a reasonable assurance that the individual will perform service in any such capacity...in the second of such academic years...(Court's emphasis.)

Section 612 is clear and unambiguous. A teacher's eligibility is determined on a weekly basis. During any week in which a teacher has a contract or reasonable assurance of employment during the upcoming school year, the teacher is not eligible to receive unemployment benefits.

Therefore, as soon as the claimant's contract for the 1982-1983 school year was approved, he was not entitled to receive unemployment compensation. Accordingly, the benefits he received thereafter were subject to recoupment.

ISSUE/DIGEST CODE **Miscellaneous/MS 410.05**
DOCKET/DATE **ABR-85-7060/7-14-86**
AUTHORITY **Section 612 of the Act**
TITLE **Seasonal Employment**
SUBTITLE **Academic Personnel**
CROSS-REFERENCE **None**

The claimant was employed as a High School Teacher for the school years 1983-1984 and 1984-1985. Toward the end of the 1984-1985 term, she received, instead of her usual contract, a letter entitled "Termination of Employment." In it, the District Superintendent stated:

> It will be my recommendation to the Board of Education that your employment will be terminated at the conclusion of the 1984-1985 school year, and that you will not be employed for the 1985-1986 school year.

At the end of the 1984-1985 school term and during succeeding weeks, the claimant filed for unemployment benefits. Records of the Department of Employment Security did not disclose that the claimant had any reasonable prospects of obtaining work as a Teacher for the ensuing school term.

HELD: Section 612 of the Act states, in pertinent part:

> An individual shall be ineligible for benefits, on the basis of wages for service in employment...for an educational institution, during a period between two...academic years...or terms...if the individual performed such service in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that the individual will perform service in any such capacity for any educational institution in the second of such academic years (or terms).

Since, in this case, the record did not indicate that the claimant had a contract or any reasonable assurance that she would be employed by an educational institution the next term, the disqualifying provisions of Section 612 were inapplicable.

ISSUE/DIGEST CODE **Miscellaneous/MS 410.05**
DOCKET/DATE ***Christine Doran v. IDOL*, 452 N.E. 2d 118 (1983)**
AUTHORITY **Section 612 of the Act**
TITLE **Seasonal Employment**
SUBTITLE **Academic Personnel**
CROSS-REFERENCE **MS 60.10, Benefit Computation; MS 95.2, Constr. Stat.**

From 1970 through 1980, the claimant taught during her school's 39-week academic term then through its 8-week summer session. Then, on June 26, 1980, at the end of 39 weeks, she was told that, due to budgetary considerations, the school would not be offering the 8-week summer session and her services would not be needed until the following autumn. So the claimant filed for unemployment benefits for that 8-week period.

The Department held that, because the claimant filed for benefits for a period between academic terms, she was ineligible under Section 612. The claimant contended that this was not a period between terms, but a portion of what would have been her customary 47-week term.

HELD: Section 612 provides, in pertinent part, that an individual shall be ineligible for benefits between "regular academic terms." What constitutes a regular academic term is determined by the legislature, not by a claimant's particular circumstances.

The legislature has defined regular academic term - not in the Unemployment Insurance Act, but in the School Code. The School Code provides that each school board shall prepare a calendar for the school term (consisting of a required number of school days, or, at this time, 39 weeks). Pursuant to its delegated authority, the claimant's school board adopted a calendar that complied with the definition by providing for 39 weeks of school. The fact that the school board did or did not offer a summer session was immaterial; the 39-week period was the regular academic term intended by the legislature.

The claimant worked until the end of the regular academic term. She filed for benefits for a period between that term and her next regularly scheduled term. Therefore, she was ineligible under Section 612.

ISSUE/DIGEST CODE **Miscellaneous/MS 410.05**
DOCKET/DATE **ABR-87-9148/3-21-88**
AUTHORITY **Section 612 of the Act**
TITLE **Seasonal Employment**
SUBTITLE **Academic Personnel**
CROSS-REFERENCE **MS 95.05, Construction of Statutes**

The claimant, a teacher, was dismissed at the end of the academic term (end of May) because his school district wished to decrease the number of teachers and services. He filed a claim for benefits for the period May 31 through June 13.

On July 29, at his appeal hearing, he established that, through the period he claimed benefits, he had no contract or reasonable assurance that he would be working the next term. However, he testified that, the week of the hearing, he accepted a contract from a different school to teach the next term. The Referee disqualified him for the period May 31 through June 13.

HELD: Section 612 provides that an individual is ineligible between successive academic terms if he performed service in the first term and there is a contract or reasonable assurance that he will perform service in the second term.

The contract or reasonable assurance must exist prior to or during the period for which the individual is claiming benefits. A later contract or assurance will not operate retroactively.

In this case, as of June 13, the claimant had no contract or reasonable assurance. He could not be denied benefits through that date based upon a contract or assurance that did not yet exist. (However, he could be denied benefits for weeks later than the date of acceptance of the contract.)

ISSUE/DIGEST CODE **Miscellaneous/MS 410.05**
DOCKET/DATE ***Campbell v. Board of Review*, 570 N.E. 2d 812 (1991)**
AUTHORITY **Section 612 of the Act**
TITLE **Seasonal Employment**
SUBTITLE **Academic Personnel**

CROSS-REFERENCE **MS 60.10, Benefit Computation; PR 380.25, Review**

The claimant worked as a part-time teacher at Prairie State College in fall, 1984; at Chicago State University in fall, 1984, and in spring, 1985; and at Columbia College in spring, 1983 through 1985, and in fall, 1984.

He filed a claim for unemployment benefits during the summer, 1985. In order to show that he could not be held ineligible under Section 612, he submitted a post-dated letter from Columbia College, which indicated that, generally, there was no guaranteed work for part-time teachers; *e.g.*, there would be no work if there was no full enrollment in a course; if a full-timer did not have full enrollment, he could bump a part-timer who did; etc.

HELD: Section 612 of the Act provides, in pertinent part, that an individual will be ineligible between terms if there is a reasonable assurance that he will perform work for any educational institution in the upcoming term.

Section 612 makes no distinction between full-time and part-time teachers. Section 612 refers to "any" educational institution and is not limited to consideration of work at one particular institution. Further, whether there is a reasonable assurance depends upon facts as well as representations.

The claimant, even though he was a part-time teacher, was subject to Section 612. The facts showed that, despite the lack of guaranteed work, he had always been able to obtain work during fall terms, at one educational institution or another. Therefore, he had a reasonable assurance of working the next fall.

ISSUE/DIGEST CODE **Miscellaneous/410.05**
DOCKET/DATE ***Marzano v. IDES*, 339 Ill. App. 3d 858 (1st Dist. 2003)**
AUTHORITY **Section 612 of the Act**
TITLE **Seasonal Employment**
SUBTITLE **Academic Employment**
CROSS-REFERENCE **None**

The claimant was employed as a substitute teacher with the employer school district. The claimant became a full-time teacher for the 1999-2000 school year. At the end of the school year the claimant received a letter informing him that he would not be re-hired as a full-time teacher for the 2000-01 school year, but in August, 2000, the claimant received a letter informing him the employer was interested in his services as a substitute teacher for that school year. The claimant then performed services as a day-to-day, as-needed substitute teacher for the 2000-01 school year, his last day of work being June 8, 2001. The claimant then filed a claim for unemployment insurance benefits. However, in August, 2001, the claimant again received a letter from the employer informing him it was interested in his services as a substitute teacher for the 2001-02 school year. The claimant responded that he wanted to work for the employer as a substitute teacher. The hearings referee denied the claimant's claim under Section 612 of the Act because the claimant had reasonable assurances of returning to work as a substitute teacher in the fall of 2001. This decision was affirmed by the Board of Review, and on administrative review by the circuit court
.
HELD: Affirmed. Section 612 of the Act applies to day-to-day substitute teachers. The plain language of Section 612(B)(1) does not distinguish between full-time and substitute teachers, but refers to individuals employed in an instructional capacity, a category under which the claimant falls. Also, the claimant had reasonable assurances of future work as required by Section 612. The IDES regulations regarding "reasonable assurance," 56 Ill. Adm. Code Secs. 2915.1, 2915.20, as applied to the facts of this case, show that the claimant had a reasonable assurance of future work as a substitute teacher for the 2001-02 school year based on the previous conduct and practice between the claimant and the employer. In addition, the letter notifying the claimant that he no longer would be employed as a full-time teacher does not constitute a letter of dismissal for the purposes of Section 612. After the letter was issued, the claimant was employed by the employer as a substitute teacher, and the conduct and practice of the claimant and employer regarding the claimant's employment as a substitute teacher was established.

ISSUE/DIGEST CODE **Miscellaneous/410.05**
DOCKET/DATE **ABR-22-34815/10-11-22**
AUTHORITY **Section 612 of the Act**
TITLE **Seasonal Employment**
SUBTITLE **Academic Employment**
CROSS-REFERENCE **None**

The claimant worked as a Special Education teacher for the Chicago Public School ("CPS") district in the 2021-2022 academic term. On 06/01/2022, she was terminated from her position in a letter and email entitled, "Non-Renewal of Probationary Appointed Teacher". In the letter and email, the employer advised the claimant that due to poor proficiency ratings in certain areas, she had "not been renewed as an educator for the 2022-2023 school year". Though her benefits would be extended until the end of August of 2021, the decision not to renew her position was to "become final" upon return of her summative proficiency rating. In this letter, the claimant is thanked for her service and given the option for "re-employment" with CPS in "other positions" or as a cadre of substitute teachers for the 2023 academic term.

HELD: Under Section 612 of the Act, when an individual has employment in an educational institution or educational service agency in the first of two successive academic years or terms or immediately prior to a vacation period or holiday recess, and the individual has reasonable assurance of returning to such employment in the second year or term or immediately following the vacation or holiday period, the individual shall be ineligible to receive benefits during the intervening period between academic years or terms, or during the vacation period or holiday recess. Under Section 2915.20 of the Rules, the reasonable assurance shall be presumed if such individual has a written, verbal, or implied agreement that covers or extends into the second academic year or term, or after the vacation period or holiday recess, to perform for any educational institution or educational service agency, academic or non-academic services. Under Section 2915.25 of the Rules, the presumption can be rebutted if the individual employed by the educational institution or educational service agency can establish by a preponderance of the evidence that such individual no longer has a reasonable assurance of continued employment, in order to be eligible for benefits under this Part. Such evidence may include a written notice of dismissal from the employer, a written statement under oath or such other evidence which tends to show that the presumption provided in Section 2915.20 is without basis.

In this case, the presumption was rebutted by the letter and email from CPS and the claimant's sworn testimony, that her contract/agreement for teaching services was involuntarily terminated by her employer on 06/01/2022; thus, precluding any presumption of continued employment in the 2023 academic term. While the letter does not state the employer would refuse to rehire the claimant based upon her poor proficiency rating, it does not offer her work. The letter simply notifies the claimant that, although she is being terminated as a teacher, she could apply for "other positions" or as "substitute", just as any other person could apply. The potential availability of substitute teaching positions did not establish a 'reasonable assurance' of continued work. Since the disqualification from benefits set forth in Section 612 only applies in cases where the claimant had a reasonable assurance of continued work in the upcoming term; and, in this case the claimant did not have a reasonable assurance of work in the upcoming term, the disqualification did not apply, and she is not subject to the disqualification.

ISSUE/DIGEST CODE	**Miscellaneous/410.05**
DOCKET/DATE	**ABR-22-35945/4-7-23**
AUTHORITY	**Section 612 of the Act**
TITLE	**Seasonal Employment**
SUBTITLE	**Academic Employment**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a talent development specialist in the employer's human resources department ("HR Position"). The HR Position is a 12-month position and not subject to collective bargaining. The claimant applied for and accepted a teaching position with the employer. The Teaching Position is a 9-month position and is subject to collective bargaining. The claimant left the HR Position on 06/30/2022 to accept the Teaching Position set to start on 08/24/2022. The claimant filed for benefits during the interim period.

HELD: Section 2915.40(c) of the Benefit Rules states that: "if an individual performs services for one type of academic employer in one capacity during the period before a vacation period or holiday recess within an academic year or term, and there is a reasonable assurance that the individual will perform services in a different capacity for the same type of academic employer for the period immediately subsequent to the vacation period or holiday recess, the individual shall be ineligible for benefits under Section 612 of the Act during the vacation period or holiday recess." Though the claimant argued that the non-union HR position, which contemplates compensation over a 12-month contract, is substantially different than the collectively bargained Teacher Position, which contemplates compensation over a 9-month contract, the Section 2915.40(c) language is clear and unambiguous. Based on the foregoing, the claimant failed to meet her burden under Section 612 of the Act.

ISSUE/DIGEST CODE	**Miscellaneous/MS 410.05**
DOCKET/DATE	***Kilpatrick v. Illinois Department of Employment Security*, 928 N.E.2d 545, 340 Ill.Dec. 546 (1st Dist. 2010)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Seasonal Employment**
SUBTITLE	**Academic Employment**
CROSS-REFERENCE	**None**

The claimant is a college teacher who applied for UI benefits based on his reduced work hours during the summer session. The College filed a protest on the ground that academic personnel are ineligible for UI benefits between regular academic terms under Section 612. The Board found that the claimant was ineligible for UI benefits under Section 612 because he applied for benefits during a period between two successive academic terms and had a reasonable assurance that he would perform services in the next academic years or term.

The claimant filed a complaint for administrative review and the trial court affirmed the decision of the Board. On appeal, the claimant argued that Section 612 does not apply because he applied for UI benefits during the *summer session*.

HELD: The Appellate Court reasoned that the College's *academic year* is divided into two eighteen week semesters (fall and spring) and as such the eight week *summer session* was not intended to be included as an *academic term* within the meaning of Section 612 of the Act. The record shows that the claimant acknowledged that he had reasonable assurance that he would be rehired at the beginning of the fall semester. The Board's decision was affirmed.

Union Relations MS 475
General MS 475.05
No decision

Labor Dispute, Participation in MS 475.35

ISSUE/DIGEST CODE	**Miscellaneous/MS 475.35**
DOCKET/DATE	***520 South Michigan Ave. Associates v. Department of Employment Security*, 935 N.E.2d 612, 343 Ill.Dec. 604 (1st Dist. 2010)**
AUTHORITY	**Section 604 of the Act**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**None**

Union members employed by a Hotel in various guest service positions went on strike against the Hotel. Some of the striking members filed for UI benefits and the Hotel filed a protest on the ground that the striking members were ineligible under Section 604. The claims adjudicator determined that the striking workers were ineligible during the first three weeks of the strike under Section 604 but "not ineligible" for weeks thereafter. The Director's representative concluded that the work stoppage was ongoing and the Hotel business operations had not returned to substantially normal levels. Therefore, the Director's representative held that the striking workers are ineligible under Section 604. The Director rejected the decision of the Director's representative and affirmed the claims adjudicator's determination.

The Hotel filed a complaint for administrative review and the circuit court affirmed the Director's decision. On appeal, the Hotel argued, in part, that the claimants are ineligible under Section 604 because the work stoppage is ongoing and as such the Hotel has not return to normal levels of business operations.

HELD: The Appellate Court reasoned that the burden of establishing that the claimants were "not ineligible" under Section 604 rested upon the employer and that the Director is the ultimate finder of fact in this case. The court held that the administrative record supports the Director's decision; therefore the Director's decision was affirmed.

PROCEDURE

Procedure PR 5
General PR 5.05

Abatement PR 10
General PR 10.05

Appearance PR 25
General PR 25.05

ISSUE/DIGEST CODE	**Procedure/PR 25.05**
DOCKET/DATE	**ABR-89-7030/2-7-90**
AUTHORITY	**56 Ill. Adm. Code 2720.215**
TITLE	**Appearance**
SUBTITLE	**By Telephone**
CROSS-REFERENCE	**None**

The hearing notice informed both parties that an in-person hearing was scheduled. The claimant appeared in person. The employer requested that a witness be allowed to appear by telephone. The hearing proceeded and a decision was rendered, but no reason was stated anywhere in the record as to why the employer's witness could not appear in person.

HELD: Rule 2720.215 permits telephone appearances under specified conditions. Rule 2720.215 also provides that, when a request is made for a change of hearing format (in-person to telephone), "the Referee shall state the reason(s) for the grant or denial of such format change on the record."

Here, the Referee did not state the reason(s) for permitting the format change.

The case was remanded.

ISSUE/DIGEST CODE	**Procedure/PR 25.05**
DOCKET/DATE	**ABR-89-5656/1-31-90**
AUTHORITY	**Section 806 of the Act**
TITLE	**Appearance**
SUBTITLE	**By Telephone**
CROSS-REFERENCE	**PR 190.05, Evidence; PR 400.05, Representation**

The claimant appealed a determination and filed a signed authorization for attorney representation. At his appeal hearing, the claimant's attorney and a witness for the employer appeared; the claimant did not appear. The claimant's attorney attempted to come forward with evidence by calling the employer's witness on the claimant's behalf. The Referee disallowed the attorney's attempt to elicit such evidence and dismissed the appeal due to the claimant's failure to appear.

HELD: Section 806 of the Unemployment Insurance Act provides, in pertinent part, that any individual or entity in any proceeding before the Referee may be represented by a duly authorized agent.

Here, under Section 806 (as well as general principles of Agency law), the appearance by duly authorized counsel was equivalent to the claimant himself having appeared. The case was remanded so that the claimant, or his attorney, might present evidence.

ISSUE/DIGEST CODE	**Procedure/PR 25.05**
DOCKET/DATE	**85-BRD-05338/7-16-85**
AUTHORITY	**Section 601 & 602 of the Act**
TITLE	**Appearance**
SUBTITLE	**By Telephone**
CROSS-REFERENCE	**PR 190.05, Evidence; PR 275.05, Jurisdiction and Powers of Tribunal**

On November 30, 1984, notice was mailed to the employer that the claimant had filed a claim for unemployment insurance benefits. The notice informed the employer that it could become a party to the proceedings if it filed a Notice of Possible

Ineligibility or a letter in lieu thereof within ten days. The employer filed no Notice of Possible Ineligibility or letter in lieu thereof. Nonetheless, the claimant was disqualified for benefits, and filed an appeal. An appeal hearing was scheduled for January 17, 1985, to consider the issue of whether the claimant had left work voluntarily without good cause attributable to the employer. Prior to that hearing, a prospective witness for the employer telephoned the Referee's supervisor. The Referee's supervisor told the witness that the employer need not appear at the hearing, because it had no "say so" in the matter. Subsequently, the Referee conducted a hearing at which only the claimant appeared. On the basis of the evidence presented, the Referee issued a decision allowing benefits to the claimant. The employer then filed an appeal to the Board of Review, expressing a desire to present evidence at a hearing.

HELD: Agency Rule 2720.205(c) reads, in pertinent part:

> In the event that a claimant appeals an Adjudicator's determination regarding a separation issue...and where the employer from which the separation occurred is not a party, such employer will receive notice of hearing which he may attend as a nonparty and present such facts and evidence as he may possess.

Therefore, even though the employer may have been a nonparty, the employer still should have been afforded an opportunity to appear at the hearing and present such facts and evidence as it possessed. The decision of the Referee was set aside, and the case was remanded.

ISSUE/DIGEST CODE	**Procedure/PR 25.05**
DOCKET/DATE	**ABR-85-7321/2-28-86**
AUTHORITY	**56 Ill. Adm. Code 2720.5**
TITLE	**Appearance**
SUBTITLE	**By Telephone**
CROSS-REFERENCE	**PR 400.05, Representation, By an Agent**

On August 28, 1985, a hearing was conducted, by telephone, to consider a work separation issue. The claimant appeared and testified. The employer was represented at the hearing by a tax service which specialized in unemployment insurance matters. Based upon the evidence presented by the claimant and the employer's representative, the Referee determined that the claimant was eligible for benefits without disqualification.

The employer (itself) appealed, stating:

> It is the employer's request that a rescheduled hearing be permitted so that the employer can give his testimony. The reason why the employer did not participate in the hearing was because the tax agency which represents the employer forgot to give the Referee the phone number for the telephone hearing ...

HELD: Agency Rule 2720.5, Service of Notices, Decisions, Orders, reads, in pertinent part, as follows:

> b) A person may designate an agent...In such cases, notice to the agent so designated is notice to the person...

In the instant case, the employer was represented at the hearing by its duly appointed agent, which had received notice of the hearing. Under Rule 2720.5 - and under general principles of Agency Law - this was equivalent to the employer itself having received notice, and having appeared at the hearing. Therefore, the employer's request for a rescheduled hearing, on the basis of its not having appeared at the originally scheduled hearing, was without merit. The request was denied.

ISSUE/DIGEST CODE	**Procedure/PR-25.05**
DOCKET/DATE	**White v. Department of Employment Security, 376 Ill.App.3d 668, 314 Ill.Dec. 867, 875 N.E.2d 1154 (1st Dist., 2007)**
AUTHORITY	**Section 601(A) of the Act**
TITLE	**Appearance**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 135.05: Discharge or Leaving – General; PR-380.1/Rehearing or Review-Additional Proof**

The claimant worked for the employer’s roofing company as a foreman. The claimant believed working conditions were

dangerous because of a recent blizzard. He testified that he contacted the manager who told him he could come to work if he wanted to. At some point thereafter, according to his testimony, he again called the manager who told him he was too busy to talk just then but would call him back. When the manager did not call back, the claimant left a voice message, which the manager also failed to return. The claimant testified that he never did hear from the manager. The manager testified that he had issued the claimant a warning on December 21, 2005 with regard to his rude treatment of a customer and told him that another such incident would result in his discharge. The following day the claimant came into work and stated that "I can't deal with this; I quit", but did not mention the warning. There was work available for the claimant on December 22, 2005. The Referee held that the claimant quit his job without good cause attributable to the employer and was disqualified from receiving benefits pursuant to Section 601(A) of the Act. The claimant appealed the Referee's decision to the Board of Review, attaching to his appeal telephone records which he believed substantiated his testimony that he had called the manager several times. Declining to consider the claimant's telephone records because he failed to show that he was not at fault for not submitting them at the hearing, the Board of Review affirmed the Referee's decision.

HELD: Noting that "a reviewing court may not judge the witnesses' credibility, resolve conflicts in testimony or re-weigh evidence", the court found that there was sufficient evidence to support the Board of Review's decision that the claimant voluntarily quit his job without good cause attributable to the employer where (1) two employer witnesses testified that there was continuing work available to the claimant when he decided to quit because he "couldn't take this" and (2) the claims adjudicator's report indicated that the claimant had told her that he had left his job for personal reasons without informing the employer.

In its opinion, the court rejected the claimant's contention on appeal that the employer should not have been allowed to testify at the hearing before the Referee because it had not filed a timely protest in accordance with the agency's benefit rules, noting that those rules provide that an employer filing a late protest is only prohibited from appealing an adverse decision by a Referee and not from testifying at the hearing.

The court also rejected the claimant's contention on appeal that the Board of Review erred in not considering his telephone records. The court found that the claimant did not adhere to the agency's rules regarding the filing of additional evidence where he did not submit such evidence within 20 days of filing his appeal and did not provide an explanation of why he was not at fault for not submitting such evidence at the time of the hearing.

ISSUE/DIGEST CODE	**Procedure/ PR 25.05**
DOCKET/DATE	***Tiggens v. Department of Employment Security*, 994 N.E.2d 1044, 374 Ill.Dec. 107 (4th Dist., 2013)**
AUTHORITY	**Section 801 of the Act; .56 Ill.Admin. 2720.255(e)(1) and 2720.300(b)(3)**
TITLE	**Appearance**
SUBTITLE	**By Telephone**
CROSS-REFERENCE	**None**

The local office adjudicator found that the claimant was ineligible for benefits under Section 500C(4) of the Act because her principal occupation was that of a student. The claimant filed an appeal but was not available for the telephone hearing at either of the phone numbers that she provided. As a result, the Referee dismissed the appeal. The claimant failed to either request a continuance or seek a reopening of the hearing. Instead, the claimant filed an appeal to the Board of Review. In her appeal, the claimant did not explain why she missed the hearing but only addressed the merits of her argument that she was not a student. The Board of Review affirmed the Referee's decision, and the circuit court affirmed the Board's decision.

HELD: The Appellate Court held that the circuit court did not abuse its discretion because the claimant failed to abide by the regulations governing the filing of an appeal to the Board. Further, the claimant did not provide an explanation of her failure to be available for the telephone hearing before the Referee.

Continuance PR 100
General PR 100.05

ISSUE/DIGEST CODE	**Procedure/PR 100.05**
DOCKET/DATE	**85-BRD-05523/7-23-85**
AUTHORITY	**14th Amend. U.S. Const.**
TITLE	**Continuances**
SUBTITLE	**When Additional is to be Submitted**
CROSS-REFERENCE	**PR 108.05, Cross-Examination; PR 190.05, Evidence; PR 195.05, Fair Hearing and Due Process**

At a hearing conducted on January 18, 1985, the employer alleged that the claimant had been discharged for attendance infractions. Then the employer requested additional time in order to submit documentation to that effect. At the conclusion of the hearing, the Referee informed the parties that his decision would remain pending, until January 31, in order to permit the employer to submit documentation concerning the claimant's attendance.

There were no further appearances by the parties. On January 31, the Referee issued a decision which disqualified the claimant for benefits, on the basis of attendance infractions. The claimant appealed that decision to the Board of Review.

HELD: The proper purpose of a hearing is to provide the parties a full and fair opportunity to be heard. Toward that end, parties must be given an opportunity to confront and rebut evidence, and cross-examine testimony pertaining to such evidence.

The Referee's conduct in the instant matter - informing the parties that his decision would be suspended pending his receipt of evidence, without continuing the hearing process to allow attendance of the parties at the presentation of such evidence - effectively precluded any opportunity for the parties to confront and rebut evidence, or cross-examine testimony pertaining to it.

The Referee's conduct was in substantial conflict with the proper purpose of a hearing. Therefore, the decision of the Referee was set aside and the matter remanded.

ISSUE/DIGEST CODE	**Procedure/PR 100.05**
DOCKET/DATE	**85-BRD-05574/7-25-85**
AUTHORITY	**56 Ill. Adm. Code 2720.215(d)**
TITLE	**Continuances**
SUBTITLE	**Denied for Lack of Good Cause, Non-compliance with Agency Rules**
CROSS-REFERENCE	**None**

In its Notice of Possible Ineligibility, the employer alleged that the claimant, a Physical Therapy Aide, had been scheduled to work on November 5, 6, 7, and 8, as a result of a schedule change explained to her by her supervisor on October 18. After the claimant failed to report to work or call in on those days, she was discharged.

At the appeal hearing, conducted on December 19, the claimant testified that ordinarily she worked only two days per week, that she had been scheduled to work November 1 and 2, and then not again until November 9 and 10. She stated under oath that she had never been informed by her supervisor of any schedule change.

The employer's witness did not possess personal knowledge of any conversation between the claimant and her supervisor. On November 29, that witness had spoken with the Claims Adjudicator, who noted: "(The witness)...will not let me speak to the supervisor...and will only submit documentation at a hearing." At the appeal hearing, which was conducted by telephone, the employer's witness requested a continuance in order to submit the documentation in question. No reason was stated for the failure to submit such documentation prior to the hearing. The request was denied. It was also pointed out to the employer's witness that the effect of such documentation would be minimal - the supervisor's testimony being the evidence which might best serve to rebut the claimant's testimony. The employer's witness then requested a continuance, to a later date, in order that the supervisor's testimony might be obtained. No reason was stated for the supervisor's immediate unavailability to testify by telephone. The witness merely restated the employer's original preference to submit documents. The request for a continuance was denied.

The claimant was allowed benefits on the basis of her unrebutted testimony that she had never been informed of any schedule change.

HELD: Agency Rule 2720.215(d) reads, in pertinent part:

> A party to a telephone hearing must submit to the Referee any documents he intends to introduce at the hearing in time to ensure that the Referee receives the documents before the date of the scheduled hearing. Prior to the date of the scheduled hearing, such party must also provide copies of all documents sent to the Referee to any other party to the hearing.

In the instant case, the employer had sufficient notice of the telephone hearing, including the date and time, in order to make such arrangements thought necessary for the hearing. The employer did not state any reason for failing to submit the documentation prior to the hearing. Accordingly, the employer's request for a continuance was properly denied by the Referee.

Agency Rule 2720.240 reads, in pertinent part:

> The Referee...shall grant a continuance whether requested in person, by telephone or in writing for good cause shown.

Again, the employer had sufficient notice of the telephone hearing, including the date and time, in order to make such arrangements thought necessary for the hearing, including making available such witnesses as may have had firsthand knowledge of the facts pertinent to the case. The employer's preference to submit documentation did not establish that there was good cause for the supervisor not to testify. Accordingly, the employer's request for a continuance was properly denied by the Referee.

ISSUE/DIGEST CODE	**Procedure/PR 100.05**
DOCKET/DATE	**85-BRD-06129/8-26-85**
AUTHORITY	**56 Ill. Adm Code 2720.240**
TITLE	**Continuances**
SUBTITLE	**Good Cause (and Lack of), Reschedule to Mutually Agreeable Time and Date**
CROSS-REFERENCE	**None**

A hearing before the Referee was scheduled for December 17, 1984. On December 13, the claimant telephoned the Referee and requested that the hearing be rescheduled because of an unspecified conflict in the claimant's attorney's schedule. Accordingly, the Referee rescheduled the hearing for December 27. In the process, the Referee telephoned the employer's representative, a service company, in order to provide notice of the new hearing date. Then, on December 14, the claimant telephoned the Referee and requested that the hearing again be rescheduled, for December 17, the original hearing date. The claimant stated that she had decided not to retain the services of counsel, and, therefore, there was no need to push the hearing date back to December 27; her preference was that the hearing be conducted on December 17, the original hearing date. The Referee granted the claimant's request and again telephoned the employer's service company representative, and left a message in order to provide notice of the correct hearing date.

The employer did not appear at the hearing conducted on December 17. In its appeal to the Board of Review, the employer stated that between the time of the first and second rescheduling "the employer representative had made commitments that could not be changed." The employer requested that the case be remanded for a new hearing.

HELD: Agency Rule 2720.240 reads, in pertinent part:

> The Referee...shall grant a continuance whether requested in person, by telephone or in writing for good cause shown. In that event the hearing will be rescheduled to the earliest mutually agreeable time and date...

In the instant case, the claimant's first request for a continuance was for good cause shown: an attorney's scheduling conflict. However, the second rescheduling was no less subject to the "good cause" requirement than was the first rescheduling. The mere preference of a party for one date over another - notwithstanding that such preferred date was the date originally scheduled - did not constitute good cause. On that basis alone, the hearing should not have been rescheduled.

Moreover, nothing in the record indicated that the final rescheduled date had been "mutually agreeable." Although the claimant, as the moving party, may have agreed to the new date, the employer, at most, had been advised as to the new date. That was insufficient. No party should be deprived of an opportunity to testify where, as in the instant case, the only evidence of that

party's assent to a rescheduled date would have been the absence of an objection on the record, especially where no opportunity to object, on the record, may have been provided. For that reason also, the case should not have been rescheduled.

Cross-Examination PR 108
General PR 108.05

ISSUE/DIGEST CODE	**Procedure/PR 108.05**
DOCKET/DATE	**ABR-84-12062/10-4-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Cross-Examination**
SUBTITLE	**Bifurcated Hearings**
CROSS-REFERENCE	**PR 195.05, Fair Hearing and Due Process**

The claimant and his former employer were scheduled to testify, by telephone at an appeal hearing, to consider a work separation issue. Initially, the employer appeared, but the claimant could not be reached. The Referee proceeded to elicit the employer's testimony. After excusing the employer, the Referee made another attempt to contact the claimant, and, having done so, in the employer's absence, proceeded to elicit testimony from the claimant. Subsequently, the Referee issued his decision, based upon the parties' testimony.

HELD: The proper purpose of a hearing is to provide the parties with a full and fair opportunity to be heard. Toward that end, parties must be given a reasonable opportunity to confront one another and rebut one another's evidence. In the instant case, the Referee conducted a bifurcated hearing, during which the parties could not confront one another or rebut one another's allegations. This did not constitute a full and fair opportunity to be heard. Accordingly, the decision of the Referee was set aside and the case was remanded for a new hearing.

ISSUE/DIGEST CODE	**Procedure/PR 108.05**
DOCKET/DATE	**85-BRD-05523/7-23-85**
AUTHORITY	**14th Amend. U.S. Const.**
TITLE	**Cross-Examination**
SUBTITLE	**No Opportunity Provided**
CROSS-REFERENCE	**PR 100.05, Continuances; PR 195.05, Fair Hearing and Due Process**

At a hearing conducted on January 18, 1985, the employer alleged that the claimant had been discharged for attendance infractions. Then the employer requested additional time in order to submit documentation to that effect. At the conclusion of the hearing, the Referee informed the parties that his decision would remain pending, until January 31, in order to permit the employer to submit documentation concerning the claimant's attendance.

There were no further appearances by the parties. On January 31, the Referee issued a decision which disqualified the claimant for benefits, on the basis of attendance infractions. The claimant appealed that decision to the Board of Review.

HELD: The proper purpose of a hearing is to provide the parties a full and fair opportunity to be heard. Toward that end, parties must be given an opportunity to confront and rebut evidence, and cross-examine testimony pertaining to such evidence.

The Referee's conduct in the instant matter - informing the parties that his decision would be suspended pending his receipt of evidence, without continuing the hearing process to allow attendance of the parties at the presentation of such evidence - effectively precluded any opportunity for the parties to confront and rebut evidence, or cross-examine testimony pertaining to it.

The Referee's conduct was in substantial conflict with the proper purpose of a hearing. Therefore, the decision of the Referee was set aside and the matter remanded.

Dismissal, Withdrawal, or Abandonment PR 145
General PR 145.05

ISSUE/DIGEST CODE	**Procedure/PR 145.05**
DOCKET/DATE	**85-BRD-05261/7-10-85**
AUTHORITY	**56 Ill. Adm. Code 2720.235**
TITLE	**Dismissal, Withdrawal or Abandonment**
SUBTITLE	**Withdrawal Must Be Voluntary**
CROSS-REFERENCE	**PR 190.05, Evidence; PR 195.05, Fair Hearing and Due Process**

The employer petitioned the Board of Review to set aside the Referee's decision and reinstate its appeal from the Claims Adjudicator's determination. The employer stated that it was induced to withdraw its appeal by the Referee, who had concluded prior to taking any evidence and without making a record - that the employer's appeal had been untimely. The employer further stated that in a conversation with the Referee subsequent to the issuance of his decision, the Referee admitted that he had miscalculated in determining the timeliness of the appeal, and that the appeal had been timely in fact.

HELD: Agency Rule 2720.235 reads, in pertinent part:

> The appellant may voluntarily withdraw his appeal...at any time before the Referee's decision is issued.

The Rule speaks to voluntary withdrawals. It is improper for a Referee to act as an advocate, advising a party to withdraw. In the instant matter, because the Referee had acted as an advocate, advising the employer to withdraw, the Board of Review was compelled to set aside that withdrawal decision and reinstate the employer's appeal.

ISSUE/DIGEST CODE	**Procedure/PR 145.05**
DOCKET/DATE	**85-BRD-05534/7-23-85**
AUTHORITY	**56 Ill. Adm. Code 2720**
TITLE	**Dismissal, Withdrawal or Abandonment**
SUBTITLE	**Making a Record and Writing a Proper Decision**
CROSS-REFERENCE	**PR 190.05, Evidence**

One of the issues to be decided upon appeal was whether the employer had filed a sufficient and timely Protest of Benefit Payment, in accordance with Agency Rule 2720.130.

The record forwarded to the Board of Review by the Referee contained only one document - a copy of the employer's appeal from the Claims Adjudicator's determination.

Following the hearing, the Referee issued a decision which dismissed the employer's appeal. Under the section of the decision reserved for "Findings of Fact," the Referee made no reference to facts specific to the case, but, instead, set forth a general conclusion that the employer failed to comply with Agency Rule 2720.130.

HELD: Agency Rule 2720.270 reads, in pertinent part:

> The Referee's decision will include findings of fact and conclusions of law, separately stated and based on the preponderance of the credible, legally competent evidence in the record.

In the instant matter, the Referee's decision was inadequate for two reasons. First, the Referee's decision was not based upon evidence in the record. Second, the decision did not separately state findings of fact and conclusions of law. From an inadequate record and inadequate decision, the Board of Review was unable to determine whether the employer filed a Protest at all, or, if it did, whether the Protest was insufficient, untimely, or both.

The case was remanded with instructions to the Referee to complete the record, then issue a new decision, incorporating findings of fact specific to the case. Those findings were to include the date of Notice to the Last Employer, the date by which the employer had to respond, and what the employer's response, if any, stated. The Referee was further instructed to set forth a conclusion, separately stated, showing that the employer's Protest was timely or untimely with respect to the due date, or was sufficient or insufficient with respect to content - including the reasons therefore.

ISSUE/DIGEST CODE	**Procedure/PR 145.05**
DOCKET/DATE	**ABR-10-1162**
AUTHORITY	**Sections 801 and 804 of the UI Act; 56 Ill. Adm. Code 2712.1 and 2720.255**
TITLE	**Dismissal, Withdrawal, or Abandonment**
SUBTITLE	**General**
CROSS-REFERENCE	**PR/380.05: Rehearing or Review-General**

The employer failed to appear at a hearing scheduled pursuant to notice before a Referee on December 24, 2009. The Referee called the employer's witness at the proper time at the only telephone number appearing in the Department's file, but received an outgoing message that the business was closed for the holidays. The Referee dismissed the employer's appeal due to its failure to appear at the scheduled hearing.

In its appeal to the Board of Review, the employer stated that its failure to appear was due to the Referee's failure to call the employer's witnesses at the telephone number where those witnesses were waiting for the call. Attached to its appeal to the Board was a copy of the Notice of Hearing which contained the telephone numbers of two witnesses who would testify on the employer's behalf. However, the employer provided no confirmation that this message was faxed to the Referee prior to the hearing.

HELD: In reaching its decision, the Board of Review relied on Section 2712.1 of the Department's rules, which provides in pertinent part that

> ...any document which is a response to or protest of a statement or notice that has been issued by the Department or the Director to which there are protest or appeal rights may be filed by facsimile transmission sent to the designated Department address. The date imprinted on the document by the Department's telefax machine shall have the same effect as the U.S. Postal Service's postmark. The individual or entity filing a document by telefax transmission bears the risk that the transmission will not be successful. The date imprinted on the transmission confirmation document by the sender"s telefax machine may be presented as evidence of successful transmission and filing of the document. [56 Ill. Adm. Code 2712.1]

In the instant case, the document showing the witnesses' names and telephone numbers did not contain a telefax transmission confirmation to substantiate that the employer faxed this information to the Department on December 21, 2009, which was prior to the hearing. A telefax transmission did appear at the top of the page, but it indicated only that it was transmitted to the Board of Review on December 30, 2009 and not to the Referee before the December 24th hearing. The Board found that the evidence indicated that the employer did not successfully transmit the fax prior to the hearing and affirmed the Referee's decision dismissing the employer's appeal.

ISSUE/DIGEST CODE	**Procedure/PR 145.05**
DOCKET/DATE	***Carroll v. Department of Employment Security*, 389 Ill.App.3d 329 Ill.Dec. 697, 907 N.E.2d 16 (1st Dist., 2009)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Dismissal**
SUBTITLE	**Withdrawal or Abandonment**
CROSS-REFERENCE	**PR 430.2: Taking & Perfecting Proceedings for Review, Timeliness; PR 440: Judicial Review of Board of Review Decisions**

The claimant was denied benefits in a determination issued by the claims adjudicator. The determination was affirmed by the Referee which, in turn, was affirmed by the Board of Review in a decision issued on April 11, 2007. The claimant had 35 days in which to file a complaint for administrative review of the Board's decision in the circuit court, *e.g.*, until May 16, 2007. The claimant filed his complaint on May 18, 2007. The Board filed a motion before the circuit court to dismiss the complaint as being untimely filed. The circuit court granted the Board's motion and dismissed the claimant's complaint. The claimant timely filed an appeal to the appellate court.

HELD: In affirming the circuit court, the appellate court initially held that in computing the 35-day period in which to file a complaint seeking administrative review of a Board decision (1) calendar days are counted, not business days; (2) the day of mailing the decision is excluded from the computation; and (3) intervening weekend days and holidays are included, unless the last day of the 35-day period falls on a weekend day or holiday, in which case the last day to file would be the next working day. In the instant case, May 16, 2007 did not fall on a holiday or weekend day and, thus, it was the last day on which the

claimant's complaint for administrative review had to be filed in order to be timely. Since the claimant did not file his complaint until May 18, 2007, his complaint was late and was properly dismissed by the circuit court for lack of jurisdiction.

The appellate court also held that (1) the Board did not violate the claimant's due process rights by not calculating the exact filing due date for the claimant and by not warning him to count calendar days, rather than business days, in computing the 35-day period; and (2) the Board met its burden of proving that it mailed its decision on April 11, 2007 by providing evidence of its office custom regarding the mailing of its decisions and evidence to corroborate that it followed that custom.

Evidence PR 190
General PR 190.05

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	***Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814, 333 Ill.Dec. 1, 914 N.E.2d 208 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 554, 336 Ill.Dec. 492, 920 N.E.2d 1082 (Table) (11/25/09)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 195.05, Fair Hearing and Due Process; PR 400.05: Representation, By a Non-Attorney; MC 5.05, Definition of Misconduct**

The claimant was employed as an apprentice electrician. He was discharged for misconduct for removing air conditioning equipment without authorization. After filing a claim for benefits, the local office and the Referee found that the claimant was guilty of misconduct and held him ineligible for benefits under Section 602 of the Act. The claimant argued that the employer's non-attorney representative engaged in the unauthorized practice of law during the hearing by examining and cross-examining witnesses. He also argued that he did not receive a fair hearing, that the evidence did not show that he was guilty of misconduct, and that the employer's testimony was inadmissible hearsay. The Board of Review affirmed the Referee's decision denying benefits and rejected all of the claimant's arguments against it.

HELD: The court discussed four issues. The first concerns the unauthorized practice of law. The court held that the practice of law turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation.

The second issue is whether the claimant received a fair hearing as required by due process of law. The court held that the claimant had received a fair hearing in that he was given an opportunity to be heard and to question the employer's witnesses. The fact that he chose not to take advantage of the opportunity to question the adverse employer's witnesses does not invalidate the proceeding on grounds of due process.

The third issue was whether the employer proved all the elements of misconduct under Section 602. The court held that all the elements of misconduct were met. In particular, the court noted that a rule or policy need not be written down in order to bind the employee. The claimant's violation of an oral directive not to be present in certain areas of the workplace also constitutes a violation of an employer rule or policy.

The fourth issue was the claimant's objection that testimony concerning the cost of the air conditioning units was inadmissible hearsay. The court noted that this testimony was introduced not for its factual accuracy but simply to show that the loss of the air conditioning units caused financial harm to the employer. Thus, strictly speaking, the testimony concerning the approximate cost of the air conditioning units was not hearsay at all.

ISSUE/DIGEST CODE	**Procedure/PR190.05**
DOCKET/DATE	***Ken's Beverage, Inc. v. Wood, 2021 IL App (3d) 190115***
AUTHORITY	**Section 602A of the Act**
TITLE	**Fair Hearings and Due Process**
SUBTITLE	**Evidence/Hearsay**
CROSS-REFERENCE	**Misconduct/MC 390.05**

Claimant worked for the employer for seven years where her last position was a dispatch supervisor. During the claimant's employment she accumulated 12 documented warnings, six of them for unprofessional behavior. Claimant's final written warning, issued on July 5, 2017, was for a violation of the employer's sexual harassment policy. The warning included a reprimand and stated that, "any further incidents of misconduct [or] harassment will result in [Wood's] immediate termination." Claimant was discharged on March 1, 2018 for engaging in hostile and disruptive work behavior against three dispatchers and her supervisors. The local office denied the claimant benefits and she appealed. At her hearing the human resources director and the claimant's direct supervisor testified. The HR director testified that the employer had to move several personnel due to claimant's behavior. The claimant's supervisor testified that there were complaints about the claimant's behavior and in February, 2018, the supervisor observed a dispatcher crying in her car following a hostile interaction with the claimant. The supervisor testified that, when he was discussing her behavior with her, claimant said "that's bulls***." The Referee denied benefits and the claimant appealed. The Board of Review reversed the ruling, stating that the final incident of sexual harassment was an isolated incident, and commented that the employer failed to present eye-witness testimony about actual incidents. The employer appealed and the circuit court affirmed the Board's decision. The employer appealed.

HELD: The appellate court reversed the decision of the circuit court, holding that the Board of Review erred in making a distinction between the sexual harassment abusive language and the claimant's other abusive language towards other employees. The court stated that, "The issue is whether Wood's comments or choice of words caused harm to other employees by affecting their "well-being" or their "morale." citing *Alternative Staffing, Inc.*, 2012 IL App (1st) 113332. The court went on to state that the Board focused on the triggering event and ignored prior incidents, again citing *Alternative Staffing*. Under *Alternative Staffing*, the evidence of prior documented warnings was sufficient to satisfy the employer's burden of proof. The court went on to rebut the Board's argument that the hearsay statements were admitted in error as no objection was made to the hearsay, citing UI Rule 2720.250 which states that unobjected to hearsay statements may be considered and given their natural probative value.

In a clarifying concurring opinion, Justice Woldridge stated that the claimant's attorney did object to the hearsay evidence. However, the admissibility of the employer's hearsay testimony was moot. Justice Woldridge wrote that the Referee did not rely on hearsay statements in reaching his decision and stated so. Nevertheless, there was sufficient non-hearsay evidence of the claimant's misconduct introduced at the hearing. The final warning informed claimant that any further misconduct by her would result in her termination. Her supervisor testified that he repeatedly e-mailed claimant warnings about her failure to follow his directives, but claimant ignored his directions on several occasions. At least one of these 10 instances occurred after the final warning. Her supervisor testified that, when he met with claimant in February 2018 to discuss her misconduct, claimant dismissed the claims against her as "bullshit." That statement constituted misconduct by claimant in defiance of the final warning. In addition, the HR Director testified that she was present during a meeting in the Fall of 2017 when claimant's supervisors warned her about her misconduct and claimant "started yelling."

ISSUE/DIGEST CODE	**PR 190.05 Evidence**
DOCKET/DATE	***Wilbon v. Ill. Dep't of Empl. Sec.*, 2020 IL App (1st) 192106-U**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence/Hearsay**
SUBTITLE	**General**
CROSS-REFERENCE	**AA/235.05 General**

The claimant filed for benefits after his employer reduced his hours because he had a medical condition and was under a doctor's care. The claimant was originally denied benefits and he appealed. At a hearing, the employer failed to appear. The Referee marked several documents as Agency Exhibit 1, which included the employer's protest, and stated that they may refer to any or all of those documents during the hearing. The claimant was again denied benefits, appealed to the Board and was, again denied. the Board's decision was based on its assessment of the claimant's credibility in light of the fact that he had changed his story after the claims adjudicator denied his application for benefits. The Board's determination was that the claimant's testimony that he was able to work and available for work was not credible in light of his statements to the claims adjudicator that he was "still under a doctor's care," and his failure to provide the referee a doctor's statement showing his ability to work

during the relevant period. The circuit court reversed the Board, finding that the Department failed to admit certain documents, including the employer's protest, into evidence and thus "there was no competent evidence to support the Board's determination." The Department appealed.

HELD: The Appellate Court affirmed the circuit court's decision allowing benefits, stating that the being under a doctor's care does not mean the claimant was not ready for work and willing to accept suitable work. It simply means that, like so many employees, he was seeing a physician for a medical issue. Being under a doctor's care does not establish that the claimant was not able to work or available for work under section 500(C) of the Act. There were no findings by the Board that the claimant had requested his hours be reduced or had told his employer that he could not work due to a medical issue. Thus, the Board's finding affirming the denial of unemployment benefits was clearly erroneous.

Furthermore, the Appellate Court stated that, contrary to the trial court's holding, the Board could have based its decision on the documents in Agency Exhibit 1 even if the referee did not formally admit them into evidence. Section 801(A) of the Act provides that "[a]t any [referee] hearing, the record of the claimant's registration for work, or of the claimant's certification that, during the week or weeks affected by the hearing, he was able to work, available for work, and actively seeking work, or any document in the files of the Department of Employment Security submitted to it by any of the parties, shall be a part of the record, and shall be competent evidence bearing upon the issues." Accordingly, the General Assembly has determined that, by operation of law, documents submitted by the parties—including employer protests—automatically become part of the record and constitute competent evidence.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**ABR-84-12201/3-21-85**
AUTHORITY	**56 Ill. Adm. Code 2720.225**
TITLE	**Evidence**
SUBTITLE	**Subpoenaed Documents Not Produced; Effect**
CROSS-REFERENCE	**PR 195.05, Fair Hearing and Due Process**

The claimant worked as a balance clerk from 1981 until his discharge in January 1984. The employer's Notice of Possible Ineligibility indicated that, in general, the claimant had had an "uncooperative attitude." The claimant often had been abusive to superiors, refusing to perform work as assigned. When he did perform work, which he understood well, he would do it sloppily, on purpose. He would not work according to schedule; on one occasion he absented himself from work in order to play golf and counted it as a sick day; on another occasion, though denied permission to leave work early, he did so anyway in order to watch a television show. The employer also stated that the claimant had been intoxicated on the job, on more than one occasion. The employer's witnesses testified to the above at an appeal hearing, after which the claimant was disqualified for benefits for misconduct connected with his work.

Prior to a remanded hearing, the claimant made an application for subpoenas, including subpoenas duces tecum for the employer's "error accounts" - which the claimant contended would establish that he had worked to the best of his ability ("over 100%"); for the employer's attendance records; and for the employer's time cards - in particular, the time cards of the claimant and his supervisor, whom the claimant alleged had come to work late and left work early more often than the claimant. The Referee agreed to issue all the subpoenas sought by the claimant.

In response to the subpoenas duces tecum, the employer was prepared to produce its error account book and its attendance records, but not the time cards requested by the claimant, due to the time and expense involved in locating and shipping them from storage facilities in another state. However, the employer was willing to stipulate that the claimant may have worked longer hours than his supervisor. The proposed stipulation was presented to the claimant several days before the hearing was to commence; he never indicated that the proposed stipulation was unacceptable to him.

On October 18, 1984, the claimant and the employer appeared for the appeal hearing. The claimant informed the Referee that he would not proceed without the timecards. The claimant then walked out of the hearing room. The Referee considered the evidence before him, including that previously submitted, and issued a decision which disqualified the claimant for benefits.

Upon further appeal, the claimant contended that he had been denied a fair hearing because the employer had not been compelled to produce the subpoenaed timecards.

HELD: A Referee shall allow a request for a subpoena unless he finds that the evidence sought is immaterial, irrelevant, or cumulative. The request having been allowed, if a party fails to obey a subpoena of the Referee, the Referee shall treat the evidence required by the subpoena, but not produced, as establishing the truth of the position of the party who subpoenaed the documents.

In the instant case, the subpoena for the time cards should not have been issued in the first place. The claimant had never shown that his supervisor's hours were material or relevant to his claim. The claimant's hours, not to mention allegations of his intoxication and insubordination, were in question. Even so, the claimant had no basis for complaining about the employer's failure to produce the time cards, since, either by the employer's failure to produce the time cards or by the employer's offer to enter into a stipulation, the truth of the claimant's position would have been established: that the claimant worked longer hours than his supervisor - which, again, was neither material nor relevant.

It is not the purpose of the Act to require the production of records unnecessary for a full, fair, and impartial hearing. In the instant case, the failure of the employer to produce unnecessary timecards did not deny the claimant a fair hearing.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05261/7-10-85**
AUTHORITY	**56 Ill. Adm. Code 2720.235**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**PR 145.05, Withdrawal; PR 195.05, Fair Hearing and Due Process**

The employer petitioned the Board of Review to set aside the Referee's decision and reinstate its appeal from the Claims Adjudicator's determination. The employer stated that it was induced to withdraw its appeal by the Referee, who had concluded - prior to taking any evidence and without making a record - that the employer's appeal had been untimely. The record forwarded to the Board of Review did not contain a written, signed statement or an oral statement by the employer on the record to the effect that the employer wished to withdraw.

HELD: Agency Rule 2720.235 reads, in pertinent part:

The appellant may voluntarily withdraw his appeal by signed written statement filed with the Referee or by oral statement on the record at any time before the Referee's decision is issued.

In the instant matter, the withdrawal decision of the Referee was not accompanied by either a written statement or the taking of an oral statement on the record. It could not be said that the Referee's decision was supported by the law. The Referee's decision was set aside, and the employer's appeal was reinstated.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05338/7-16-85**
AUTHORITY	**56 Ill. Adm. Code 2720.205(c)**
TITLE	**Evidence**
SUBTITLE	**NonParty Employer**
CROSS-REFERENCE	**PR 25.05, Appearance; PR 275.05, Jurisdiction and Powers of Tribunal**

On November 30, 1984, notice was mailed to the employer that the claimant had filed a claim for unemployment insurance benefits. The notice informed the employer that it could become a party to the proceedings if it filed a Notice of Possible Ineligibility or a letter in lieu thereof within ten days. The employer filed no Notice of Possible Ineligibility or letter in lieu thereof. Nonetheless, the claimant was disqualified for benefits, and filed an appeal. An appeal hearing was scheduled for January 17, 1985, to consider the issue of whether the claimant had left work voluntarily without good cause attributable to the employer. Prior to that hearing, a prospective witness for the employer telephoned the Referee's supervisor. The Referee's supervisor told the witness that the employer need not appear at the hearing, because it had no "say so" in the matter.

Subsequently, the Referee conducted a hearing at which only the claimant appeared. On the basis of the evidence presented, the Referee issued a decision allowing benefits to the claimant. The employer then filed an appeal to the Board of Review, expressing a desire to present evidence at a hearing.

HELD: Agency Rule 2720.205(c) reads, in pertinent part:

> In the event that a claimant appeals an Adjudicator's determination regarding a separation issue...and where the employer from which the separation occurred is not a party, such employer will receive notice of hearing which he may attend as a nonparty and present such facts and evidence as he may possess.

Therefore, even though the employer may have been a nonparty, the employer still should have been afforded an opportunity to appear at the hearing and present such facts and evidence as it possessed. The decision of the Referee was set aside, and the case was remanded.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05523/7-23-85**
AUTHORITY	**56 Ill. Adm. Code 2720.265**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**PR 100, Continuances; PR 108.05, Cross-Examination; PR 195.05, Fair Hearing**

At a hearing conducted on January 18, 1985, the employer alleged that the claimant had been discharged for attendance infractions. Then the employer requested additional time in order to submit documentation to that effect. At the conclusion of the hearing, the Referee informed the parties that his decision would remain pending, until January 31, in order to permit the employer to submit documentation concerning the claimant's attendance.

There were no further appearances by the parties. On January 31, the Referee issued a decision which disqualified the claimant for benefits, on the basis of attendance infractions. The claimant appealed that decision to the Board of Review.

The record of the hearing forwarded to the Board of Review did not contain any documentation concerning the claimant's attendance, nor was it disclosed whether the employer had in fact furnished the documentation as it had stated it would. Nor did the Referee cite in his decision whether he had relied upon any such documentation in rendering his decision.

HELD: When material information has not been made a part of the record, and no reason for its omission has been provided, the record may be rendered inadequate. From an inadequate record, it cannot be determined whether the Referee made a correct finding of fact or whether his decision was supported by the law. Those being the circumstances in the instant case, the decision of the Referee was set aside and the matter remanded.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05534/7-23-85**
AUTHORITY	**56 Ill. Adm. Code 2720**
TITLE	**Evidence**
SUBTITLE	**Making a Record and Writing a Proper Decision**
CROSS-REFERENCE	**PR 145.05, Dismissal**

One of the issues to be decided upon appeal was whether the employer had filed a sufficient and timely Protest of Benefit Payment, in accordance with Agency Rule 2720.130.

The record forwarded to the Board of Review by the Referee contained only one document -- a copy of the employer's appeal from the Claims Adjudicator's determination.

Following the hearing, the Referee issued a decision which dismissed the employer's appeal. Under the section of the decision reserved for "Findings of Fact," the Referee made no reference to facts specific to the case, but, instead, set forth a general conclusion that the employer failed to comply with Agency Rule 2720.130.

HELD: Agency Rule 2720.270 reads, in pertinent part:

> The Referee's decision will include findings of fact and conclusions of law, separately stated and based on the preponderance of the credible, legally competent evidence in the record.

In the instant matter, the Referee's decision was inadequate for two reasons. First, the Referee's decision was not based upon evidence in the record. Second, the decision did not separately state findings of fact and conclusions of law. From an inadequate record and inadequate decision, the Board of Review was unable to determine whether the employer filed a Protest at all, or, if it did, whether the Protest was insufficient, untimely, or both.

The case was remanded with instructions to the Referee to complete the record, then issue a new decision, incorporating findings of fact specific to the case. Those findings were to include the date of Notice to the Last Employer, the date by which the employer had to respond, and what the employer's response, if any, stated. The Referee was further instructed to set forth a conclusion, separately stated, showing that the employer's Protest was timely or untimely with respect to the due date, or was sufficient or insufficient with respect to content - including the reasons therefore.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05853/8-9-85**
AUTHORITY	**56 Ill. Adm. Code 2720.265**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**None**

During an appeal hearing conducted in March 1985, the claimant testified that he quit work due to an ailment, which he purportedly wished to corroborate by presenting a document supposedly signed by his treating physician.

The Referee marked the document "Exhibit Number 1," but did not otherwise identify it, or read its contents into the record, or prepare copies of it, before, apparently, returning it to the claimant.

Subsequently, the Referee issued a decision which disqualified the claimant for benefits for Voluntary Leaving, under Section 601A of the Act.

HELD: When material information has not properly been made a part of the record, the record may be rendered inadequate. From an inadequate record, it cannot be determined whether a Referee made a correct finding of fact or whether his decision was supported by the law. In the instant matter, in the absence of a copy of "Exhibit Number 1," the Board of Review was unable to determine whether or not the claimant left work under circumstances which precluded the disqualifying provisions of Section 601A from applying by reason of the exemption provisions of Section 601B(1), based in large part upon the requirement that a licensed, practicing physician has deemed the claimant unable to work. Therefore, it could not be concluded that the Referee made a correct finding of fact or that his decision was supported by the law. The decision of the Referee was set aside, and the case was remanded with instructions to procure the document in question.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**ABR-85-9292/6-30-86**
AUTHORITY	**Section 500C of the Act and 56 Ill. Adm. Code 2720.245**
TITLE	**Evidence**
SUBTITLE	**Burden of Coming Forward**
CROSS-REFERENCE	**PR 380.2, Rehearing or Review; AA 190.1, Evidence**

In his decision, the Referee wrote:

> The employer appealed the determination allowing benefits under Section 500C. Therefore, the employer had the burden of going forward with the evidence. The testimony of the employer added nothing to the evidence submitted to the Claims Adjudicator... (Therefore) the employer did not go forward with the evidence (and) the claimant is eligible for benefits...

HELD: At an appeal hearing, the appellant has the burden of coming forward with evidence to show that the Adjudicator's determination is incorrect. This does not preclude the appellant from coming forward with some evidence previously presented, or with evidence in all respects identical to the evidence presented earlier. The burden of coming forward should not be confused with the weight of the evidence or a burden of proof.

Further, a finding of fact by a Referee identical to that of the Claims Adjudicator does not require that the Referee come to the same conclusion of law as the Adjudicator. A legal conclusion is one which must follow, as a matter of law, from a given set of facts. It is the Referee's responsibility - as the appellate tribunal - to render a legal conclusion. He is not absolved from this responsibility just because a Claims Adjudicator has made similar findings of fact, irrespective of the Adjudicator's conclusion.

As it happened, in this case, the Board of Review found that the Claims Adjudicator's conclusion - and, therefore, the Referee's - was incorrect.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**ABR-89-5656/1-31-90**
AUTHORITY	**56 Ill. Adm. Code 2720.245 and 2720.250**
TITLE	**Evidence**
SUBTITLE	**Burden of Coming Forward**
CROSS-REFERENCE	**PR 25.05, Appearance; PR 400.05, Representation**

The claimant appealed a determination and filed a signed authorization for attorney representation. At his appeal hearing, the claimant's attorney and a witness for the employer appeared; the claimant did not appear. The claimant's attorney attempted to come forward with evidence by calling the employer's witness on the claimant's behalf. The Referee disallowed the attorney's attempt to elicit such evidence and dismissed the appeal.

HELD: Rule 2720.245 provides that, in every case, the appellant has the burden of coming forward and will first produce testimony or other evidence to establish that a determination is incorrect. However, there is no prescribed method for producing testimony or other evidence. And Rule 2720.250 provides As it happened, ules of evidence do not apply before Referees.

The case was remanded so that the claimant, or his attorney, might present evidence.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	***Johnson v. Board of Review*, 479 N.E. 2d 1082 (1985)**
AUTHORITY	**Sections 500C and 801 of the Act**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**PR 380.2, Review; AA 190.05, Evidence**

The claimant filed a claim for unemployment insurance benefits, for the period February 22, 1981 through July 5, 1981. The Claims Adjudicator determined that the claimant was ineligible, pursuant to the provisions of Section 500C of the Act, in that he had not met his burden of demonstrating that he had been available for and actively seeking work during the period under review.

The claimant appealed, requesting that certification forms which he had filed with the Local Office be considered at the appeal hearing. The forms listed the claimant's job contacts and had been filed by the claimant every 2 weeks, as required by the Department's rules. Those certification forms were never forwarded by the Local Office and were not made a part of the record at the appeal hearing, during which the claimant testified about his job contacts and his availability for work. After the hearing, the Referee issued a decision affirming the Adjudicator's determination that the claimant had not been available for or actively seeking work. The Board of Review also affirmed the denial of benefits.

The claimant filed an action for administrative review. His complaint alleged that the decision denying benefits violated Section 801 of the Unemployment Insurance Act, which stated, in pertinent part:

> At any hearing (bearing upon the issue) the...claimant's certification that, during the week or weeks affected by the hearing, he was able to work, available for work, and actively seeking work...shall be a part of the record...

HELD: Under Section 801 of the Act, the Agency is required to submit certification forms which it has in its possession. If those forms are not submitted and made a part of the record, as a matter of law a decision denying benefits under Section 500C

cannot stand. In the instant case, because the claimant's certification forms were not made a part of the record, the claimant could not be denied benefits. The decision of the Board of Review was reversed.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**ABR-92-13791 & ABR-93-8425/5-14-94**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof *vs* Going Forward with Evidence**
CROSS-REFERENCE	**None**

At the start of a hearing (ABR-92-13791), a Referee remarked: "This is the claimant's appeal; therefore, the claimant has the burden of proof and will go first." After a hearing (ABR-93-8425), a Referee ruled that the appellant did not meet its burden of proof because he "failed to establish a basis which would justify reversing the Local Office determination."

HELD: The burden of proof has nothing to do with whether a party is an appellant or the order in which evidence is presented. The burden of proof is the same at every stage of adjudication and does not necessarily lie with the party bringing an appeal, but lies with the party in a better position to know the underlying circumstances of a work separation: the claimant in a voluntary leaving case, the employer in a discharge case. Another way of stating this is that if the evidence on both sides is equal or if neither side appears to have prevailed by a preponderance of the evidence, the party with the burden of proof (the claimant in a voluntary leaving case, the employer in a discharge case) loses.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**ABR-94-8110/10-12-94**
AUTHORITY	**Section 804 of the Act**
TITLE	**Evidence**
SUBTITLE	**Hearing Record**
CROSS-REFERENCE	**None**

The claimant (the appellee at a hearing) refused to permit his testimony to be recorded. The Referee proceeded anyway, taking the employer's testimony, upon which he based a decision denying benefits to the claimant. The claimant then requested another hearing.

HELD: Section 804 of the Act provides, in pertinent part:

> A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded ...

The purpose of recording testimony is to preserve a record for review. In this case, the Referee did what the Act required him to do: he recorded testimony, preserving a record for review. Upon review, the Board of Review stated: "When a party refuses to participate, we find no reason for granting the party another hearing and we will proceed based upon the available record." Based upon the available record, the Board of Review affirmed the denial of benefits.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	***Village Discount Outlet v. Department of Employment Security*, 384 Ill.App.3d 522, 323 Ill.Dec. 469, 893 N.E.2d 943 (1st Dist., 2008)**
AUTHORITY	**56 Ill. Adm. Code 2720.250 and 2720.270**
TITLE	**Evidence**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 195.05, Fair Hearing & Due Process; MC 190.15 Evidence, Weight & Sufficiency**

The employer operated drop-off facilities and thrift stores for various charities. It discharged the claimant for allegedly setting aside donations intended for the employer and taking them for himself or his relatives. At the hearing before the Referee, the employer's Regional Manager testified that he had seen a videotape showing the claimant setting aside a television and directing attendants to load it into a relative's car. The claimant denied taking any items. On appeal by the claimant, the Board of Review reversed the Referee's finding of misconduct on the basis that the Regional Manager's testimony was hearsay and there was not sufficient firsthand evidence to show that the claimant had actually committed the actions that had caused his discharge.

HELD: The appellate court held that the Regional Manager's testimony about his observations of the videotape was not hearsay. The court found, however, that the Board of Review was correct in not ruling that the alleged hearsay was inadmissible and properly gave such evidence its natural probative effect, which was minimal due to fact that the evidence was rife with evidentiary flaws, such as the employer's failure to lay a proper foundation for the videotape. Also affecting the weight of the evidence was that the videotape itself was never introduced into evidence and, thus, the witness's description of what he saw on the tape ran afoul of the "best evidence rule", which expresses a preference for the original of documentary evidence when the contents of the documentary evidence are sought to be proved.

The court also held that the employer's due process right to a fair hearing was not violated. The court noted that the Referee took an active role in developing the evidence and fleshing out the positions of the parties. Due process does not require the Referee to take such an active role at a hearing that all evidentiary deficiencies are remedied, even where a party is not represented by legal counsel. The employer was given prior notice of the requirements for admitting the videotape into evidence and elected, instead, to present only the testimony of a supervisor who had been shown the tape. According to the court, the employer "must now live with the consequences of that decision." Since the employer received a fair hearing, there was no necessity to remand the matter to allow the employer another opportunity to correct any evidentiary deficiencies in its case.

Judicial Notice 190.2

ISSUE/DIGEST CODE	**Procedure/PR 190.2**
DOCKET/DATE	***Leach v. Dep't of Empl. Sec.*, 2020 IL App (1st) 190299**
AUTHORITY	**500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Judicial Notice**
CROSS-REFERENCE	**AA160.05 Efforts to Secure Employment, PR 195.05, Fair Hearing & Due Process**

After filing for unemployment benefits, Claimant was notified he needed to register for work with the IDES Job Link and that his "registration will be considered complete when you create or upload at least one resume." Claimant was then sent a notice informing him he had to provide work search records "and/or any documentation that may demonstrate your ability to work" prior to the interview. A claims adjudicator attempted to call the Claimant twice, but he did not answer the phone. A determination was issued, finding Claimant not eligible for benefits under Section 500C of the Act. Claimant appealed. A Notice of Telephone hearing was sent to Claimant, reiterating one of the issues to be considered was whether Claimant was able and available for work during the period in question. At the hearing, only Claimant appeared and testified. He testified he had asked to have weekends off but was available Monday through Friday. He denied asking for a leave of absence. He testified he was looking for another job and kept track of "some of the places" he applied to online but acknowledged he had not been keeping an actual record. He testified he applied at McDonald's, IHOP, and a "few other places" over a four-week period. He testified he registered with the Illinois Job Link service and was available for any work shift outside of the weekends. At the conclusion of the hearing, the Referee asked Claimant if he had anything else to tell him regarding his availability for work. Claimant responded that he had nothing to say. As the Referee was closing the hearing, Claimant indicated he had one thing he wanted to add and testified he was not getting enough hours at his prior employer and they refused to schedule him for more hours despite his request. The Referee issued a decision finding Claimant had requested a reduction in work hours due to family matters and that Claimant failed to keep a work search record and could only recall one job contact per week. Therefore, he did not meet the work search requirements of Section 500C. On appeal, Claimant stated he was actively seeking work but did not have a list of his work search history because he was not aware that he needed to have that information available. The Board, found that Claimant was not able and available for work pursuant to Section 500C, and noted that Claimant had failed to successfully register on the Illinois Job Link as he did not submit a resume.

In reversing the Board's decision, the circuit court found the proceedings before the Department failed to conform to due process. It noted the claims adjudicator denied Claimant benefits after she failed to contact him after a single attempt. The court further opined the Referee "cross-examined Claimant in an exceedingly hostile fashion, cut off his attempts to explain events or develop the record, adopted wholesale the version of events put forth by the non-participating Employer, and denied benefits due to Claimant's lack of evidence of a job search." The court held the issue of Claimant's job search was completely unrelated to the claims adjudicator's decision and he thus had no reason to anticipate he would need to be prepared to discuss it. The circuit court also held the Board improperly conducted its own fact-finding when it determined Claimant failed to register with the Illinois Job Link website and that the Board somehow circumvented the traditional adversarial process by engaging in "*ex parte* fact-finding."

HELD: The appellate court reversed the circuit court on all issues, finding the Board's decision to not be clearly erroneous. Claimant's failure to provide a written work search record, combined with his minimal job contacts, and failure to register with the Illinois Job Link demonstrated he was not actively seeking work during the benefit period.

The appellate court noted Claimant was, both at the adjudicator and hearing stage prior to the scheduled interview and hearing, adequately put on notice that his work search was at issue. As such, he was required to provide a written work search record. The circuit court therefore erred in finding Claimant's job search was a "surprise issue."

The appellate court also noted Claimant was contacted twice by the claims adjudicator, not once, and Claimant failed to respond on both occasions. Claimant was also provided with opportunities to reschedule the interview as well as a notification that a failure to participate would result in a denial of benefits. Claimant was therefore not denied due process by the claims adjudicator's denial of benefits.

Regarding the Referee's conduct, the court noted the Referee was attempting to develop the record by obtaining basic information from Claimant in the form of yes or no questions. The Referee has discretion to control the hearing in the best manner under the circumstances. Contrary to the circuit court's decision, the Referee did not prevent Claimant from explaining events or developing the record. Following the three incidents noted by the circuit court, the Referee allowed Claimant to provide long, explanatory answers to his questions. Furthermore, Claimant was provided with the opportunity to add anything at the end, which he did. Accordingly, the appellate court noted Claimant was afforded a full opportunity to present testimony regarding his separation and his job search.

Finally, regarding the Board taking judicial notice of Claimant's failure to register with the Illinois Job Link, the appellate court found no due process violation by the Board taking judicial notice of a readily verifiable fact to aid in the disposition of a case. The Illinois Job Link website is a public website and an individual's registration with it is readily verifiable and the accuracy of the information cannot be reasonably questioned. It was therefore appropriate for the Board to take judicial notice of Claimant's failure to register without offering him a further opportunity to testify or otherwise submit evidence.

Fair Hearing and Due Process PR 195
General PR 195.05

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	***Thermen v. Dep't of Emp. Sec., 2024 IL App (1st) 220541-U***
AUTHORITY	**Section 602A(5) of the Act**
TITLE	**Fair Hearing & Due Process**
SUBTITLE	**Notice of Issue, Full and Fair Hearing on that Issue**
CROSS REFERENCE	**MC/5.05, Definition of Misconduct**

Claimant was employed by an automobile agency and worked in the service department. On December 21, 2020, claimant was asked by three people to move a vehicle from a sales department staging area but refused to let it be moved, despite lacking the authority to deny another department use of the area. When a supervisor came to retrieve the vehicle's keys to move the vehicle, the claimant used verbally abusive language and grabbed the supervisor's hand, twisting his finger. Company policy prohibited "Any conduct which is determined to be against the Company's interests, including, but not limited to, vulgarity, fighting, *** interference with fellow workers through horseplay and other objectionable or immoral conduct." Claimant had signed an acknowledgement of receipt acknowledging that he had received and reviewed the employee handbook. Claimant was previously verbally reprimanded due to a "heated and unprofessional" exchange between himself and a coworker. Claimant was instructed to bring any issues with coworkers to his supervisor rather than to the coworker. Following the December 21, 2020, incident the claimant was discharged. Following a hearing, the Appeals referee found no disqualification under Section 602(A) of the Act, stating, in part, that no willful and deliberate violation of the employer's policies had been established. The employer appealed. The Board of Review reversed the referee, denying benefits under Section 602(A)(5), stating that subsection (A)(5) imposed a "lower threshold" for finding that an employee was discharged based on misconduct, as proof was no longer required that the employee's actions be "willful or deliberate," that the employer was harmed, or that the employee's conduct was repeated or in violation of a reasonable work-related rule. The claimant appealed.

The circuit court reversed the Board, stating that the Board's review of the referee's determination was a frank violation of the claimant's due process rights, as the Board had cast the Referee's decision aside in favor of an entirely different analysis

governed by new subsection (A)(5) without providing the claimant notice and opportunity to be heard on that issue. The circuit court found that the record was "wholly undeveloped" regarding the new legal standard set forth in subsection (A)(5), which had not been mentioned at any point during the claims adjudication process or the appeal to the referee. The Department appealed.

HELD: The Appellate Court first concluded the Board's application of the statutory definition of misconduct was correct. The Board correctly determined that the plain text of section 602(A)(5) does not require an employee's refusal to obey a reasonable instruction to be willful or deliberate. Nor does it require proof of harm to the employer, that the conduct was repeated, or that the conduct violated a reasonable work-related rule. While those requirements apply to the general statutory definition of misconduct under section 602(A) of the Act, subsection (A)(5) gives an "independent example" of one particular type of per se misconduct that does not contain the same elements as the general definition. The claimant was previously instructed to bring any issues with coworkers to his supervisor. However, he disobeyed the instruction by engaging in an altercation with a coworker over a work-related disagreement. The Board properly found that this amounted to a refusal to obey the employer's reasonable and lawful instruction, and that the claimant therefore was ineligible for unemployment benefits as he was discharged for misconduct under section 602(A)(5) of the Act.

Next, the Appellate Court addressed the circuit court's finding that the claimant was denied due process when the Board applied the section 602(A)(5) definition of misconduct. The Court stated that throughout the proceedings and prior to the appeal hearing before the referee, the Department notified the claimant that the relevant issue was whether his conduct constituted misconduct under section 602(A), which had already been amended to include the per se categories of misconduct. Multiple notices that the Department sent to the claimant, including the notice of reconsideration and appeal to the referee, expressly listed the eight per se categories of misconduct, including the category of misconduct set forth in subsection 602(A)(5). Thus, the record shows that the claimant had been notified repeatedly that the issue before the agency concerned misconduct under section 602(A) in its entirety, i.e., under all of the categories of misconduct set forth in the statute including section 602(A)(5), and he was afforded an opportunity to be heard thereon. The Appellate Court found that no due process violation occurred during the administrative proceedings.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**ABR-84-12201/3-21-85**
AUTHORITY	**56 Ill. Adm. Code 2720.225**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Subpoenaed Documents Not Produced; Effect**
CROSS-REFERENCE	**PR 190.05, Evidence**

The claimant worked as a balance clerk from 1981 until his discharge in January 1984. The employer's Notice of Possible Ineligibility indicated that, in general, the claimant had had an "uncooperative attitude." The claimant often had been abusive to superiors, refusing to perform work as assigned. When he did perform work, which he understood well, he would do it sloppily, on purpose. He would not work according to schedule; on one occasion he absented himself from work in order to play golf and counted it as a sick day; on another occasion, though denied permission to leave work early, he did so anyway in order to watch a television show. The employer also stated that the claimant had been intoxicated on the job, on more than one occasion. The employer's witnesses testified to the above at an appeal hearing, after which the claimant was disqualified for benefits for misconduct connected with his work.

Prior to a remanded hearing, the claimant made an application for subpoenas, including subpoenas duces tecum for the employer's "error accounts" - which the claimant contended would establish that he had worked to the best of his ability ("over 100%"); for the employer's attendance records; and for the employer's time cards - in particular, the time cards of the claimant and his supervisor, whom the claimant alleged had come to work late and left work early more often than the claimant. The Referee agreed to issue all the subpoenas sought by the claimant.

In response to the subpoenas duces tecum, the employer was prepared to produce its error account book and its attendance records, but not the time cards requested by the claimant, due to the time and expense involved in locating and shipping them

from storage facilities in another state. However, the employer was willing to stipulate that the claimant may have worked longer hours than his supervisor. The proposed stipulation was presented to the claimant several days before the hearing was to commence; he never indicated that the proposed stipulation was unacceptable to him.

On October 18, 1984, the claimant and the employer appeared for the appeal hearing. The claimant informed the Referee that he would not proceed without the timecards. The claimant then walked out of the hearing room. The Referee considered the evidence before him, including that previously submitted, and issued a decision which disqualified the claimant for benefits.

Upon further appeal, the claimant contended that he had been denied a fair hearing because the employer had not been compelled to produce the subpoenaed timecards.

HELD: A Referee shall allow a request for a subpoena unless he finds that the evidence sought is immaterial, irrelevant, or cumulative. The request having been allowed, if a party fails to obey a subpoena of the Referee, the Referee shall treat the evidence required by the subpoena, but not produced, as establishing the truth of the position of the party who subpoenaed the documents.
In the instant case, the subpoena for the timecards should not have been issued in the first place. The claimant had never shown that his supervisor's hours were material or relevant to his claim. The claimant's hours, not to mention allegations of his intoxication and insubordination, were in question. Even so, the claimant had no basis for complaining about the employer's failure to produce the timecards, since, either by the employer's failure to produce the timecards or by the employer's offer to enter into a stipulation, the truth of the claimant's position would have been established: that the claimant worked longer hours than his supervisor - which, again was neither material nor relevant.

It is not the purpose of the Act to require the production of records unnecessary for a full, fair, and impartial hearing. In the instant case, the failure of the employer to produce unnecessary timecards did not deny the claimant a fair hearing.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-04920/7-2-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Ex Parte Communications**
CROSS-REFERENCE	**None**

The claimant complained that the employer's witness and the Referee continued a conversation in the hearing room for "approximately ten minutes after I left the hearing room."

HELD: Ex parte communications of the type alleged by the claimant violate the concepts of Fair Hearing and Due Process, which require that a Referee base his decision upon competent evidence presented to him in the record forwarded by the claims adjudicator and from the hearing in which the claimant was a participant. To do otherwise would taint not only the immediate proceeding, but damage, in general, the interest in presenting an atmosphere free from suspicion of bias or improper influence. (In the instant case, however, the evidence did not support the claimant's allegation that the Referee engaged in improper ex parte communications or that the Referee based his decision upon information furnished through communications off the record.)

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05261/7-10-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Notice of Issue, Full and Fair Hearing on that Issue**
CROSS-REFERENCE	**PR 145.05, Withdrawal; PR 190.05, Evidence**

The employer petitioned the Board of Review to set aside the Referee's decision and reinstate its appeal from the Claims Adjudicator's determination. The employer stated that it was induced to withdraw its appeal by the Referee, who had concluded prior to taking evidence and without making a record - that the employer's appeal had been untimely. The employer further stated that the Referee later admitted that he had miscalculated in determining the timeliness of the appeal. In addition, the issue of timeliness had not been listed on the hearing notice sent to the parties.

HELD: Due Process requires adequate notice of the issues to be considered, and a full and fair opportunity to be heard with respect to those issues. The resulting decision should be based upon the evidence of record with respect to those issues. In the instant matter, the Referee considered an issue despite the parties' lack of notice, did not elicit evidence with respect to that issue, acted as an advocate in advising a party to withdraw on account of that issue, and rendered a withdrawal decision based upon that (non-existent) issue. The affected party was, in the process, denied Due Process. The decision of the Referee was set aside, and the employer's appeal was reinstated.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05334/7-16-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Right to Produce Witnesses**
CROSS-REFERENCE	**None**

The claimant, a Retail Salesperson, was discharged after the employer determined that she had stolen money from the employer by issuing a false cash credit to a customer. Subsequently, in the course of an interview with the Claims Adjudicator, the claimant stated that she had issued a proper cash credit to the customer; and, the claimant furnished the name, address, and telephone number of that customer. Still, the claimant was disqualified for benefits, under Section 602B, for theft. She appealed, and a hearing was conducted on December 28, 1984. In the course of that hearing, the claimant told the Referee that the customer in question was willing to testify on the claimant's behalf. The Referee did not attempt to contact the customer by telephone, nor did the Referee continue the hearing to give the claimant an opportunity to produce the witness in person. Based upon the evidence presented at the hearing, the Referee affirmed the disqualification imposed by the Claims Adjudicator.

In her appeal to the Board of Review, the claimant contended that the testimony of the customer in question should have been heard.

HELD: Due Process requires that parties be given a full and fair opportunity to be heard, which would include the right to produce witnesses who might present or rebut evidence which would be material to a fair disposition of the case. In the instant matter, the claimant was prepared to introduce a witness who was willing to testify concerning the central issue in the case, but was precluded from doing so. The claimant was denied a full and fair hearing.

The case was remanded, and the Referee was instructed to take the testimony of the claimant's witness, either in person or by telephone.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05523/7-23-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Parties' Rights to Confront, Cross-Examine, and Rebut Evidence**
CROSS-REFERENCE	**PR 100, Continuances; PR 108.05, Cross-Examination; PR 190.05, Evidence**

At a hearing conducted on January 18, 1985, the employer alleged that the claimant had been discharged for attendance infractions. Then the employer requested additional time in order to submit documentation to that effect. At the conclusion of the hearing, the Referee informed the parties that his decision would remain pending, until January 31, in order to permit the employer to submit documentation concerning the claimant's attendance.

There were no further appearances by the parties. On January 31, the Referee issued a decision which disqualified the claimant for benefits, on the basis of attendance infractions. The claimant appealed that decision to the Board of Review.

HELD: The proper purpose of a hearing is to provide the parties a full and fair opportunity to be heard. Toward that end, parties must be given an opportunity to confront and rebut evidence and cross-examine testimony pertaining to such evidence.

The Referee's conduct in the instant matter - informing the parties that his decision would be suspended pending his receipt of evidence, without continuing the hearing process to allow attendance of the parties at the presentation of such evidence - effectively precluded any opportunity for the parties to confront and rebut evidence or cross-examine testimony pertaining to it.

The Referee's conduct was in substantial conflict with the proper purpose of a hearing. Therefore, the decision of the Referee was set aside and the matter was remanded.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05832/8-8-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Notice of Issue to be Considered, Waiver of Notice**
CROSS-REFERENCE	**None**

On February 21, 1985, the claimant appeared and testified at an appeal hearing. The hearing notice had informed the claimant that the issue to be considered was Misconduct, under Section 602A of the Act. That had been the Section of the Act under which the Claims Adjudicator had disqualified the claimant for benefits.

On February 26, 1985, the Referee issued a decision disqualifying the claimant for benefits, due to Voluntary Leaving, under Section 601A of the Act. The Referee had not explained to the claimant during the course of the hearing that Voluntary Leaving was an issue or that Section 601A was applicable; and, accordingly, the claimant had had no opportunity to waive notice with regard to Section 601A of the Act.

HELD: Due Process requires that an individual be given reasonable notice of the issues to be considered at a hearing. Where circumstances preclude an opportunity for such notice, an individual may voluntarily and knowingly waive such notice. In the instant case, the claimant was not given notice of the issue upon which the Referee based her decision. Nor was the claimant in a position to knowingly waive notice. In order to ensure that the claimant would be accorded Due Process, the Board of Review set aside the Referee's decision and remanded the case, with instructions to provide the claimant with adequate notice of the Section(s) of the Act being addressed.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05894/8-14-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Leading Questions on Direct Examination (Posed by Referee)**
CROSS-REFERENCE	**MC 385.05, Relation of Offense to Discharge**

The claimant worked in Sales for 2 1/2 years. On November 29, 1984, immediately after being questioned about "register shortages," the claimant was discharged. He was told that he was being discharged due to having falsified his application for employment.

At the appeal hearing, the claimant admitted that 2 1/2 years prior to his discharge he had omitted to mention on his application the name of a previous employer. The Referee then cursorily questioned the employer's witness. The Referee asked for the date when the employer first acquired knowledge of the application falsification.

Referee: "Just before the claimant was discharged?"

Employer: "Right."

Relying upon the claimant's admission and the employer's witness's response to the question posed, the Referee failed to elicit any testimony concerning any relationship between the "register shortages" and the claimant's discharge, and, subsequently, the Referee issued a decision which disqualified the claimant for benefits, on the basis of the claimant having falsified his application for employment.

HELD: On direct examination, leading questions designed to elicit responses regarding material facts are improper. The Referee's question, cited above, was clearly a leading question, one which patently encouraged the witness to respond affirmatively. Therefore, the employer's witness's response to that improper question could not be accorded any weight.

It is axiomatic that for an act to constitute misconduct connected with the work within the meaning of the statute the claimant must have been discharged for that act. Based upon the evidence of record, not including the employer's witness's response to the improper question, it was unclear whether the employer discharged the claimant immediately upon discovering that he had

falsified his application, or only after passage of substantial time, thereby condoning such falsification and discharging him for reasons other than falsification of his employment application.

Accordingly, the Referee's decision was contrary to the manifest weight of the evidence and was set aside and the matter was remanded.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-06296/8-29-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Ex Parte Communications**
CROSS-REFERENCE	**None**

In connection with her appeal to the Board of Review, the claimant wrote:

> ...I would also like to know why (employer's) representative stayed in with Hearing Referee after hearing because he (the Referee) is a lawyer and very prejudiced and I was not there to defend myself.

HELD: The interests of justice require that parties be given every reasonable opportunity to perceive proceedings before the Referee as affording a fair and impartial hearing, conducive to a disposition of their appeal on its merits and on the basis of all credible and tangible evidence, on the record. Toward this end, impartiality must be maintained throughout the hearing process. Proceedings must be characterized by the absence of influence or conduct suggesting bias, prejudice, or prejudgment of issues. Ex parte communications are to be strongly condemned and discouraged.

In the instant case, the Referee's alleged ex parte communications with the employer's witness created an impression that any review and consideration of the claimant's case would be tainted by prejudice. Under such circumstances, the Board of Review was compelled to set aside the Referee's decision and remand the case to a different Referee for a new hearing.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**ABR-84-12062/10-4-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Bifurcated Hearings**
CROSS-REFERENCE	**PR 108.05 Cross-Examination**

The claimant and his former employer were scheduled to testify, by telephone at an appeal hearing, to consider a work separation issue. Initially, the employer appeared, but the claimant could not be reached. The Referee proceeded to elicit the employer's testimony. After excusing the employer, the Referee made another attempt to contact the claimant, and, having done so, in the employer's absence, proceeded to elicit testimony from the claimant. Subsequently, the Referee issued his decision, based upon the parties' testimony.

HELD: The proper purpose of a hearing is to provide the parties with a full and fair opportunity to be heard. Toward that end, parties must be given a reasonable opportunity to confront one another and rebut one another's evidence. In the instant case, the Referee conducted a bifurcated hearing, during which the parties could not confront one another or rebut one another's allegations. This did not constitute a full and fair opportunity to be heard. Accordingly, the decision of the Referee was set aside and the case was remanded for a new hearing.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	***Booker v. IDES*, 576 N.E. 2d 1028 (1991)**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Inaudible Hearing Transcript**
CROSS-REFERENCE	**None**

The claimant contended that he was denied due process because the transcript of his hearing referred to portions that were "inaudible." He contended that the Board of Review should not have relied upon this incomplete account in reviewing the Referee's decision.

HELD: The mere fact that portions of a record are inaudible does not by itself establish a denial of due process if the record also demonstrates that an individual receives a fair hearing with a full opportunity to present evidence.

Here, the claimant did not show how he was prejudiced by the inaudible portions. Although parts of the tape may have been inaudible, the transcript showed that the claimant had a fair and full hearing. The Referee's and Board's decision were supported by the record.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	***Arroyo v. IDES*, 695 N.E. 2d 1350 (1998)**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Notice**
CROSS REFERENCE	**VL 135.05 and MC 135.05, Discharge or Leaving**

The employer protested that the claimant, who was absent from work for more than a month due to medical problems, had "terminated voluntarily"; however, the claims adjudicator found the separation to be a discharge and issued a determination that the claimant was discharged for reasons other than misconduct. The employer appealed. The hearing notice mentioned both Section 601 (Voluntary Leaving) and 602 (Discharge); still, the Referee affirmed the claims adjudicator's determination that this was a discharge. When the employer appealed to the Board of Review, the Board reversed the Referee and denied benefits, finding the claimant voluntarily left work. The claimant then appealed, arguing she was deprived of due process: an opportunity to be heard on the Voluntary Leaving issue.

HELD: The claimant should have expected to address Voluntary Leaving: first, the employer raised the issue in its protest; second, the hearing notice mentioned both Section 601 and Section 602. The due process contention failed.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	***Figueroa v. Doherty*, 707 N.E. 2d 654 (1999)**
AUTHORITY	**14th Amend. U.S. Constitution**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Right to be heard**
CROSS-REFERENCE	**None**

The claimant appealed a decision of the Board of Review which denied benefits due to discharge for misconduct. The claimant spoke Spanish but knew some English. Although an interpreter was provided, the Referee directed the interpreter at the hearing to summarize rather than translate his testimony and his questions to the opposing party. The claimant contended that he had not been given a fair hearing. The circuit court affirmed the Board of Review's denial of benefits. The appellate court reversed and remanded the case for another hearing.

HELD: The appellate court held that the claimant did not receive a fair hearing. His testimony was not accurately translated and the Referee did not develop the record to insure that the relevant questions were asked and answered. The court remanded the case back to conduct a fair hearing.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	***Meneweather v. Board of Review*, 621 N.E. 2d 22 (1992)**
AUTHORITY	**14th Amend. U.S. Constitution**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Referee's duty to develop the record**
CROSS-REFERENCE	**PR 190.05, Evidence**

The claimant was denied benefits due to her discharge for misconduct. The claimant alleged that her alcoholism prevented her from acting "willfully and deliberately" as required by the misconduct disqualification. The claimant also contended that she was denied a fair hearing because the referee did not develop the record to determine her condition. The circuit court affirmed the Board of Review's denial of benefits. The appellate court reversed and remanded the case for another hearing.

HELD: The appellate court held that the claimant did not receive a full and fair hearing on her allegation that her alcoholism

caused her behavior. Her testimony concerning her condition should have prompted the Referee to have more fully investigated the truth of her allegations. The court remanded the case back to conduct a fair hearing.

HELD: Section 803 permits the Board of Review to take jurisdiction upon its own motion. Here, the Board took jurisdiction despite being unable to determine with certainty that the employer protested or appealed. The reason was that the purpose of the Act is better served by investigating a case on the merits than by awarding benefits on a technicality from a deficient record.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	***Leach v. Dep't of Empl. Sec.*, 2020 IL App (1st) 190299**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Right to Present Evidence**
CROSS-REFERENCE	**AA160.05 Efforts to Secure Employment, PR 190.2 Judicial Notice**

After filing for unemployment benefits, Claimant was notified he needed to register for work with the IDES Job Link and that his "registration will be considered complete when you create or upload at least one resume." Claimant was then sent a notice informing him he had to provide work search records "and/or any documentation that may demonstrate your ability to work" prior to the interview. A claims adjudicator attempted to call the Claimant twice, but he did not answer the phone. A determination was issued, finding Claimant not eligible for benefits under Section 500C of the Act. Claimant appealed. A Notice of Telephone hearing was sent to Claimant, reiterating one of the issues to be considered was whether Claimant was able and available for work during the period in question. At the hearing, only Claimant appeared and testified. He testified he had asked to have weekends off but was available Monday through Friday. He denied asking for a leave of absence. He testified he was looking for another job and kept track of "some of the places" he applied to online but acknowledged he had not been keeping an actual record. He testified he applied at McDonald's, IHOP, and a "few other places" over a four-week period. He testified he registered with the Illinois Job Link service and was available for any work shift outside of the weekends. At the conclusion of the hearing, the Referee asked Claimant if he had anything else to tell him regarding his availability for work. Claimant responded that he had nothing to say. As the Referee was closing the hearing, Claimant indicated he had one thing he wanted to add and testified he was not getting enough hours at his prior employer, and they refused to schedule him for more hours despite his request. The Referee issued a decision finding Claimant had requested a reduction in work hours due to family matters and that Claimant failed to keep a work search record and could only recall one job contact per week. Therefore, he did not meet the work search requirements of Section 500C. On appeal, Claimant stated he was actively seeking work but did not have a list of his work search history because he was not aware that he needed to have that information available. The Board, found that Claimant was not able and available for work pursuant to Section 500C, and noted that Claimant had failed to successfully register on the Illinois Job Link as he did not submit a resume.

In reversing the Board's decision, the circuit court found the proceedings before the Department failed to conform to due process. It noted the claims adjudicator denied Claimant benefits after she failed to contact him after a single attempt. The court further opined the Referee "cross-examined Claimant in an exceedingly hostile fashion, cut off his attempts to explain events or develop the record, adopted wholesale the version of events put forth by the non-participating Employer, and denied benefits due to Claimant's lack of evidence of a job search." The court held the issue of Claimant's job search was completely unrelated to the claims adjudicator's decision and he thus had no reason to anticipate he would need to be prepared to discuss it. The circuit court also held the Board improperly conducted its own fact-finding when it determined Claimant failed to register with the Illinois Job Link website and that the Board somehow circumvented the traditional adversarial process by engaging in "*ex parte* fact-finding."

HELD: The appellate court reversed the circuit court on all issues, finding the Board's decision to not be clearly erroneous. Claimant's failure to provide a written work search record, combined with his minimal job contacts, and failure to register with the Illinois Job Link demonstrated he was not actively seeking work during the benefit period.
The appellate court noted Claimant was, both at the adjudicator and hearing stage prior to the scheduled interview and hearing, adequately put on notice that his work search was at issue. As such, he was required to provide a written work search record. The circuit court therefore erred in finding Claimant's job search was a "surprise issue."

The appellate court also noted Claimant was contacted twice by the claims adjudicator, not once, and Claimant failed to respond on both occasions. Claimant was also provided with opportunities to reschedule the interview as well as a notification that a failure to participate would result in a denial of benefits. Claimant was therefore not denied due process by the claims adjudicator's denial of benefits.

Regarding the Referee's conduct, the court noted the Referee was attempting to develop the record by obtaining basic information from Claimant in the form of yes or no questions. The Referee has discretion to control the hearing in the best manner under the circumstances. Contrary to the circuit court's decision, the Referee did not prevent Claimant from explaining events or developing the record. Following the three incidents noted by the circuit court, the Referee allowed Claimant to provide long, explanatory answers to his questions. Furthermore, Claimant was provided with the opportunity to add anything at the end, which he did. Accordingly, the appellate court noted Claimant was afforded a full opportunity to present testimony regarding his separation and his job search.

Finally, regarding the Board taking judicial notice of Claimant's failure to register with the Illinois Job Link, the appellate court found no due process violation by the Board taking judicial notice of a readily verifiable fact to aid in the disposition of a case. The Illinois Job Link website is a public website and an individual's registration with it is readily verifiable and the accuracy of the information cannot be reasonably questioned. It was therefore appropriate for the Board to take judicial notice of Claimant's failure to register without offering him a further opportunity to testify or otherwise submit evidence.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	***Maskevich v. Ill. Dep't of Emp. Sec., 2022 IL App (1st) 210779***
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Notice of Appeal**
CROSS-REFERENCE	**PR 430.3, Timeliness of Appeal**

Claimant received unemployment insurance benefits but also received, during most of that same time, short-term disability benefits for a knee injury. IDES sent Claimant a "Notice of Fraud Decision," to Claimant's last known address seeking a refund of unemployment benefits and providing information on how to appeal that determination if Claimant disagreed. Claimant filed that administrative appeal to an IDES referee, who found that they lacked jurisdiction to hear the appeal, as Claimant filed the appeal more than 30 days after the Notice of Fraud was sent to him. Claimant appealed that ruling to the Board, which affirmed the referee. The circuit court affirmed the Board's final decision. Claimant appealed alleging that the manner in which IDES provided notice of the right to appeal violated "fundamental fairness" and "fair play." Specifically, Claimant alleged that "the placement of the notice within the overall, actual decision packet" was not "reasonably calculated" to actually give notice. He further claimed that he was denied due process when IDES ignored and overlooked facts, resulting in a determination that was against the manifest weight of the evidence.

HELD: The Act provides that "appeals from a claims adjudicator shall be taken to a Referee" and that, unless the claimant files an appeal within 30 days from the date the decision is mailed to him or her, the claims adjudicator's determination "shall be final." 820 ILCS 405/800 (West 2018). This is a mandatory provision that acts as a statute of limitations. The 30-day deadline must be "strictly" complied with and is calculated from the date of service, that is, the mailing of the decision to the last known address of the party entitled to receive it. *Thompson v. Dep't of Empl. Sec*., 399 Ill. App. 3d 393 (2010) ("the statute does not confer additional authority on the Board to entertain appeals beyond the 30 days after a decision has been mailed"). The appellate court therefore concurred with the Board that it lacked statutory authority, or jurisdiction, to hear Claimant's appeal as Claimant filed the appeal beyond the 30-day deadline.

Furthermore, regarding Claimant's allegation of a due process violation, the appellate court stated that the government is not required to notify an individual of administrative appeal rights, as long as a statute, administrative rule, or some otherwise clear public notice is provided by the government explaining such appeal rights. But if the government chooses to provide notice of those appeal rights, the notice "must not be misleading" or prejudicially confusing. In this case the "Notice of Fraud Decision" included a paragraph on the back page of its notice that explained Claimant's appeal rights. The appellate court noted that the language was clear and unambiguous. This paragraph explaining Claimant's appeal rights was in the same size and font as the other paragraphs of the Notice of Fraud Decision. It was, in fact, the very first paragraph on the second page. It was not buried among other text but was its own freestanding paragraph. Neither the Illinois supreme court nor the appellate court has been receptive to the notion that a citizen is not required to flip a page to read on, beyond the front page of a government notice. The appellate court added that it is not asking too much of its citizenry to read a notice in full, even if the information continues beyond the front page.

ISSUE/DIGEST CODE	**Procedure PR 195.05**
DOCKET/DATE	***Village Discount Outlet v. Department of Employment Security*, 384 Ill.App.3d 522, 323 Ill.Dec. 469, 893 N.E.2d 943 (1st Dist., 2008)**

AUTHORITY **56 Ill. Adm. Code 2720.250 and 2720.270**
TITLE **Fair Hearing & Due Process**
SUBTITLE **General**
CROSS-REFERENCE **Procedure/PR 190.05, Evidence, General; MC 190.15 Evidence, Weight & Sufficiency**

The employer operated drop-off facilities and thrift stores for various charities. It discharged the claimant for allegedly setting aside donations intended for the employer and taking them for himself or his relatives. At the hearing before the Referee, the employer's Regional Manager testified that he had seen a videotape showing the claimant setting aside a television and directing attendants to load it into a relative's car. The claimant denied taking any items. On appeal by the claimant, the Board of Review reversed the Referee's finding of misconduct on the basis that the Regional Manager's testimony was hearsay and there was not sufficient firsthand evidence to show that the claimant had actually committed the actions that had caused his discharge.

HELD: The appellate court held that the Regional Manager's testimony about his observations of the videotape was not hearsay. The court found, however, that the Board of Review was correct in not ruling that the alleged hearsay was inadmissible and properly gave such evidence its natural probative effect, which was minimal due to fact that the evidence was rife with evidentiary flaws, such as the employer's failure to lay a proper foundation for the videotape. Also affecting the weight of the evidence was that the videotape itself was never introduced into evidence and, thus, the witness's description of what he saw on the tape ran afoul of the "best evidence rule", which expresses a preference for the original of documentary evidence when the contents of the documentary evidence are sought to be proved.

The court also held that the employer's due process right to a fair hearing was not violated. The court noted that the Referee took an active role in developing the evidence and fleshing out the positions of the parties. Due process does not require the Referee to take such an active role at a hearing that all evidentiary deficiencies are remedied, even where a party is not represented by legal counsel. The employer was given prior notice of the requirements for admitting the videotape into evidence and elected, instead, to present only the testimony of a supervisor who had been shown the tape. According to the court, the employer "must now live with the consequences of that decision." Since the employer received a fair hearing, there was no necessity to remand the matter to allow the employer another opportunity to correct any evidentiary deficiencies in its case.

ISSUE/DIGEST CODE **Procedure/PR 195.05**
DOCKET/DATE ***Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814, 333 Ill.Dec. 1, 914 N.E.2d 208 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 554, 336 Ill.Dec. 492, 920 N.E.2d 1082 (Table) (11/25/09)**
AUTHORITY **Section 602A of the Act**
TITLE **Fair Hearing and Due Process**
SUBTITLE **General**
CROSS-REFERENCE **PR 190.05, Evidence, general; PR 400.05: Representation, By a Non-Attorney; MC 5.05, Definition of Misconduct**

The claimant was employed as an apprentice electrician. He was discharged for misconduct for removing air conditioning equipment without authorization. After filing a claim for benefits, the local office and the Referee found that the claimant was guilty of misconduct and held him ineligible for benefits under Section 602 of the Act. The claimant argued that the employer's non-attorney representative engaged in the unauthorized practice of law during the hearing by examining and cross-examining witnesses. He also argued that he did not receive a fair hearing, that the evidence did not show that he was guilty of misconduct, and that the employer's testimony was inadmissible hearsay. The Board of Review affirmed the Referee's decision denying benefits and rejected all of the claimant's arguments against it.

HELD: The court discussed four issues. The first concerns the unauthorized practice of law. The court held that the practice of law turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation.

The second issue is whether the claimant received a fair hearing as required by due process of law. The court held that the claimant had received a fair hearing in that he was given an opportunity to be heard and to question the employer's witnesses. The fact that he chose not to take advantage of the opportunity to question the adverse employer's witnesses does not invalidate the proceeding on grounds of due process.

The third issue was whether the employer proved all the elements of misconduct under Section 602. The court held that all the elements of misconduct were met. In particular, the court noted that a rule or policy need not be written down in order to bind the employee. The claimant's violation of an oral directive not to be present in certain areas of the workplace also constitutes a violation of an employer rule or policy.

The fourth issue was the claimant's objection that testimony concerning the cost of the air conditioning units was inadmissible hearsay. The court noted that this testimony was introduced not for its factual accuracy but simply to show that the loss of the air conditioning units caused financial harm to the employer. Thus, strictly speaking, the testimony concerning the approximate cost of the air conditioning units was not hearsay at all.

Jurisdiction and Powers of Tribunal PR 275
General PR 275.05

ISSUE/DIGEST CODE	**Procedure/PR 275.05**
DOCKET/DATE	**ABR-89-6022/8-9-90**
AUTHORITY	**Sections 702, 800, and 803 of the Act**
TITLE	**Jurisdiction and Powers of Tribunal**
SUBTITLE	**When the Record is Incomplete**
CROSS-REFERENCE	**PR 405.2, Right of Review**

The record presented to the Board contained no protest; however, there was an adjudicator's note that a 134.1 determination was mailed to the employer. (A 134.1 determination means that the adjudicator found that the employer submitted a timely protest.) Further, the record contained no letter of appeal to the determination; however, the determination did not contain the employer's address (and may not have been mailed correctly).

HELD: Section 803 permits the Board of Review to take jurisdiction upon its own motion. Here the Board took jurisdiction despite being able to determine with certainty that the employer protested or appealed. The reason was that the purpose of the Act is better served by investigating a case on the merits than by awarding benefits on a technicality from a deficient record.

ISSUE/DIGEST CODE	**Procedure/PR 275.05**
DOCKET/DATE	**ABR-90-9555/12-10-90**
AUTHORITY	**Section 702 of the Act; 56 Ill. Adm. Code 2720.130**
TITLE	**Jurisdiction and Powers of Tribunal**
SUBTITLE	**Sufficiency of Protest**
CROSS-REFERENCE	**None**

The employer's protest set forth these facts:

> Employee said he was unable to perform his tasks. He is also suing under the Workers' Compensation thru our insurance carrier and may have some funds distributed to him. This has not been determined yet to our knowledge. We needed to hire someone to do his tasks.

The claims adjudicator deemed the employer's protest sufficient and subsequently issued a determination that the claimant was eligible for benefits. The employer appealed. The Referee dismissed the employer's appeal. The Referee held that the employer had submitted an insufficient protest, which did not entitle it to appeal rights.

HELD: Benefit Rule 2720.130 provides that, if an employer submits an insufficient protest, the Department shall return it, affording the employer an opportunity to correct the insufficiency. Here, if the Referee believed that the protest was insufficient, he was only empowered to remand the case to the Adjudicator for further action, not dismiss it altogether.

ISSUE/DIGEST CODE	**Procedure/PR 275.05**
DOCKET/DATE	**ABR-21-23434/9-9-21**
AUTHORITY	**Sections 703 and 1508.1 of the Act**
TITLE	**Jurisdiction and Powers of Tribunal**
SUBTITLE	**Time Limit for Adjudication to Reconsider Determination**
CROSS-REFERENCE	**PR 430.3 Right of Review**

On 04/05/2020, the claimant became eligible for benefits pursuant to Section 601A and was first paid benefits on this claim the week ending 4/11/2020. On 05/18/2021, the claims adjudicator issued a determination finding the claimant ineligible under Section 601A of the Act from 12/27/2020. On 08/17/2021 the referee dismissed the matter pursuant to Section 2720.255 of the Benefit Rules.

HELD: Section 703 of the Act provides in pertinent part that a claims adjudicator may reconsider their determination at any time within one year after last day of the week for which the determination was made. Section 1508.1 of the Act provides in pertinent part the employer shall not be charged for benefits paid pursuant to Section 703 of the Act. Acts or orders of an administrative agency which are unauthorized by the enabling statute are void. *See Weingart v. Department of Labor,* 122 Ill.2d 1 (1988).

The 05/18/2021 determination and the 08/17/2021 decision were void. The decision of the Referee was VACATED. Pursuant to 820 ILCS 405/1508.1, benefit wages or benefit charges attributable to the employer were cancelled for this matter. Pursuant to 820 ILCS 405/601A, the claimant was eligible for benefits, as to this issue only, from 04/05/2020.

ISSUE/DIGEST CODE	**Procedure/PR 275.05**
DOCKET/DATE	**85-BRD-05338/7-16-85**
AUTHORITY	**Section 803 of the Act**
TITLE	**Jurisdiction and Powers of Tribunal**
SUBTITLE	**Nonparty Appeal to Board of Review**
CROSS-REFERENCE	**PR 25.05, Appearance; PR 190.05, Evidence**

On November 30, 1984, notice was mailed to the employer that the claimant had filed a claim for unemployment insurance benefits. The notice informed the employer that it could become a party to the proceedings if it filed a Notice of Possible Ineligibility or a letter in lieu thereof within ten days. The employer filed no Notice of Possible Ineligibility or letter in lieu thereof. Nonetheless, the claimant was disqualified for benefits, and filed an appeal. An appeal hearing was scheduled for January 17, 1985, to consider the issue of whether the claimant had left work voluntarily without good cause attributable to the employer. Prior to that hearing, a prospective witness for the employer telephoned the Referee's supervisor. The Referee's supervisor told the witness that the employer need not appear at the hearing, because it had no "say so" in the matter.

Subsequently, the Referee conducted a hearing at which only the claimant appeared. On the basis of the evidence presented, the Referee issued a decision allowing benefits to the claimant. The employer then filed an appeal to the Board of Review, expressing a desire to present evidence at a hearing.

HELD: Although the employer, because it had not filed a Notice of Possible Ineligibility or letter in lieu thereof, was not technically a party entitled to take an appeal to the Board of Review, the Board of Review took jurisdiction over the matter, citing Section 803 of The Illinois Unemployment Insurance Act:

The Board of Review may, on its own motion...affirm, modify, or set aside any decision of a Referee.

The case was subsequently remanded for a new hearing, from which the employer would not be excluded. (See PR 25.05, Appearance; PR 190.05, Evidence.)

ISSUE/DIGEST CODE	**Procedure/PR 275.05**
DOCKET/DATE	**ABR-86-4328/8-6-87**
AUTHORITY	**Section 803 of the Act**
TITLE	**Jurisdiction and Powers of Tribunal**
SUBTITLE	**Board of Review over Matters Pending Before a Referee**
CROSS-REFERENCE	**None**

The claimant appeared without witnesses and requested a continuance. The Referee denied a continuance and ruled that the claimant was disqualified for benefits.

The claimant appealed to the Board of Review, requesting that he be given the opportunity to produce his witnesses. The Board remanded the case for that purpose.

At his new hearing, the claimant, again, appeared without witnesses and, again, requested a continuance. This time, the Referee granted a continuance.

After the Referee granted the continuance, but before the hearing was held, the employer wrote a letter to the Board, objecting to this third opportunity for the claimant as "a gross abuse of the process" that "would constitute substantial harassment of the employer."

HELD: Section 803 provides that the Board of Review may, on appeal or its own motion, affirm, modify, or set aside a Referee's decision. Section 803 does not permit the Board to rule on matters pending before a Referee. There is one exception. The Director may remove matters from a Referee to the Board of Review. But the Board itself is not empowered to remove matters from a Referee.

The granting of a continuance was a matter pending before a Referee. The Director had not removed this matter from the Referee to the Board. The Board of Review was without jurisdiction to take any action on the employer's request.

ISSUE/DIGEST CODE	**Procedure/PR 275.05**
DOCKET/DATE	***Stone v. Board of Review*, 572 N.E. 2d 412 (1991)**
AUTHORITY	**Section 803 of the Act**
TITLE	**Jurisdiction and Powers of Tribunal**
SUBTITLE	**Time Limit for Board of Review to Render Decision**
CROSS-REFERENCE	**None**

An appeal was taken from a Referee's decision to the Board of Review. Thirteen months passed, during which time neither party applied for a Notice of Right to Sue. Then the Board of Review rendered its decision.

The claimant, who was denied benefits, argued that Section 803 of the Act requires the Board to render its decision within 120 days of the date of appeal or lose jurisdiction; because the Board issued its decision nine months late, it lost jurisdiction, and, therefore, its decision was null and void.

HELD: Section 803 of the Act provides, in pertinent part:

> The Board of Review shall make a final determination on the appeal within 120 days of the date of the filing of the appeal...
>
> At any time after the...120-day period...the party claiming to be aggrieved by the decision of the Referee may apply for a Notice of Right to Sue (to bypass the Board and proceed directly to court).
>
> If no party files a Notice of Right to Sue, the decision of the Board of Review, issued at any time, shall be the final decision on the appeal.

Courts will not construe a statute in such a way as to render its provisions meaningless. Here, the 120-day time-limit is not mandatory. If it were, then the provision for seeking a Notice of Right to Sue would be meaningless, as would be the provision concerning the validity of a Board of Review decision issued at any time in the absence of a Notice of Right to Sue.

In short, 120 days was the time after which the claimant could apply for a Notice of Right to Sue, not a time limit within which the Board of Review was required to issue its decision.

ISSUE/DIGEST CODE	**Procedure/PR 275.05**
DOCKET/DATE	***Perez v. Dep't of Emp. Sec*., 2023 IL App (1st) 221928-U**
AUTHORITY	**Section 500B of the Act**
TITLE	**Jurisdiction and Powers of Tribunal**
SUBTITLE	**Backdating**
CROSS-REFERENCE	**MS 75.1, Claims and Registration, Backdating, PR 430.15, Taking and Perfecting Proceedings for Review**

Claimant was laid off on March 18, 2020, and filed for benefits. On March 27, 2020, IDES sent claimant a UI finding letter noting that she needed to certify for benefits. The letter indicated that the first certification date would be April 6, 2020. The

letter contained instructions regarding how to certify using the internet or by calling the office. On December 8, 2020, claimant completed a backdating questionnaire for three certification dates that she missed in April and May 2020, explaining that she began certifying on May 18, 2020, and did not certify earlier because she did not know she needed to certify online every two weeks beginning on April 6, 2020. The local office denied the late certification. Claimant appealed. At the hearing claimant informed the referee that she called IDES before May but never reached anyone. Claimant stated that an IDES representative finally contacted her in December 2020, and told her to file a backdating questionnaire. Claimant also informed the referee that she initially believed the process for obtaining her unemployment benefits was automatic and she did not know that she needed to certify for the benefits until May. The referee affirmed the claims adjudicator's decision. Claimant appealed to the Board. The Board noted that IDES was not required to process claimant's late claim certification because her failure to certify for benefits was not due to her unawareness of her rights any failure of IDES or her employer to discharge its responsibilities, any coercion, warning, or instruction not to pursue her rights, or circumstances beyond her control. Claimant appealed and the circuit court affirmed. Claimant appealed, asserting that she was unable to reach a representative of IDES by phone or receive assistance in person because the office was closed due to the COVID-19 pandemic. Claimant argued that the requirement to file her claim certification within 14 days after the reasons for the failure to file no longer existed should not apply due to the pandemic. Additionally, claimant argued that the UI finding letter did not specify a two-week "time limit" to file for back benefits, and she only learned about that rule "almost a year" later from the referee.

HELD: Under the Illinois Administrative Code, after the claimant has filed her initial claim, she must certify her continuing eligibility for each week she expects payment. IDES will send the claimant a claim certification form every two weeks, which the claimant must complete and file on the "Date to Mail" established by the form. If the claimant files a claim certification more than two weeks but less than one year late, IDES will still process the claim if the claimant shows:
1) The individual's unawareness of his or her rights under the Act;
2) Failure of either the employing unit or [IDES] to discharge its responsibilities or obligations under the Act or the rules;
3) Any act of any employing unit in coercing, warning or instructing the individual not to pursue his or her benefit rights; or
4) Other circumstances beyond the individual's control if the claimant shows he or she filed his or her claim within 14 days after the reasons for the failure to file no longer existed."

At the hearing before the referee, claimant asserted that she first believed the process for certifying was "automatic" and did not understand she needed to answer a questionnaire online. The initial UI finding letter contradicts claimant's claim, since it instructs her to certify for benefits using the Internet or by calling the office. Claimant also filed for unemployment benefits shortly after she was laid off, which establishes that she understood her right to request benefits. Additionally, the record contains no evidence that IDES and claimant's employer did not discharge their responsibilities under the Act. As noted, claimant filed for unemployment benefits, and IDES sent her the UI finding letter which instructed her about the process for obtaining the benefits, which included certifying online or by telephone. Similarly, claimant presented no evidence establishing that her employer coerced, warned, or instructed her not to pursue her unemployment benefits. Lastly, evidence established that claimant began certifying on May 18, 2020. As the claims adjudicator noted, on that day, the reasons for the failure to file no longer existed. Claimant did not file for back benefits until December 2020, well beyond the 14-day deadline in the regulation.

Claimant argued that the "time limit" should not apply due to the extraordinary circumstances of the COVID 19 pandemic. However, the Board did not have the ability to extend the deadline for filing. IDES is limited to powers granted by the legislature in its enabling statute. The Act does not outline extenuating circumstances which could extend the deadline. Had the Board extended the deadline without authority, it would have lacked jurisdiction, and the decision would have been void. The Board determined that claimant was not eligible for unemployment benefits for the certification dates she missed, because she was ineligible for backdating. Thus, claimant could not claim benefits for the missed weeks in accordance with IDES's regulations. There was no definite and firm conviction that a mistake had been committed.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

Payment of Benefits When Due PR 350
General PR 350.05
No decision

Privileged Communication PR 367
General PR 367.05
No decision

Rehearing or Review PR 380
General PR 380.05

ISSUE/DIGEST CODE	**Procedure/ PR 380.05**
DOCKET/DATE	**ABR-10-1162**
AUTHORITY	**Sections 801 and 804 of the UI Act; 56 Ill. Adm. Code 2712.1 and 2720.255**
TITLE	**Rehearing or Review**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 145.05, Dismissal, Withdrawal, or Abandonment-General**

The employer failed to appear at a hearing scheduled pursuant to notice before a Referee on December 24, 2009. The Referee called the employer's witness at the proper time at the only telephone number appearing in the Department's file, but received an outgoing message that the business was closed for the holidays. The Referee dismissed the employer's appeal due to its failure to appear at the scheduled hearing.

In its appeal to the Board of Review, the employer stated that its failure to appear was due to the Referee's failure to call the employer's witnesses at the telephone number where those witnesses were waiting for the call. Attached to its appeal to the Board was a copy of the Notice of Hearing which contained the telephone numbers of two witnesses who would testify on the employer's behalf. However, the employer provided no confirmation that this message was faxed to the Referee prior to the hearing.

HELD: In reaching its decision, the Board of Review relied on Section 2712.1 of the Department's rules, which provides in pertinent part that

> ...any document which is a response to or protest of a statement or notice that has been issued by the Department or the Director to which there are protest or appeal rights may be filed by facsimile transmission sent to the designated Department address. The date imprinted on the document by the Department's telefax machine shall have the same effect as the U.S. Postal Service's postmark. The individual or entity filing a document by telefax transmission bears the risk that the transmission will not be successful. The date imprinted on the transmission confirmation document by the sender"s telefax machine may be presented as evidence of successful transmission and filing of the document. [56 Ill. Adm. Code 2712.1]

In the instant case, the document showing the witnesses' names and telephone numbers did not contain a telefax transmission confirmation to substantiate that the employer faxed this information to the Department on December 21, 2009, which was prior to the hearing. A telefax transmission did appear at the top of the page, but it indicated only that it was transmitted to the Board of Review on December 30, 2009 and not to the Referee before the December 24th hearing. The Board found that the evidence indicated that the employer did not successfully transmit the fax prior to the hearing and affirmed the Referee's decision dismissing the employer's appeal.

ISSUE/DIGEST CODE	**Procedure/ PR 380.05**
DOCKET/DATE	***Matlock v. Ill. Dep't of Empl. Sec*., 2019 IL App (1st) 180645**
AUTHORITY	**Section 601A of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was employed as a home health care worker by DHS. He told the adjudicator that he stopped reporting to work because he wasn't being paid. DHS protested the claim because the claimant merely stopped reporting to work. The claimant appealed. At the hearing before the referee, DHS did not appear. The claimant presented an unsigned letter on DHS letterhead indicating that he was laid off. The claimant told the referee that he was told that he was not being paid because the Governor Rauner would not release the funds. The referee found that the claimant quit his job for unknown reasons. The claimant appealed to the Board of Review. The Board adopted the findings of the referee that the claimant quit for unknown reasons. It relied on a letter from DHS indicating that the claimant had been paid all monies due him. The Circuit Court affirmed the

Board of Review and refused to accept a signed letter from DHS stating that the claimant was laid off.

HELD: The Appellate Court reversed and remanded for the Board to make findings to justify its decision. It noted that the letter from DHS that the claimant had been paid was not in the record. It also noted that the Circuit Court did not err by refusing to accept the signed letter from DHS into evidence.
A dissenting opinion noted that the burden of proving eligibility is on the claimant. He could have presented some proof that he did not get paid. The Dissent would have affirmed the Board.

Additional Proof PR 380.1

ISSUE/DIGEST CODE	**Procedure/PR 380.1**
DOCKET/DATE	**85-BRD-05033/7-8-85**
AUTHORITY	**56 Ill. Adm. Code 2720.310**
TITLE	**Rehearing or Review**
SUBTITLE	**Additional, Standard for Granting Oral Argument**
CROSS-REFERENCE	**PR 430.15, Taking and Perfecting Proceedings for Review**

The claimant, her attorney, and a witness for the employer appeared at an appeal hearing on October 4, 1984, to consider the issue of whether the claimant left work voluntarily without good cause attributable to her employer. During the course of the hearing, the claimant offered direct testimony, listened to the testimony of the employer's witness, cross-examined the employer's witness, offered rebuttal testimony, and cited case law to support her position. The Referee concluded that the claimant had left work voluntarily without good cause attributable to her employer. The claimant appealed the Referee's decision. In connection with her appeal to the Board of Review, the claimant requested that the Board hear additional oral argument.

HELD: Agency Rule 2720.310 reads, in pertinent part:

> The Board of Review shall decide a case on the record...without oral argument or shall grant oral argument where it is necessary or appropriate for a full and fair disposition of the appeal...

In the instant case, the Board of Review denied the claimant's request because the claimant, accompanied by her attorney, was given a reasonable opportunity for a full and fair hearing before the Referee, and further oral argument was not necessary for a fair disposition of the appeal.

ISSUE/DIGEST CODE	**Procedure/PR 380.1**
DOCKET/DATE	***Gregory v. Bernardi*, 465 N.E. 2d 1052 (1984)**
AUTHORITY	**Section 803 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Additional Proof**
CROSS-REFERENCE	**PR 380.25, Rehearing or Review, Scope and Extent**

The employer's letter of appeal to the Board of Review contained a "Summary of Events" that was not part of the record before the Referee or ever properly submitted as evidence. In its decision, disqualifying the claimant, the Board made reference to two "facts" contained in the Summary of Events.

The claimant contended that the Board's decision should be set aside because it denied him due process: it was based upon evidence he had no opportunity to examine.

HELD: Findings upon which a decision is based must be drawn from the record. The record may include evidence not previously submitted, but only if all parties are given notice and an opportunity to rebut that evidence.

In this case, the Board considered evidence improperly. (However, this was deemed "harmless error," because the decision was based upon other facts. The decision was not set aside.)

ISSUE/DIGEST CODE	**Procedure/ PR-380.1**
DOCKET/DATE	***White v. Department of Employment Security*, 376 Ill.App.3d 668, 314 Ill.Dec. 867, 875 N.E.2d 1154 (1st Dist., 2007)**
AUTHORITY	**Section 601(A) of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Additional Proof**
CROSS-REFERENCE	**VL 135.05, Discharge or Leaving – General PR-25.05, Appearance-General;**

The claimant worked for the employer's roofing company as a foreman. The claimant believed working conditions were dangerous because of a recent blizzard. He testified that he contacted the manager who told him he could come to work if he wanted to. At some point thereafter, according to his testimony, he again called the manager who told him he was too busy to talk just then but would call him back. When the manager did not call back, the claimant left a voice message, which the manager also failed to return. The claimant testified that he never did hear from the manager. The manager testified that he had issued the claimant a warning on December 21, 2005 with regard to his rude treatment of a customer and told him that another such incident would result in his discharge. The following day the claimant came into work and stated that "I can't deal with this; I quit," but did not mention the warning. There was work available for the claimant on December 22, 2005. The Referee held that the claimant quit his job without good cause attributable to the employer and was disqualified from receiving benefits pursuant to Section 601(A) of the Act. The claimant appealed the Referee's decision to the Board of Review, attaching to his appeal telephone records which he believed substantiated his testimony that he had called the manager several times. Declining to consider the claimant's telephone records because he failed to show that he was not at fault for not submitting them at the hearing, the Board of Review affirmed the Referee's decision.

HELD: Noting that "a reviewing court may not judge the witnesses' credibility, resolve conflicts in testimony or re-weigh evidence", the court found that there was sufficient evidence to support the Board of Review's decision that the claimant voluntarily quit his job without good cause attributable to the employer where (1) two employer witnesses testified that there was continuing work available to the claimant when he decided to quit because he "couldn't take this" and (2) the claims adjudicator's report indicated that the claimant had told her that he had left his job for personal reasons without informing the employer.

In its opinion, the court rejected the claimant's contention on appeal that the employer should not have been allowed to testify at the hearing before the Referee because it had not filed a timely protest in accordance with the agency's benefit rules, noting that those rules provide that an employer filing a late protest is only prohibited from appealing an adverse decision by a Referee and not from testifying at the hearing.

The court also rejected the claimant's contention on appeal that the Board of Review erred in not considering his telephone records. The court found that the claimant did not adhere to the agency's rules regarding the filing of additional evidence where he did not submit such evidence within 20 days of filing his appeal and did not provide an explanation of why he was not at fault for not submitting such evidence at the time of the hearing.

ISSUE/DIGEST CODE	**Procedure/ PR 380.1**
DOCKET/DATE	**Rogers *v. Department of Employment Security, 2022 IL App (1st) 210468***
AUTHORITY	**Section 500C of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Additional Proof**
CROSS-REFERENCE	**AA 235.15, Emotional or Mental Illness, Able and Available/AA 235.05**

From August 2018 to July 2019, Claimant worked as a full-time motor vehicle cashier for the Secretary of State. On May 30, 2019, Claimant was involved in a car accident that reinjured her knee. On July 26, 2019, Claimant tendered a resignation letter stating that she was under the care of several doctors and, due to the aftereffects of the accident, was losing focus, sleep, and unexplained weight. In order to heal properly she was resigning. Claimant filed for benefits. The Local Office requested that Claimant submit a doctor's note attesting to her fitness to work and gave Claimant additional time to produce a letter. Claimant failed to submit a letter. The Local Office found Claimant ineligible for benefits from 8/11/2019 through 8/24/2019 under Section 500C of the Act as Claimant failed to demonstrate that she was able to work. Claimant filed a request for reconsideration and attached letters from two doctors; one from a clinical psychologist stating that Claimant was under her care for clinical

depression, and another letter, from Ijaz Ahmad, stating that she was able to work from 8/11/19. This Ahmad letter had a typographical error and was not on a letterhead. The Local Office issued a "Notice of Reconsideration and Appeal" again denying Claimant and scheduled a hearing on the 500C issue.

At the hearing Claimant submitted the Ahmad letter. The ALJ, noting the typographical error and that the formatting of the letter did not "look regular," believed the note did not "look genuine." Claimant agreed that the note looked "homemade." Claimant stated that that she would like "the opportunity to get something more professional" from Dr. Ahmad. That request was denied for purposes of that hearing. The ALJ asked her about the lack of a statement from her psychologist and Claimant answered that Dr. Saafir did not feel comfortable providing that information. The ALJ affirmed the Local Office determination, noting Claimant was previously given extra time to supplement any doctor's notes and that the Dr. Ahmad letter "appears fabricated." Even if the letter were legitimate, the evidence shows the claimant's medical difficulties primarily stemmed from the psychiatric conditions for which she was consulting a psychologist and, without evidence that this medical professional considered the claimant mentally capable of returning to work, the claimant on these facts did not demonstrate that she was able to work during the period under review. Claimant appealed. The Board affirmed, noting that Claimant sought to present additional information, but it did not consider her request because "she failed to set forth a sufficient explanation showing that for reasons not her fault and outside her control she was unable to introduce the evidence at the hearing before the Referee as required by Section 2720.315(b) of the Benefit Rules." The Board found (1) Claimant left her employment due to a medical condition; (2) during the benefit period Claimant sought treatment from three physicians due to her medical condition; (3) prior to her initial interview, Claimant failed to provide any notes from her physicians regarding her ability to work during the benefit period; (4) the letter she submitted when filing her appeal was "not on letterhead of the provider, has a spelling error, appears unformatted and the person signing it does not give their title"; and (5) Claimant "did not provide documentary evidence from her two other medical providers stating that she was able to work during the benefit period." Claimant appealed. The circuit court reversed the Board, finding two points of error: that the Board erred in discounting the Ahmad letter based on suspicions alone because witness testimony may only be discounted if it was "impeached, contradicted by positive testimony or by circumstances, or found to be inherently improbable"; and that the Board erred in refusing to consider Claimant's request to present additional evidence.

HELD: In reversing the circuit court, the appellate court found the Board's findings were not against the manifest weight of the evidence. The court did not assess the Ahmad letter's authenticity because the Board did not rest its determination solely on that letter. In addition to her knee injury, Claimant suffered from anxiety and depression which also affected her ability to work. When the ALJ asked her about getting a statement from her psychologist, Claimant answered that Dr. Saafir did not feel comfortable providing that information. Without a statement from Dr. Saafir regarding Claimant's ability to work, she cannot show that she "is physically and mentally capable of performing work for which he or she is otherwise qualified." (See Section 2865.105(a) of the Rules). The court further held the Board did not err in declining to consider additional evidence from Claimant as she failed to explain that, for reasons outside her control, she was unable to introduce the evidence at the hearing before the Referee. See Section 803 of the Act and Section 2720.315(b) of the Rules.

ISSUE/DIGEST CODE	**Procedure/PR 380.1**
DOCKET/DATE	***Palacios v. Dep't of Empl. Sec.*, 2021 IL App (1st) 191889-U**
AUTHORITY	**Section 601A of the Act**
TITLE	**Rehearing or Review, 56 Ill. Adm. Code 2720.315(c)**
SUBTITLE	**Additional Proof**
CROSS-REFERENCE	**Voluntary Leaving/VL 210.05 Good Cause**

Claimant was employed by Kovach Eye Institute (Employer) from April 2017 to April 2018 when Claimant sent Employer an email giving notice that her last day of employment would be April 24, 2018. The claims adjudicator denied Claimant's claim, finding her ineligible for benefits because she voluntarily left employment. Claimant appealed and following a hearing the referee affirmed. The Claimant appealed to the Board. The Board found Claimant had sought and been granted part-time hours due to personal issues. Claimant then decided to leave Employer because she felt that she was stressed, Employer was making work hard for her, Employer did not want to help her with performing her job duties, she was overworked, and Employer was "pushing her out." The Board further found Claimant was not instructed by a doctor that she needed to leave her employment. The Board concluded that the evidence showed Claimant was not subjected to such conditions as would have rendered the job unsuitable for her. As such, the Board found Claimant voluntarily left employment with Employer for personal reasons not attributable to the Employer and was disqualified for benefits under section 601(A) of the Act. The Board noted that Claimant had submitted a "written argument" as an accompaniment to her appeal. However, because Claimant had not certified in writing

that she mailed or served the written argument upon the opposing party, as required by IDES regulation (56 Ill. Adm. Code 2720.315(b) (2018)), the Board indicated it had not considered it in connection with the appeal. Claimant appealed the Board's decision. The circuit court affirmed the Board and the Claimant appealed.

HELD: The appellate court noted that the record supports the Board's determination that Claimant voluntarily left work without good cause attributable to Employer and was thus ineligible for unemployment benefits under section 601(A) of the Act. Good cause for leaving employment exists when the circumstances produce real and substantial pressure to compel a reasonable person under those circumstances to leave. *Childress v. Department of Employment Security*, 405 Ill. App.3d 939, 943 (2010). Leaving employment is not attributable to the employer unless the employee's cause for leaving is within the employer's control. *Lojek v. Department of Employment Security*, 2013 IL App (1st) 120679. Thus, when determining whether good cause exists, the focus is on the employer's conduct, not the employee's. *Matlock v. Illinois Department of Employment Security*, 2019 IL App (1st) 180645. However, when possible, the employee must make a reasonable effort to resolve the cause of her leaving. *Lojek*, 2013 IL App (1st) 120679. "A substantial and unilateral change in employment may render employment unsuitable so that good cause for voluntary termination is established." *Acevedo v. Department of Employment Security*, 324 Ill. App. 3d 768, 772 (2001). But changes in pay, duties, and hours alone are generally insufficient to show good cause attributable to the employer for purposes of receiving benefits. Nor does workplace stress typically constitute good cause, absent medical documentation that was submitted to the employer and not accommodated. See *Eggleston v. Illinois Department of Employment Security*, 199 Ill. App. 3d 743, 745-46 (1990).

Although Claimant stated in her resignation email that her pay had been cut and she was experiencing stress at work, the court noted above that these issues are not generally deemed sufficient to constitute good cause. See id. at 745-46; *Acevedo*, 324 Ill. App. 3d at 772. In addition, while Claimant referenced inadequate training at the telephone hearing, she did not testify to any specific, substantial changes in her job duties that required such training. See *Lojek*, 2013 IL App (1st) 120679, (record reflected no evidence that changes in employment were substantial where employee did not explain how her job duties changed). In addition, the court noted that the Board may not consider "any written argument, response, or reply unless the submitting party has certified that it served a copy of the written argument on the opposing party." 56 Ill. Adm. Code 2720.315(b) (2018). Here, Claimant did not certify in writing that she mailed or served her written argument upon Employer. As such, the Board did not abuse its discretion by refusing to consider the document, and the court did not consider it in determining whether Claimant is ineligible for unemployment benefits because she left work voluntarily. Here, Claimant presented no evidence of a substantial and unilateral change in employment, initiated by Employer, that rendered her employment unsuitable.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

ISSUE/DIGEST CODE	**Procedure/PR 380.1**
DOCKET/DATE	***Yolanda Smothers v. Dept. of Empl. Sec.*, 2021 IL App (1st) 191993, No.1-19-1993-U, Order filed August 25, 2021**
AUTHORITY	**56 Ill. Adm. Code 2720.315(c)**
TITLE	**Rehearing or Review**
SUBTITLE	**Additional Proof**
CROSS REFERENCE	**MISCONDUCT/MC 435.05**

Claimant worked for a janitorial services company from July 23, 2015 until her discharge on February 12, 2019. Claimant was discharged due to repeated tardiness issues. During claimant's employment claimant received both a verbal, and a written warning for various tardiness infractions. Claimant received employer's attendance policy which stated that three instances of late arrival in a six-month period will lead to a written warning, and subsequent late arrivals may result in "further discipline up to and including termination." Claimant signed off on the policy. The claims adjudicator allowed benefits. Following a hearing the referee reversed the claims adjudicator's award and denied claimant's claim for unemployment benefits finding that that claimant had "multiple incidents of tardiness" after she received the written warning. The referee concluded that claimant's tardiness was excessive, and the reasons were within her control, which evinced "deliberate and willful disregard." In claimant's appeal to the Board, claimant attached documents to the appeal, including medical records and handwritten explanations of specific late arrivals. The record does not contain a certification that she served the documents on employer.

The Board denied claimant's appeal. The Board declined to consider the documents claimant attached to her appeals because she did not certify that she served these documents on employer. The Board found that employer warned claimant regarding "excessive tardiness" and claimant then arrived late 15 more times, which constituted misconduct such that she was ineligible

for unemployment benefits following her discharge under section 602(A)(3) of the Act. The Board further found that claimant failed to present credible testimony or evidence that she made a reasonable effort to remedy the reasons for her late arrivals, and that the reasons were not out of her control. Claimant appealed the Board and the circuit court affirmed the Board. Claimant appealed.

HELD: The appellate court affirmed the Board, stating that the record showed that claimant's conduct satisfied the standard for misconduct under Section 602(A)(3) of the Act. First, there is no dispute that claimant knew of employer's attendance policy and violated it repeatedly both before and after the written warning. The court found employer's policy reasonable. The Board also correctly determined that Section 602(A)(3)'s exceptions do not apply here. The record showed no evidence that claimant made reasonable efforts to remedy her late arrivals. Claimant arrived to work late on multiple occasions without any excuse after her written warning, and it was reasonable for the Board to conclude that this conduct demonstrated an unwillingness to alter her behavior. Second, claimant did not demonstrate that the conditions causing her late arrivals were beyond her control. Even accepting that certain instances of late arrivals were due to illness or were excused by her supervisor, as she claimed without evidence, it is undisputed that claimant provided no explanation for unexcused late arrivals on dates, which occurred after employer warned her in writing.

Finally, the court noted that the Board declined to consider the documents and handwritten statements claimant filed with her appeal to the Board because she did not certify that she served the documents on employer. A party wishing to include new documentation in an appeal to the Board must certify that it served the proposed new documents on the opposing party. 56 Ill. Adm. Code 2720.315(c) (2019). There is no certification in the record that claimant served the proposed new documents on employer here. The Board correctly declined to consider them.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

ISSUE/DIGEST CODE	**Procedure/PR 380.1**
DOCKET/DATE	**85-BRD-04670/6-25-85**
AUTHORITY	**56 Ill. Adm. Code 2720.315(c)(2)**
TITLE	**Rehearing or Review**
SUBTITLE	**Additional Proof**
CROSS-REFERENCE	**None**

At an appeal hearing before a Referee, on August 23, 1984, the claimant and witnesses for the employer appeared and testified to consider the issue of whether the claimant had been discharged for misconduct connected with her work. Based upon his findings, the Referee issued a decision which allowed benefits to the claimant. The employer appealed to the Board of Review, and in connection with that appeal, the employer submitted an affidavit, by the claimant's supervisor, which purported to refute the testimony furnished by the claimant at the August 23 hearing - which the supervisor had not attended. The affidavit was not accompanied by any statement providing a reason for the supervisor's failure to attend the August 23 hearing. The record did not show that the employer had requested a continuance of the hearing in order to present the supervisor's testimony.

HELD: Agency Rule 2720.315(c)(2) reads, in pertinent part:

> If the party who filed a request to submit additional evidence, or his witness, failed to appear at a scheduled hearing, the party must show either that he did not receive timely notice of the hearing, that his failure to appear at the hearing was due to circumstances beyond his control or that he requested a continuance before the conclusion of the hearing, which was denied.

In the instant case, because no reason was provided for the supervisor's failure to appear at the original hearing, and because no continuance had been requested, the Board of Review refused to consider the substance of the supervisor's affidavit.

ISSUE/DIGEST CODE	**Procedure/PR 380.1**
DOCKET/DATE	**ABR-09-18309/2-10-10**
AUTHORITY	**56 Ill. Adm. Code 2720.245(a)**
TITLE	**Rehearing or Review**
SUBTITLE	**Additional Proof**
CROSS-REFERENCE	**None**

The claimant downloaded a first-run movie onto the employer's computer while at work. The motion picture company that owned the film informed the employer by e-mail to stop this activity which it considered a form of theft. The employer feared prosecution from the movie company for theft or a curtailing of their internet privileges. The claimant was subsequently discharged. After his discharge, but prior to the hearing before the Referee, the claimant asked the employer for a copy of this e-mail which formed the basis of his discharge. However, the employer did not provide the claimant a copy until after the hearing. Furthermore, this e-mail had not been provided to the claims adjudicator or to the Referee. At the hearing, the claimant did not deny that he, on occasion, downloaded movies from the employer's computer while at work. He characterized this activity as an accepted practice by the employer and commonplace at the workplace. It was not clear, from the evidence presented at the hearing, whether the claimant, in stating that he did, indeed, download movies at work, was confessing to having downloaded the movie in question illegally. In his appeal to the Board of Review, the claimant requested another hearing for the purpose of submitting this e-mail into evidence.

HELD: 56 Ill. Adm. Code 2720.245(a) provides that "[T]he Referee will control the hearing which will be confined to the factual and/or legal issues on appeal and ensure that the parties have a full opportunity to present all evidence and testimony regarding such issues." In the instant case, the Board of Review determined that the claimant had not been given full opportunity to present his case at the hearing because the e-mail in question had not been provided to him prior to the hearing. The Board found that the claimant had engaged in due diligence in attempting to obtain a copy of the e-mail which formed the basis for his discharge and remanded the matter back to the Referee for a further hearing at which the e-mail shall be entered into evidence. At the subsequent hearing, the parties may examine and cross-examine with regard to this document as to its authenticity and relevance. Either party may present testimony or other evidence pertaining to the issue of whether the claimant illegally downloaded a movie onto the employer's computer and whether his activity was thereby "misconduct" as that term is defined in Section 602(A) of the Act. Evidence from the prior hearing in this matter is to be incorporated into and made a part of the record before the Referee, who is to issue a decision based upon all the evidence of record.

Credibility of Witness PR 380.15

ISSUE/DIGEST CODE	**Procedure/PR 380.15**
DOCKET/DATE	**85-BRD-05454/7-19-85**
AUTHORITY	**56 Ill. Adm. Code 2720.250**
TITLE	**Rehearing or Review**
SUBTITLE	**Credibility of Witness**
CROSS-REFERENCE	**MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed as a Nurse's Aide, until her discharge for reportedly remarking to a patient: "Shut up, you old crab."

At the appeal hearing, the claimant, under oath, denied making any such remark to a patient. An eyewitness of the employer, also under oath, testified to having heard the claimant make the remark to a patient.

The Referee concluded that the claimant had made the remark to a patient and as a result the claimant was disqualified under Section 602A.

HELD: Where the record is adequate, but the testimony of the parties is conflicting, the Referee -- who has had an opportunity to observe the demeanor and mein of the witnesses -- shall determine which testimony is more credible and what weight to accord it. In the instant case, the Board of Review determined that the record was adequate and that the Referee had made appropriate findings as to credibility. Therefore, the Referee's decision was properly based upon the preponderance of credible evidence.

ISSUE/DIGEST CODE	**Procedure/PR 380.15**
DOCKET/DATE	**85-BRD-06072/8-22-85**
AUTHORITY	**56 Ill. Adm. Code 2720.250**
TITLE	**Rehearing or Review**
SUBTITLE	**Credibility of Witness**
CROSS-REFERENCE	**MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed as a Housekeeper in a hospital, until his discharge for reportedly stealing food.

At the appeal hearing, the employer's first witness, a security officer, testified that in the course of her investigation of the causes of missing food, she hid in a Day Surgery dressing room, directly across from a nurses' station where the food in question was kept. She observed the claimant enter the nurses' station, stoop and crawl toward a refrigerator, and remove two cartons of juice. The security officer exclaimed, "I got you!" Whereupon the claimant replaced the cartons of juice and proceeded to walk away, ignoring a command that he stop. At that point, one of the claimant's co-workers approached the area, as did the claimant's supervisor.

The employer's second witness testified that the claimant did have the right to be in the Day Surgery section of the hospital. However, that witness testified that the claimant's co-worker had no business being there.

The claimant's supervisor filed a report concerning the incident. It reflected what the security officer had reported to the supervisor and did not mention the claimant's co-worker.
The claimant testified that he never took anything from the refrigerator. Both the claimant and his witness, the co-worker, testified that they had a right to be in the Day Surgery section, since they were on a break and were not pre-occupied by other duties. They testified that they had entered the Day Surgery section together.

The Referee issued a decision in which it was concluded that the claimant had not attempted to steal food items.

HELD: Where the record is adequate, but the testimony of the parties is conflicting, the Referee - being in the best position to observe the demeanor of the witnesses and to assess their credibility - shall determine which testimony is more credible and what weight to accord it. In the instant case, neither the claimant's nor his co-worker's statements were any less consistent or on their face entitled to any less credence than the statements of the employer's witnesses. Therefore, it could not be concluded that the Referee's decision was contrary to the manifest weight of the evidence.

ISSUE/DIGEST CODE	**Procedure/PR 380.15**
DOCKET/DATE	**85-ABR-3858/9-30-85**
AUTHORITY	**56 Ill. Adm. Code 2720.250**
TITLE	**Rehearing or Review**
SUBTITLE	**Credibility of Witness (Where Record Inadequate)**
CROSS-REFERENCE	**MC 190.15, Evidence; MC 270.05, Intoxication**

The claimant, a Driver, left his employer's garage at 4 p.m. on Christmas Eve, to pick up and deliver mail, and was expected to return no later than 6 p.m. Instead, at 8:15 p.m., the employer located the claimant in the vestibule of a closed post office along his route. The employer testified that although he found no "booze" on the claimant's person or in his truck, the claimant was in an obviously drunken condition.

The claimant testified that his truck had twice stalled, leaving him stranded at a post office until his employer could arrive with a tow truck. He denied that he had consumed any intoxicants. He stated that he believed the employer discharged him in retaliation for the claimant's having exposed certain violations of law by the employer: The claimant said that he had been instrumental in forcing the employer to pay unemployment insurance contributions, and to buy state licenses for trucks which the employer had been operating with dealers' stickers.

The Referee asked the employer no questions concerning the alleged violations and alleged retaliation. Subsequently, the Referee issued a decision which disqualified the claimant for benefits. The Referee's conclusions rested solely upon the employer's testimony, which the Referee had found to be more credible than that of the claimant.

In its review of the record, the Board of Review Noted that the claimant made reference to the fact that, for 49 years, his speech had been impaired and he walked with a limp. Those points were not developed in the record.

HELD: Where the record is adequate, and a Referee's findings as to credibility are supported by that record, the Referee's findings as to credibility will not be disturbed, since the Referee would have been in the best position to evaluate the demeanor and mien of the witnesses. However, from an inadequate record, a Referee's findings as to credibility, being unsupported, must be questioned.

In the instant case, the Referee's failure to ask relevant questions rendered the record, and therefore the Referee's resolution of the question of credibility, inadequate. The case was remanded, with instructions to pose the following relevant questions:

(1) Was the employer in violation of tax and licensing laws; and

(2) Did the claimant expose such violations to the authorities; and

(3) Was the claimant's act of exposing such violations a consideration in the employer's decision to discharge him; and

(4) Does the claimant suffer from physical disabilities which could cause him to speak and walk as if he were intoxicated?

The Referee was instructed to elicit testimony with respect to those questions, and, from that testimony and the evidence previously submitted, make findings and issue a decision based upon the more complete record.

Question of Fact or Law PR 380.2

ISSUE/DIGEST CODE	**Procedure/PR 380.2**
DOCKET/DATE	**ABR-85-9292/6-30-86**
AUTHORITY	**Section 500C of the Act and 56 Ill. Adm. Code 2720.245**
TITLE	**Rehearing or Review**
SUBTITLE	**Question of Fact or Law**
CROSS-REFERENCE	**PR 190-05, Evidence; AA 190.1, Evidence**

In his decision, the Referee wrote:

> The employer appealed the determination allowing benefits under Section 500C. Therefore, the employer had the burden of going forward with the evidence. The testimony of the employer added nothing to the evidence submitted to the Claims Adjudicator... (Therefore) the employer did not go forward with the evidence (and) the claimant is eligible for benefits...

HELD: At an appeal hearing, the appellant has the burden of coming forward with evidence to show that the Adjudicator's determination is incorrect. This does not preclude the appellant from coming forward with some evidence previously presented, or with evidence in all respects identical to the evidence presented earlier. The burden of coming forward should not be confused with the weight of the evidence or a burden of proof.

Further, a finding of fact by a Referee identical to that of the Claims Adjudicator does not require that the Referee come to the same conclusion of law as the Adjudicator. A legal conclusion is one which must follow, as a matter of law, from a given set of facts. It is the Referee's responsibility - as the appellate tribunal - to render a legal conclusion. He is not absolved from this responsibility just because a Claims Adjudicator has made similar findings of fact, irrespective of the Adjudicator's conclusion.

As it happened, in this case, the Board of Review found that the Claims Adjudicator's conclusion - and, therefore, the Referee's - was incorrect.

ISSUE/DIGEST CODE	**Procedure/PR 380.2**
DOCKET/DATE	***Johnson v. Board of Review*, 479 N.E. 2d 1082 (1985)**
AUTHORITY	**Sections 500C and 801 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Question of Fact or Law**
CROSS-REFERENCE	**PR 190.05, Evidence; AA 190.05, Evidence**

The claimant filed a claim for unemployment insurance benefits, for the period February 22, 1981 through July 5, 1981. The Claims Adjudicator determined that the claimant was ineligible, pursuant to the provisions of Section 500C of the Act, in that he had not met his burden of demonstrating that he had been available for and actively seeking work during the period under review.

The claimant appealed, requesting that certification forms which he had filed with the Local Office be considered at the appeal hearing. The forms listed the claimant's job contacts and had been filed by the claimant every 2 weeks, as required by the Department's rules. Those certification forms were never forwarded by the Local Office and were not made a part of the record at the appeal hearing, during which the claimant testified about his job contacts and his availability for work. After the hearing,

the Referee issued a decision affirming the Adjudicator's determination that the claimant had not been available for or actively seeking work. The Board of Review also affirmed the denial of benefits.

The claimant filed an action for administrative review. His complaint alleged that the decision denying benefits violated Section 801 of the Unemployment Insurance Act, which stated, in pertinent part:

> At any hearing (bearing upon the issue) the...claimant's certification that, during the week or weeks affected by the hearing, he was able to work, available for work, and actively seeking work...shall be a part of the record...

HELD: Under Section 801 of the Act, the Agency is required to submit certification forms which it has in its possession. If those forms are not submitted and made a part of the record, as a matter of law a decision denying benefits under Section 500C cannot stand. In the instant case, because the claimant's certification forms were not made a part of the record, the claimant could not be denied benefits. The decision of the Board of Review was reversed.

Scope and Extent PR 380.25

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	***Richard Jackson v. IDES*, No. 4-87-0559 (1988)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**None**

A Claims Adjudicator, Referee, and the Board of Review all held that the claimant was disqualified for benefits for misconduct connected with his work under Section 602A. Upon appeal to the Circuit Court, the claimant submitted an "Affidavit of Witness," a document disputing, and discrediting as hearsay, evidence submitted to the Agency during the course of the adjudication process. The Circuit Court admitted this affidavit for the sole purpose of showing that the material evidence relied upon by the Agency was hearsay. Then the Circuit Court reversed the decision of the Board of Review, finding that it was based upon hearsay evidence and against the manifest weight of the evidence.

HELD: Section 1100 of the Unemployment Insurance Act provides, in relevant part, that review by the courts of decisions of the Board of Review shall be in accordance with the provisions of Administrative Review Law. The scope of review of an administrative agency's decision is set forth in the Code of Civil Procedure. The Code of Civil Procedure limits review of new or additional evidence as follows:

> No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court.

Further, courts have held that, upon administrative review, the reviewing court is limited to considering only the evidence submitted in the administrative hearing and it may not hear further evidence or conduct a hearing de novo. Further, parties are not permitted to supplement the administrative record on appeal to provide new or additional evidence.
In this case, although the Circuit Court qualified its decision by stating that the affidavit was admitted for the sole purpose of showing that the material evidence relied upon by the Agency was hearsay, the admission of the document was still improper, and it was on the basis of this document, and not the record properly before the Circuit Court on review, that it reversed the Agency decision as being against the manifest weight of the evidence. The decision of the Board of Review was not against the manifest weight of the evidence. The decision of the Circuit Court was reversed.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	***Gregory v. Bernardi,* 465 N.E. 2d 1052 (1984)**
AUTHORITY	**Section 803 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**PR 380.1. Rehearing or Review. Additional Proof**

The Referee made findings of fact based upon the record and held that the claimant was discharged not for misconduct.

Upon appeal, the Board of Review made an independent assessment of the evidence in the record, rather than merely determining the supportability of the Referee's findings. On the basis of its findings of fact, the Board of Review determined that the claimant was discharged for misconduct.

The claimant contended that the Referee was the trier of fact and that the Board, as a reviewing body, should not have assessed evidence independently or disturbed the trier's findings unless they were against the manifest weight of the evidence (this being the standard that would apply to a reviewing court).

HELD: Where an administrative agency and not a hearing examiner is responsible for a decision, the agency must make its own decision based upon the evidence in the record.

Section 803 of the Act designates Board of Review decisions as Department decisions subject to direct judicial review. Referee decisions are not subject to direct judicial review. Further, section 803 contemplates that the Board will make findings. It empowers the Board to take additional evidence, or conduct its own hearings, thereby expanding the Referee's record. The Board, then, is the ultimate finder of fact. The Referee is not the finder of fact, but merely one such finder, along with the claims adjudicator.

Consequently, the Board of Review is not held to the standard of a reviewing court. While the Board is required to consider the findings of the Referee as part of the record, it is free to consider the whole record in order to reach its own independent findings.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	***Harry Clark v. IDOL*, 219 N.E. 2d 143 (1966)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**None**

A Claims Adjudicator issued a determination that the claimant was ineligible for benefits. The determination contained a notice that, if the claimant did not appeal in a timely fashion, the determination would become final.

The claimant filed an untimely appeal. He explained to the Referee that he did not file on time because his emotions were in turmoil: he had been evicted from his apartment for unpaid rent; his wife had left him, taking their children. The Referee concluded that the dates of filing were not in error, that the determination had become final, and that he was without jurisdiction to hear the case on the merits. He dismissed the appeal.

The claimant appealed to the Board of Review, which affirmed the Referee's decision dismissing the appeal.

The claimant sought judicial review. The Circuit Court heard additional evidence relating to the reasons for the delayed appeal. The court then remanded the case to the Board of Review for a hearing on the merits.

The Board of Review conducted a hearing, after which the claimant was denied benefits on the merits.

The claimant appealed to Circuit Court, which reversed the decision of the Board of Review.

HELD: The scope of judicial review is confined to questions of fact and law presented by the record. No new or additional evidence in support of or in opposition to any finding, order, determination, or decision of an administrative agency may be heard by a reviewing court.

In this case, the Circuit court should not have heard evidence relating to the circumstances of the claimant's late filing. This was so even if the claimant's additional evidence merely reiterated what he told the Referee. The court did not make the distinction between remanding for the purpose of taking additional testimony and remanding on the basis of having taken additional testimony, the latter being improper and grounds for reversal. The Circuit Court's decision was reversed.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	***Campbell v. Board of Review*, 570 N.E. 2d 812 (1991)**
AUTHORITY	**Section 900 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**MS 60.10, Benefit Computation: MS 410.05. Seasonal**

The claimant was held ineligible under Section 612. Despite this, he continued to receive unemployment checks, until the Department issued a recoupment decision. The claimant never requested that recoupment be waived. In the meantime, he appealed his 612 case to the Referee, the Board of Review, the Circuit Court, and, finally, the Appellate Court, and lost.

The claimant argued before the Appellate Court that he should not have to pay recoupment.

HELD: An individual must exhaust administrative remedies before seeking judicial review.

Under Section 900 of the Act, the conditions for waiver of recoupment are that an individual must request it, benefits must have been received without fault, and recoupment must be against equity and good conscience.

Here, the claimant never requested waiver. Consequently, he precluded the Department from making findings concerning fault, equity, and good conscience. Because the claimant did not exhaust his administrative remedies, the court could not waive recoupment.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	***Thomas v. Ward*, 570 N.E. 2d 477 (1990)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**MC 15.1, Absence; MC 190.15, Evidence**

The claimant had received numerous warnings for absenteeism. He was last absent because he was seeking admission to a hospital because of a reaction to heroin. The employer discharged him for being absent without notice.

The claimant testified that he tried to contact his employer by telephone. The employer testified that there was no message on its answering machine. The claimant testified that he tried to leave a message on the employer's answering machine, but it sometimes malfunctioned.

The Board of Review found that the claimant did not try to leave a message and denied benefits. The Circuit Court, examining the same facts, reversed. On review, the Department argued that the Circuit Court had no authority to disturb the Board's findings.

HELD: On review, the findings and conclusions of an administrative agency Shall be held to be prima facie true and correct. Only if the court finds that the decision was against the manifest weight of the evidence will the decision be overturned. A reviewing court may not reweigh the evidence and make factual findings. A reviewing court may not consider an agency's decision to be against the manifest weight of the evidence simply because the court would have decided the case differently, but only if no rational trier of fact could have agreed with the agency's decision.

Whether a worker gives proper notice of absenteeism is a question of fact. Factual matters may be decided based upon witness' credibility.

Whether the machine did or did not function was a factual question. That question could be resolved by assessing the parties' credibility. The Board of Review, the Department's ultimate trier of fact, was empowered to assess credibility and resolve the factual question. Its findings regarding that fact could not be disturbed.
Benefits were denied.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	**Nykaza v. Department of Employment Security, 364 Ill.App.3d 624, 301 Ill.Dec. 397,**
846	**N.E.2d 1000 (3rd Dist., 2006)**

AUTHORITY	**Section 803 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a tree trimmer. When he applied for benefits, he told the claims adjudicator (1) that increased transportation distances and associated costs caused him to quit his job and start his own business and (2) that he had been self-employed from March or April of 2003 until November 28, 2003. The claims adjudicator denied him benefits based on Section 601(A) of the Act, stating in the decision that the claimant quit his job to start his own business. In his appeal to the Referee, the claimant wrote that he was forced to quit "to try my own tree business." At the hearing, he testified that transportation costs caused him to quit his job to try his own business. The Referee affirmed the claims adjudicator's determination. In his appeal to the Board of Review, he reiterated that transportation costs caused him to quit his job and open his own business and, for the first time, raised the possibility that he might be eligible for benefits under Section 601(B)(2) of the Act, which provides that Section 601(A) will not apply to someone who leaves work voluntarily to accept other *bona fide* work. The Board affirmed the Referee's decision finding the claimant ineligible under Section 601(A), without referencing the Section 601(B)(2) issue. The claimant filed a complaint for administrative review and argued that he was entitled to benefits under Section 601(B)(2). The circuit court denied his claim.

HELD: The appellate court held that the claimant did not waive his claim under Section 601(B)(2). According to the court, the criteria for determining whether an issue is adequately raised before an administrative agency is that the issue must be raised with sufficient specificity and clarity that the tribunal is aware that it must decide the issue, and in sufficient time that the agency can do so. Here, beginning with the claimant's statement to the claims adjudicator, it was clear that the claimant had quit his job to start his own business. This fact was reiterated before the Referee and the Board of Review. Based on these facts, the court found that the plaintiff raised the issue with sufficient clarity and specificity that the Board was aware that it must decide the plaintiff's Section 601(B)(2) claim and in sufficient time for the Board to decide it. The matter was remanded to the Board to decide this issue.

Trial De Novo PR 380.3
No decision

Representation PR 400
General PR 400.05

ISSUE/DIGEST CODE	**Procedure/PR 400.05**
DOCKET/DATE	**ABR-89-5656/1-31-90**
AUTHORITY	**Section 806 of the Act**
TITLE	**Representation**
SUBTITLE	**By an Agent**
CROSS-REFERENCE	**PR 25.05, Appearance; PR 190.05, Evidence**

The claimant appealed a determination and filed a signed authorization for attorney representation. At his appeal hearing, the claimant's attorney and a witness for the employer appeared; the claimant did not appear. The claimant's attorney attempted to come forward with evidence by calling the employer's witness on the claimant's behalf. The Referee disallowed the attorney's attempt to elicit such evidence and dismissed the appeal due to the claimant's failure to appear.

HELD: Section 806 of the Unemployment Insurance Act provides, in pertinent part, that any individual or entity in any proceeding before the Referee may be represented by a duly authorized agent.

Here, under Section 806 (as well as general principles of Agency law), the appearance by duly authorized counsel was equivalent to the claimant himself having appeared. The case was remanded so that the claimant, or his attorney, might present evidence.

ISSUE/DIGEST CODE **Procedure/PR 400.05**
DOCKET/DATE **ABR-85-7321/2-28-86**
AUTHORITY **56 Ill. Adm. Code 2720.5**
TITLE **Representation**
SUBTITLE **By an Agent**
CROSS-REFERENCE **PR 25.05, Appearance, By an Agent**

On August 28, 1985, a hearing was conducted, by telephone, to consider a work separation issue. The claimant appeared and testified. The employer was represented at the hearing by a tax service which specialized in unemployment insurance matters. Based upon the evidence presented by the claimant and the employer's representative, the Referee determined that the claimant was eligible for benefits without disqualification.

The employer (itself) appealed, stating:

> It is the employer's request that a rescheduled hearing be permitted so that the employer can give his testimony. The reason why the employer did not participate in the hearing was because the tax agency which represents the employer forgot to give the Referee the phone number for the telephone hearing...

HELD: Agency Rule 2720.5, Service of Notices, Decisions, Orders, reads, in pertinent part, as follows:

> b) A person may designate an agent...In such cases, notice to the agent so designated is notice to the person...

In the instant case, the employer was represented at the hearing by its duly appointed agent, which had received notice of the hearing. Under Rule 2720.5 - and under general principles of Agency Law - this was equivalent to the employer itself having received notice, and having appeared at the hearing. Therefore, the employer's request for a rescheduled hearing, on the basis of its not having appeared at the originally scheduled hearing, was without merit. The request was denied.

ISSUE/DIGEST CODE **Procedure/ PR 400.05**
DOCKET/DATE ***White v. IDES* (1994)**
AUTHORITY **56 Ill. Adm. Code 2720.5 and 2720.335**
TITLE **Representation**
SUBTITLE **Notice to Principal or Designated Agent**
CROSS-REFERENCE **MS 95.4, Construction of Statutes**

The claimant retained counsel and notified IDES. Despite this, IDES mailed notices and decisions to the claimant and not to her attorney. The attorney's receipt of decisions denying the claimant benefits was delayed, and, consequently, when the attorney filed a complaint for administrative review, the complaint was untimely. IDES argued that the case should be dismissed because direct notice to the principal constituted adequate notice.

HELD: 56 Ill. Adm. Code 2720.5 provides that a person may designate an agent to receive notices and decisions. 56 Ill. Adm. Code 2720.335 provides that the Board of Review shall mail decisions to a party or the party's representative. To construe 56 Ill. Adm. Code 2720.335 narrowly to permit the Board to choose to mail notices to either a party or the party's representative leads to an absurd, illogical, and unfair result; *i.e.*, the Department would provide for agents, then could disregard their status, penalizing a claimant. Therefore, when a party properly designates an agent, notices and decisions must be sent to that agent.

ISSUE/DIGEST CODE **Procedure/PR 400.05**
DOCKET/DATE ***Perto v. Board of Review* / 8-3-95**
AUTHORITY **Section 806 of the Act**
TITLE **Representation**
SUBTITLE **By a Non-Attorney**
CROSS-REFERENCE **None**

The employer used a service company, whose nonattorney protested on an IDES form that the claimant was discharged for neglect of duties, and, later, appealed by sending a letter disagreeing with a determination and requesting a hearing. The service company did not participate in the hearing. After he was denied benefits, the claimant argued that the service company's representation of the employer constituted the unauthorized practice of law.

HELD: There is no all-inclusive definition of the practice of law. Here, the service company's letter writing was a relatively uncomplicated function that did not require legal training or expertise, and, therefore, did not constitute the practice of law. However, this holding:

> ... is a narrow one confined to the facts of this case. We specifically do not reach the question of whether [the service company's] actions would have constituted the practice of law if [the service company] had participated in the hearing ... Nor do we speculate ... at what point, if any, in the Department's administrative proceedings the participation of nonattorneys constitutes the unauthorized practice of law.

ISSUE/DIGEST CODE	**Procedure/PR 400.05**
DOCKET/DATE	***Hurst v. Department of Employment Security,* 393 Ill.App.3d 323, 332 Ill.Dec. 777, 913 N.E.2d 1067 (1st Dist., 2009)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Representation**
SUBTITLE	**General**
CROSS-REFERENCE	**Misconduct/MC 485.65: Violation of Company Rule, Motor Vehicle**

The claimant's position as a customer service technician required that he have a valid driver's license. The claimant was arrested for drunk driving. The employer's rule required that a worker report any arrest upon returning to work, but the claimant did not report the arrest until several days after his return, telling his supervisor that he was unaware of the rule. The record showed that he had received and read the employee handbook containing the rule and had attended a meeting, held two weeks before his arrest, at which the rule had been discussed. The claimant was subsequently discharged for failing to report his arrest to the employer.

HELD: Initially, the appellate court held that the claimant had waived the issue that the rule did not govern his behavior in the performance of his work and, thus, could not form the basis for a finding of misconduct by not raising this issue in administrative proceedings before the Referee or the Board of Review. Despite its ruling of waiver, the court found that the rule related to the claimant's work since the failure to report his arrest occurred at the workplace and had a direct effect on his ability to perform his job duties which required possession of a valid driver's license.

The court found that (1) the claimant's failure to adhere to the rule was deliberate and wilful since he had received and read the employee handbook containing the rule and had attended a meeting where the rule was discussed two weeks before his arrest; and, (2) the claimant caused harm by impeding the employer's ability to ascertain whether he had a valid driver's license, exposing the employer to potential liability for injuries caused by the claimant while driving on an invalid license when performing his duties, and negatively impacting the employer's interest in maintaining an orderly workplace. The court concluded that the Board of Review's decision that the claimant was disqualified from receiving benefits because his behavior constituted misconduct was not against the manifest weight of the evidence.

Lastly, the court found that the claimant received a fair hearing because the Referee did not prevent him from fully presenting his case and was not unobjective in conducting the hearing, even though she took a strong negative position on the plaintiff's claim that he was allowed to keep his old driver's license when he renewed it.

ISSUE/DIGEST CODE	**Procedure/PR 400.05**
DOCKET/DATE	***Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814, 333 Ill.Dec. 1, 914 N.E.2d 208 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 554, 336 Ill.Dec. 492, 920 N.E.E2d 1082 (Table) (11/25/09)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Representation**
SUBTITLE	**By a Non-Attorney**
CROSS-REFERENCE	**PR/190.05, Evidence, general; PR 195.05, Fair Hearing and Due Process; MC 5.05, Definition of Misconduct**

The claimant was employed as an apprentice electrician. He was discharged for misconduct for removing air conditioning equipment without authorization. After filing a claim for benefits, the local office and the Referee found that the claimant was guilty of misconduct and held him ineligible for benefits under Section 602 of the Act. The claimant argued that the employer's non-attorney representative engaged in the unauthorized practice of law during the hearing by examining and cross-examining

witnesses. He also argued that he did not receive a fair hearing, that the evidence did not show that he was guilty of misconduct, and that the employer's testimony was inadmissible hearsay. The Board of Review affirmed the Referee's decision denying benefits and rejected all of the claimant's arguments against it.

HELD: The court discussed four issues. The first concerns the unauthorized practice of law. The court held that the practice of law turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation.

The second issue is whether the claimant received a fair hearing as required by due process of law. The court held that the claimant had received a fair hearing in that he was given an opportunity to be heard and to question the employer's witnesses. The fact that he chose not to take advantage of the opportunity to question the adverse employer's witnesses does not invalidate the proceeding on grounds of due process.

The third issue was whether the employer proved all the elements of misconduct under Section 602. The court held that all the elements of misconduct were met. In particular, the court noted that a rule or policy need not be written down in order to bind the employee. The claimant's violation of an oral directive not to be present in certain areas of the workplace also constitutes a violation of an employer rule or policy.
The fourth issue was the claimant's objection that testimony concerning the cost of the air conditioning units was inadmissible hearsay. The court noted that this testimony was introduced not for its factual accuracy but simply to show that the loss of the air conditioning units caused financial harm to the employer. Thus, strictly speaking, the testimony concerning the approximate cost of the air conditioning units was not hearsay at all.

ISSUE/DIGEST CODE	**Procedure/PR 400.05**
DOCKET/DATE	***Grafner v. Department of Employment Security*, 393 Ill.App.3d 791, 333 Ill.Dec. 101, 914 N.E.2d 520 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 520, 336 Ill.Dec. 482, 920 N.E.2d 1072 (Table) (11/25/09)**
AUTHORITY	**Section 806 of the Act**
TITLE	**Representation**
SUBTITLE	**By a Non-Attorney**
CROSS-REFERENCE	**None**

The employer was a church which employed the claimant as a part-time musician. After filing a claim for benefits, the local office and the Referee found that the claimant had voluntarily quit her job and was found ineligible for benefits under Section 601A of the Act. The claimant argued that both the non-attorney representative and the employer witness engaged in the unauthorized practice of law during the hearing by examining and cross-examining witnesses and making closing remarks. The Board of Review affirmed the Referee's decision denying benefits holding that the representative's actions at the hearing did not constitute the practice of law.

HELD: The court held that while the practice of law is a flexible concept, it turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. Citing *Perto v. Board of Review*, 654 N.E. 2d 232, (1995), the court looked to the character of the actions performed, not the place where they were done, in determining the legal significance of the actions performed. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation. In reaching its conclusion, the court also relied on the language of Section 806 of the Act which expressly states that an entity "may be represented by a union or any duly authorized agent." The court reasoned that if the legislature intended that only attorneys could represent parties in an unemployment compensation hearing, such broad language would not have been used.

Right of Review PR 405
General PR 405.05
No decision

Agreement or Stipulation PR 405.1
No decision

Finality of Determination PR 405.15

ISSUE/DIGEST CODE	**Procedure/PR 405.15**
DOCKET/DATE	***Hernandez v. DOL*, 83 Ill. 2d. 512 (1981)**
AUTHORITY	**Section-800**
TITLE	**Right of Review**
SUBTITLE	**Finality of Determination**
CROSS-REFERENCE	**None**

The claims adjudicator found the claimant ineligible for benefits due to work-related misconduct consisting of unauthorized absences and sent a determination written entirely in English to this effect to the claimant. The determination also purported to inform him of his right to appeal within nine days of the date it was mailed.

The claimant and members of his household speak only Spanish, so he took this determination to a friend for translation. The friend only informed him that the notice said he was discharged for unauthorized absences, something he already knew. The claimant personally visited the employment office after the notice was mailed, and after the appeal period expired, to investigate the delay in receiving benefits and, at that time, first learned of the ineligibility finding from an agency interpreter. The referee ruled on appeal that he lacked jurisdiction to review the adjudicator's determination because of the late appeal, and the Board of Review affirmed. The Circuit Court of Cook County dismissed the claimant's complaint, but the Appellate Court reversed and remanded for a determination on the merits. The Board of Review and the former employer appealed the remand to the Supreme Court.

HELD: The Supreme Court reversed the Appellate Court. The limitation in which to file an appeal contained in Section 800 is analogous to a statute of limitation provision for those parties "given notice thereof." It is a mandatory rather than a directory provision because the consequence of noncompliance, that the claims adjudicator's determination be considered final, is clearly provided in the Act.
It is undisputed here that claimant was "given notice" by the agency, and he apparently received it in sufficient time to permit compliance with its terms. The argument advanced here, however, is that the claimant did not have "actual notice" of the contents of the notice because he spoke only Spanish, and his friend incorrectly translated the contents of the notice.

Notices written in English are sufficient to constitute effective notice. A decision otherwise might lead to a claim that a notice in English is insufficient as to illiterates and all non-English speaking persons.

The Act does not provide for late filings for excusable neglect or for good cause. The Supreme Court will not amend the statute by engrafting onto it a good-cause or excusable-neglect provision, which would allow the appeal period to be extended on grounds that a benefit applicant cannot understand the English language.

ISSUE/DIGEST CODE	**Procedure/PR 405.15**
DOCKET/DATE	***Gu v. Department of Employment Sec.*, 2015 IL App (3d) 140595, 40 N.E.3d 231, 396 Ill.Dec. 578 (3d Dist., 2015)**
AUTHORITY	**Section 800 of the Act**
TITLE	**Right of Review**
SUBTITLE	**Finality of Determination**
CROSS-REFERENCE	**PR 145.05: Dismissal, Withdrawal, or Abandonment**

The claimant received a “Notice of Work Search Audit” seeking documentation of the claimant’s efforts to find employment between December 9 and December 22, 2012. The claimant’s response was due March 20, 2013. The claimant did not send the requested documentation by the deadline. On March 22, 2013, IDES mailed the claimant a determination that the claimant was not actively seeking work and was ineligible for benefits between December 9, 2012, and March 16, 2013. The determination notice advised the claimant that the determination would be final if he did not file an appeal within 30 days. On May 25, 2013, the claimant filed a request for reconsideration of the determination and appeal. In his request for reconsideration, the claimant stated that: (1) he was out of the country between March 1 and April 26, 2013; (2) he did not file an appeal within 30 days because he did not receive the determination notice; and (3) he had been diligent in searching for a job. The claimant’s request for reconsideration was denied. The claimant appealed and at a hearing before a referee the claimant stated that he had been in China between March 1 and April 26, 2013, looking for a job and visiting family and did not see the letter until he returned home. The referee asked why the claimant waited an additional month to file his appeal after he returned, and the claimant replied that he had a large amount of mail when he returned home. The referee issued a decision dismissing the claimant’s appeal. The referee’s decision reasoned that the claimant’s appeal was untimely because it was filed more than 30 days after the claims adjudicator’s determination, and, consequently, the referee was without authority to hear the appeal.

The claimant appealed and the Board affirmed, stating that the claimant was not relieved from filing a timely appeal because he was out of the country. The claimant appealed and the circuit court affirmed the Board. The claimant appealed.

HELD: In affirming the decision, the appellate court stated that administrative agencies have no general or common law powers. An agency's powers are limited to those granted by the legislature and any action must be specifically authorized by statute. When an administrative agency acts outside its statutory authority, it acts without jurisdiction. The court cited Section 800 of the UI Act which states that any appeal from an adjudicator's finding or determination must be appealed within 30 calendar days or the finding or determination shall become final as to all parties (820 ILCS 405/800). The period for filing an appeal from an adjudicator's determination is mandatory and operates as a statute of limitations and both the referee and the Board lack jurisdiction to reach the merits of an appeal of an adjudicator's decision that has been untimely filed.

Finally, in the claimant's appeal to the Board he alleged that recoupment of his benefits would be against equity and good conscience because it would cause extreme financial hardship, and he attached a petition to waive recoupment to his appeal. In his complaint for administrative review in the circuit court, the claimant alleged that he received a "Notice of Overpayment and Recoupment Decision" on March 22, 2013, seeking recoupment in the amount of $5,215. The claimant requested that the court reverse the recoupment decision. The appellate court noted that the claimant failed to follow the proper procedures to request a waiver of recoupment. The claimant raised the issue of recoupment for the first time in his appeal to the Board. The claimant was required to tender his initial request to his local unemployment office. See 56 Ill. Adm. Code 2835.50, 2835.55 (2012) (the initial request for waiver of recoupment should be made at the local unemployment office and, if it is denied, the claimant may file a request for reconsideration of the denial with the claims adjudicator or appeal to a hearings referee). Therefore, the appellate court declined to address plaintiff's waiver of recoupment argument.

Persons Entitled PR 405.2

ISSUE/DIGEST CODE	**Procedure/PR 405.2**
DOCKET/DATE	**ABR-89-6022/8-9-90**
AUTHORITY	**Sections 702, 800, and 803 of the Act**
TITLE	**Right of Review**
SUBTITLE	**Persons Entitled**
CROSS-REFERENCE	**PR 275.05, Jurisdiction and Powers of Tribunal**

The record presented to the Board contained no protest; however, there was an adjudicator's note that a 134.1 determination was mailed to the employer. (A 134.1 determination means that the adjudicator found that the employer submitted a timely protest.) Further, the record contained no letter of appeal to the determination; however, the determination did not contain the employer's address (and may not have been mailed correctly).

HELD: Section 803 permits the Board of Review to take jurisdiction upon its own motion. Here, the Board took jurisdiction despite being unable to determine with certainty that the employer protested or appealed. The reason was that the purpose of the Act is better served by investigating a case on the merits than by awarding benefits on a technicality from a deficient record.

ISSUE/DIGEST CODE	**Procedure/PR 405.2**
DOCKET/DATE	**ABR-90-7764/11-8-90**
AUTHORITY	**Section 702 of the Act: 56 Ill. Adm. Code 2720.130**
TITLE	**Right of Review**
SUBTITLE	**Persons Entitled**
CROSS-REFERENCE	**None**

The claimant filed his claim for benefits and notice of the claim was mailed to the employer. That notice contained information advising the employer that it could become a party to the proceedings entitled to rights of appeal if it filed a protest to the claim. But the notice of claim mailed to the employer was incorrectly addressed, the employer never received it, and the employer did not file a protest to the claim.

After the claimant was allowed benefits, the employer appealed. The Referee dismissed the employer's appeal because it had not filed a protest.

HELD: Because the Department caused the employer not to file a protest, the Department was estopped from holding that the employer lacked party status and rights of appeal. The case was remanded to the Referee for a hearing on the merits.

ISSUE/DIGEST CODE	**Procedure/PR 405.2**
DOCKET/DATE	**84-BRD-100-EB/3-29-84**
AUTHORITY	**Section-702**
TITLE	**Right of Review**
SUBTITLE	**Persons Entitled**
CROSS-REFERENCE	**None**

The employer filed a protest which alleged, in part:

> The claimant has been unemployed for an extended period of time in an area where job openings exist for persons with clerical experience. We feel her extended period of unemployment results from the fact that she is not making the systematic and sustained effort to find work required under Section 409K.

HELD: The protest of the employer did provide reasons other than general conclusions of law for the allegation that the claimant was unavailable for work. The employer was entitled to receive notice of the claims adjudicator's determination.

ISSUE/DIGEST CODE	**Procedure/PR 405.2**
DOCKET/DATE	**84-BRD-354-FSC/3-29-84**
AUTHORITY	**Section-702**
TITLE	**Right of Review**
SUBTITLE	**Persons Entitled**
CROSS-REFERENCE	**None**

The employer filed a protest which alleged, in part:

> The claimant has been continuously and uninterruptedly unemployed for a period of six months, restricts himself to the second and third shifts only, and has no prospects of new employment. Based on the above and further considering his past training, skills, and experiences, we feel that he has not exerted sufficient effort to return to the full-time active labor force.

HELD: The protest of the employer did provide a reason other than a general conclusion of law for the allegation that the claimant was unavailable for work. The employer was entitled to receive notice of the claims adjudicator's determination.

ISSUE/DIGEST CODE	**Procedure/PR 405.2**
DOCKET/DATE	**ABR-85-7949/3-28-86**
AUTHORITY	**Sections 500C and 702 of the Act**
TITLE	**Right of Review**
SUBTITLE	**Persons Entitled**
CROSS-REFERENCE	**AA 5, General, Sufficiency of Employer's Protest**

The claimant filed a claim for benefits and the Claims Adjudicator mailed a notice of the claim to the employer. The employer filed a timely protest, in which it stated, in pertinent part:

> The Claimant was employed in a seasonal capacity with our company, working for the 1984 Christmas season only. The Claimant was aware of the temporary status of her position at the time of the acceptance. The Claimant has not shown an attachment to the full-time labor force through (such employment, and) in addition, the Claimant does have marketable skills for which there are positions available in the full-time labor market. This is evident by the fact that the Claimant did secure employment subsequent to working (for us). Based on this information, we question the Claimant's efforts to secure full-time permanent employment.

The issue presented was whether the employer was entitled to receive a determination with respect to the claimant's availability for work.

HELD: An employer is entitled to receive a determination when it has filed a timely and sufficient protest. In order to be sufficient, a protest must contain a reason which would tend to support its conclusion. In cases involving an individual's availability for work, the employer must provide a reason which would tend to support a conclusion that the individual was unavailable for work during the period under review. The mere (and self-evident) fact that an individual is unemployed does not mean that it is presumed that the person wishes to remain unemployed and is therefore unavailable for work.

In the instant case, the employer provided reasons why the claimant may have been available - not unavailable - for work. The employer established that the claimant had marketable skills and had applied them by accepting 2 jobs. Other than that, the employer merely restated the fact that the claimant was unemployed.

The employer's protest was insufficient, and the employer was not entitled to receive notice of the Claims Adjudicator's determination.

ISSUE/DIGEST CODE	**Procedure/PR 405.2**
DOCKET/DATE	**ABR-88-5245/11-29-88**
AUTHORITY	**Section 702 of the Act; 56 Ill. Adm. Code 2720.130**
TITLE	**Right of Review**
SUBTITLE	**Persons Entitled**
CROSS-REFERENCE	**None**

On March 25, notice of the claimant's benefit claim was mailed to the employer. The same day, the claims adjudicator mailed to the employer a "General Employment Information" form, pertaining to the claimant's reported discharge from his job and containing questions such as: What was the act which caused the discharge?

If he violated a company rule, how was he informed of the rule?

Had he been previously warned about infraction of the rule? If so, explain.

By April 4, the last day for filing a timely protest, the employer had filed its "General Information" form, complete with factual answers, but no other documents.

Subsequently, the claims adjudicator issued a determination allowing benefits. The determination was not sent to the employer. The employer's appeal was dismissed. The reason for the lack of notice and dismissal of the appeal was that the employer was considered a non-party. It was held that, in order to have become a party, entitled to notice and appeal rights, it would have had to file a protest and not merely responses to questions on the Department's informational form.

HELD: Section 702 of the Unemployment Insurance Act provides that the claims adjudicator shall send notice of a determination to an employing unit that has filed a timely and sufficient allegation of ineligibility. Benefit Rule 2720.130 provides that an allegation of ineligibility is a "protest" and that a protest is a "notice of possible ineligibility" or a "letter in lieu thereof." It is timely when it is filed within 10 days of the date of notice to the employing unit, and, it is sufficient when it gives a reason for ineligibility that is related to the issue raised and is not a general conclusion of law.

In this case, the employer's completion of an informational form was a letter in lieu of a formal notice of possible ineligibility. It was filed within 10 days of notice to the employing unit. It set forth facts, not conclusions of law, in support of its allegation. The employer was a party.
The case was remanded for a hearing on the merits.

ISSUE/DIGEST CODE	**Procedure/PR 405.2**
DOCKET/DATE	***Board of Education of Bremen High School District No. 228 v. Mitchell,* 387 Ill.App.3d 117, 326 Ill.Dec. 509, 899 N.E.2d 1160 (1st Dist., 2008)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Right of Review**
SUBTITLE	**Persons Entitled**
CROSS-REFERENCE	**None**

The plaintiff filed a complaint with the circuit court for administrative review of the Board of Review's decision affirming the Referee's decision that the claimant/defendant, the school's former superintendent, was not disqualified from receiving benefits

under Section 602(A) of the Act. The circuit court dismissed the complaint for lack of standing on the ground that the school district, rather than the school board, was the party to the administrative proceeding. The plaintiff appealed the dismissal to the appellate court.

HELD: The appellate court reversed the circuit court and held that the school board, not the school district, was the claimant's employer for purposes of the Illinois Unemployment Insurance Act. The Illinois School Code specifically designates the school board as the governing body through which a school district operates, expressly authorizes the board to sue and be sued in court proceedings and gives the board exclusive jurisdiction over all employment decisions pertaining to the superintendent, such as hiring, firing and supervision.

The appellate court also held that the plaintiff did not forfeit its argument that it was the proper party to the unemployment proceedings involving the claimant, even though it did not object to the school district being named as the party in the administrative proceedings, since the identity of the correct employer was never clearly expressed in the administrative proceedings, and all parties, including the claimant and the Department of Employment Security, referred to the board and the school district interchangeably. In such circumstances, the appellate court could not now permit the claimant/defendant to prevail on his challenge to the plaintiff's standing when he created and perpetuated the condition that he now objects to, however inadvertent it may have been. The appellate court remanded the matter back to the circuit court for further proceedings.

ISSUE/DIGEST CODE	**Procedure/ PR 405.2**
DOCKET/DATE	***Williams v. Dep't of Employment Sec.*, 2016 IL App (1st) 142376, 52 N.E.3d 414, 402 Ill.Dec. 493 (1st Dist., 2016)**
AUTHORITY	**Section 602A of Act**
TITLE	**Right of Review**
SUBTITLE	**Persons Entitled**
CROSS-REFERENCE	**MC 310.1 Duties not Discharged; MC 485.55 Violation of Company Rule, Manner of Performing Work; PR 195.05 Fair Hearing & Due Process, General**

The claimant, a private security guard at a college campus, was terminated after video footage showed her and another security guard congregating at a picnic table for approximately 35 minutes. The unauthorized break occurred at a time that the claimant was supposed to be actively patrolling the campus. During that period, the claimant reported in she was "patrolling the campus." The claims adjudicator found the claimant ineligible and the claimant appealed. The referee affirmed the determination, the claimant appealed, and the Board of Review affirmed. The claimant appealed again, and the circuit court reversed. IDES appealed. In the appellate court the claimant argued that the Department had no standing to appeal and so the appeal must be dismissed. The claimant also alleged bias by the referee, arguing that, because the agency will defend an appeal after a Board decision denying benefits, the appellate court should presume that the Board is biased against claimants during the initial proceedings.

HELD: Regarding the claimant's argument that IDES had no standing, the Appellate Court found that IDES had standing, referring to the same argument made in *Petrovic v. Dep't of Employment Sec.*, 2016 IL 118562, and stated that "an administrative agency with additional managerial functions beyond those of a tribunal is not subject to the normal rule that an administrative agency has no standing to appeal a decision reversing its own decision."

Regarding the claim that the referee was biased, the court held that the claimant must overcome a presumption of honesty and integrity in those serving as adjudicators by showing in the record that the administrative proceeding was either tainted by dishonesty or contained an unacceptable risk of bias. The court stated that it would not infer bias during administrative proceedings merely from the fact that the Board may defend its decision at a later time. The court found that the claimant's arguments lacked merit.

As to the merits of the case, the court held that the circuit court improperly engaged in reweighing the evidence, particularly the credibility of witness testimony. The court stated, "as a reviewing court, we may not judge the credibility of the witnesses, resolve conflicts in testimony, or reweigh the evidence." The appellate court concluded that the circuit court erred in reversing the Board's decision which found the claimant ineligible for benefits, finding that the Board did not err in finding that the claimant violated the employer's rule requiring employees to request permission to take breaks and she falsely reported that she was "patrolling the campus." In so doing, the claimant's conduct caused potential harm in jeopardizing the employer's contractual relations with its client and her conduct constituted misconduct under the Act.

Taking and Perfecting Proceedings for Review PR 430
General PR 430.05
No decision

Method PR 430.1
No decision

Notice 430.15

ISSUE/DIGEST CODE	**Procedure/PR 430.15**
DOCKET/DATE	***Quinones v. Board of Review*, 432 N.E. 2d 894 (1982)**
AUTHORITY	**Section 500B of the Act**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Notice**
CROSS-REFERENCE	**MS 75.1, Claims and Registration, Backdating**

As a result of a class-action suit settlement, the claimant was to receive notice that she could file for extended unemployment insurance benefits. A letter dated June 30, instructing the claimant to report to her Local Office on July 12, was properly addressed but misdelivered, so that the claimant did not actually receive the letter until late July or August, after the report date had passed. Moreover, upon receiving the letter, the claimant did not understand it; she was Spanish-speaking and could not read English. It was not until October, after the substance of the letter had been explained to her by Legal Assistance Foundation, that the claimant reported to her Local Office, where she requested backdating of her claim so that she might file for extended benefits.

Regulation 17F (later promulgated as Benefit Rules 2720.105 and 2720.120) provided that backdating would be allowed, subject to enumerated conditions, if the claimant filed her claim within 14 days after the reason for failing to file no longer existed. The question then arose: Did the 14-day period begin to run from the claimant's receipt of the letter in late July or early August, in which case the claimant could not be allowed backdating; or did the 14-day period begin to run only from the time of the claimant's actual comprehension or interpretation of the letter, in October, in which case backdating would be allowed?

HELD: The narrow legal question before the appellate court was whether an inability to understand English excused late filing.

In *Hernandez v. IDOL*, 416 N.E. 2d 263 (1981) (*Digest of Adjudication Precedents*, PR 405.15), the Illinois Supreme Court ruled that an inability to understand English did not excuse an individual's failure to file an appeal in a timely fashion. Similarly, the appellate court held, the inability to understand English did not excuse late filing or permit backdating.

Moreover, an effective unemployment compensation system requires a measure of certainty in the application of its rules. Regulation 17F, itself a good-cause exception to the requirement that a claimant file on time, could not reasonably be expanded to include a further exception.

The receipt of the letter, notwithstanding the language problem, constituted effective notice. The claimant failed to file within the mandatory 14-day period, from the date of such effective notice. Backdating was denied.

ISSUE/DIGEST CODE	**Procedure/PR 430.15**
DOCKET/DATE	**85-BRD-05033/7-8-85**
AUTHORITY	**56 Ill. Adm. Code 2720.310(a)**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Notice**
CROSS-REFERENCE	**PR 380.1, Rehearing or Review**

The claimant filed an appeal of a Referee's decision to the Board of Review. In connection with her appeal, the claimant served upon the Board of Review a request to hear oral argument. There was no certification accompanying the claimant's appeal to indicate that the claimant had served upon the employer a copy of the request for oral argument.

HELD: Agency Rule 2720.310(a) reads, in pertinent part: "Upon filing an appeal to the Board of Review...a party may request in writing that the Board hear oral argument. The requesting party must certify in writing that he has served a copy of his request for oral argument to all other parties." In this case, because the claimant did not certify that she had served a copy of her request for oral argument upon the employer, her request for oral argument was denied.

ISSUE/DIGEST CODE	**Procedure/ PR 430.15**
DOCKET/DATE	**85-BRD-05033/7-8-85**
AUTHORITY	**56 Ill. Adm. Code 2720.315(a)(2)**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Notice**
CROSS-REFERENCE	**PR 380.15, Rehearing or Review**

The claimant filed an appeal of a Referee's decision to the Board of Review. In connection with her appeal, the claimant served upon the Board of Review a request to hear oral argument. The employer submitted a reply in response to the claimant's request, but submitted that reply to the Board of Review only, and not to the claimant.

HELD: Agency Rule 2720.315(a)(2) reads, in pertinent part: "The opposing party may file with the Board and serve on the requesting party any response (to the request for oral argument)..." In this case, because the employer's reply was not served upon the claimant in accordance with the Rule, the Board refused to consider that reply.

ISSUE/DIGEST CODE	**Procedure/PR 430.15**
DOCKET/DATE	***Perez v. Dep't of Emp. Sec.*, 2023 IL App (1st) 221928-U**
AUTHORITY	**Section 500B of the Act**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Notice**
CROSS-REFERENCE	**MS 75.1, Claims and Registration, Backdating, PR 275.05, Jurisdiction and Powers of Tribunal**

Claimant was laid off on March 18, 2020, and filed for benefits. On March 27, 2020, IDES sent claimant a UI finding letter noting that she needed to certify for benefits. The letter indicated that the first certification date would be April 6, 2020. The letter contained instructions regarding how to certify using the internet or by calling the office. On December 8, 2020, claimant completed a backdating questionnaire for three certification dates that she missed in April and May 2020, explaining that she began certifying on May 18, 2020, and did not certify earlier because she did not know she needed to certify online every two weeks beginning on April 6, 2020. The local office denied the late certification. Claimant appealed. At the hearing claimant informed the referee that she called IDES before May but never reached anyone. Claimant stated that an IDES representative finally contacted her in December 2020, and told her to file a backdating questionnaire. Claimant also informed the referee that she initially believed the process for obtaining her unemployment benefits was automatic and she did not know that she needed to certify for the benefits until May. The referee affirmed the claims adjudicator's decision. Claimant appealed to the Board. The Board noted that IDES was not required to process claimant's late claim certification because her failure to certify for benefits was not due to her unawareness of her rights any failure of IDES or her employer to discharge its responsibilities, any coercion, warning, or instruction not to pursue her rights, or circumstances beyond her control. Claimant appealed and the circuit court affirmed. Claimant appealed, asserting that she was unable to reach a representative of IDES by phone or receive assistance in person because the office was closed due to the COVID-19 pandemic. Claimant argued that the requirement to file her claim certification within 14 days after the reasons for the failure to file no longer existed should not apply due to the pandemic. Additionally, claimant argued that the UI finding letter did not specify a two-week "time limit" to file for back benefits, and she only learned about that rule "almost a year" later from the referee.

HELD: Under the Illinois Administrative Code, after the claimant has filed her initial claim, she must certify her continuing eligibility for each week she expects payment. IDES will send the claimant a claim certification form every two weeks, which the claimant must complete and file on the "Date to Mail" established by the form. If the claimant files a claim certification more than two weeks but less than one year late, IDES will still process the claim if the claimant shows:
1) The individual's unawareness of his or her rights under the Act;
2) Failure of either the employing unit or [IDES] to discharge its responsibilities or obligations under the Act or the rules;
3) Any act of any employing unit in coercing, warning or instructing the individual not to pursue his or her benefit rights; or
4) Other circumstances beyond the individual's control if the claimant shows he or she filed his or her claim within 14 days after the reasons for the failure to file no longer existed."

At the hearing before the referee, claimant asserted that she first believed the process for certifying was "automatic" and did not understand she needed to answer a questionnaire online. The initial UI finding letter contradicts claimant's claim, since it instructs her to certify for benefits using the Internet or by calling the office. Claimant also filed for unemployment benefits shortly after she was laid off, which establishes that she understood her right to request benefits. Additionally, the record contains no evidence that IDES and claimant's employer did not discharge their responsibilities under the Act. As noted, claimant filed for unemployment benefits, and IDES sent her the UI finding letter which instructed her about the process for obtaining the benefits, which included certifying online or by telephone. Similarly, claimant presented no evidence establishing that her employer coerced, warned, or instructed her not to pursue her unemployment benefits. Lastly, evidence established that claimant began certifying on May 18, 2020. As the claims adjudicator noted, on that day, the reasons for the failure to file no longer existed. Claimant did not file for back benefits until December 2020, well beyond the 14-day deadline in the regulation.

Claimant argued that the "time limit" should not apply due to the extraordinary circumstances of the COVID 19 pandemic. However, the Board did not have the ability to extend the deadline for filing. IDES is limited to powers granted by the legislature in its enabling statute. The Act does not outline extenuating circumstances which could extend the deadline. Had the Board extended the deadline without authority, it would have lacked jurisdiction and the decision would have been void. The Board determined that claimant was not eligible for unemployment benefits for the certification dates she missed, because she was ineligible for backdating. Thus, claimant could not claim benefits for the missed weeks in accordance with IDES's regulations. There was no definite and firm conviction that a mistake had been committed.

Note: This order was filed under Supreme Court Rule 23 and is not precedent. However, this order can be cited for persuasive purposes. If you do cite it, you must include a copy of it along with your decision. The Illinois Supreme Court has amended Rule 23 to state that a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes. See the Rule for the complete text.

Timeliness PR 430.2

ISSUE/DIGEST CODE	**Procedure/PR 430.2**
DOCKET/DATE	**ABR-85-3826/11-26-85**
AUTHORITY	**56 Ill. Adm. Code 2720.130**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Timeliness (of Employer's Protest)**
CROSS-REFERENCE	**None**

On February 8, 1985, Notice to the Last Employing Unit was mailed to the claimant's last employer, informing that employer that the claimant had filed a claim for benefits and that the employer could become a party to the proceedings by filing a Notice of Possible Ineligibility, or its equivalent, within 10 days. The employer, however, did not file a Notice of Possible Ineligibility, or its equivalent, within 10 days.

Subsequently, a Claims Adjudicator concluded that the claimant had not been discharged for misconduct connected with his work and was not subject to a disqualification under Section 602A of the Act. The employer appealed that determination. A Referee dismissed that appeal, having concluded that the employer did not have appeal rights with respect to the claimant's separation from work under Section 602A of the Act.

HELD: Agency Rule 2720.130 states, in pertinent part:

> Failure to file a protest within 10 days from the date of notice will result in loss of party status and appeal rights.

In the instant case, there was no evidence that the employer had filed a Notice of Possible Ineligibility (or "Protest") in a timely fashion. Accordingly, since a timely protest was not filed, the employer was not a party and did not have appeal rights with respect to the claimant's separation from work under Section 602A of the Act. The employer's appeal was correctly dismissed.

ISSUE/DIGEST CODE	**Procedure/PR 430.2**
DOCKET/DATE	**ABR-87-7652/2-16-88**
AUTHORITY	**Section 702 of the Act; 56 Ill. Adm. Code 2720.130**
TITLE	**Taking and Perfecting Proceedings for Review**

SUBTITLE **Timeliness (of Employer's Protest)**
CROSS-REFERENCE **None**

The claimant filed her benefit claim on May 22. On May 23, notice of the claim was mailed to her employer.
On June 1, the employer filed a protest alleging that the claimant quit her job for reasons not attributable to the employer and contending that she should be disqualified under Section 601A (Voluntary Leaving).

On July 29, the employer submitted a protest alleging that the claimant was physically unfit to work and contending that she should be ruled ineligible under Section 500C (Ability and Availability for Work).

The claimant was allowed benefits under Section 500C, without disqualification under Section 601A, for the period May 31 through June 13.

The employer appealed the issue of Ability and Availability for Work under Section 500C.

HELD: Section 702 and Benefit Rule 2720.130 provide that an employer is a party, entitled to notice of determinations and rights of appeal, if it files a timely protest.

Generally, a protest is timely if it is filed within 10 days of mailing of the notice of claim. The employer's protest of Voluntary Leaving under Section 601A was timely.

However, the employer's protest of Ability and Availability for Work was untimely, both under the 10 day provision and under Benefit Rule 2720.130(b). Rule 2720.130(b) provides that:

> Any employing unit may, at any time, file a protest alleging that acts or circumstances which may have occurred during the claim series should result in the termination or suspension of benefits. A protest regarding possible ineligibility during a claim series is timely beginning with the week in which it is received.

The employer's protest was filed July 29. It would have been timely beginning with that week, but not for the period May 31 through June 13.

The employer had no right of appeal. Its purported appeal was dismissed.

ISSUE/DIGEST CODE **Procedure/PR 430.2**
DOCKET/DATE ***Mario K. Thompson v. Department of Employment Security*, 399 Ill.App.3d 393, 340 Ill.Dec. 529, 928 N.E.2d 528 (1st Dist., 2010)**
AUTHORITY **Section 801(A) of the Act**
TITLE **Taking and Perfecting Proceedings for Review**
SUBTITLE **Timeliness**
CROSS-REFERENCE **None**

The claimant was discharged from his job after an altercation with a co-worker and applied for unemployment benefits. The claims adjudicator determined that he was ineligible for benefits due to misconduct connected with his work and mailed this determination to the claimant's last known address. The claimant received the determination and timely filed an appeal to the Referee. At the hearing before the Referee, the claimant confirmed his address as the one to which determination had been sent. The Referee affirmed the determination denying benefits and mailed his/her decision to the claimant on February 8, 2008, at the same address to which the claims adjudicator's determination had been sent. A letter accompanying the decision informed the claimant that he had 30 days from the date on which the decision was mailed, *i.e.*, February 8, 2008, to file an appeal to the Board of Review, the last day being March 10, 2008. The claimant, however, did not file this appeal until April 24, 2008. The Board of Review dismissed the appeal for lack of jurisdiction under Section 801(A) of the Act on the basis that the appeal was filed untimely. The Board's decision was affirmed by the circuit court, which the claimant then appealed to the appellate court.

HELD: In his appeal to the appellate court, the claimant argued that he did not receive adequate notice of the Referee's decision because it was not mailed to him at his new address. The appellate court rejected the claimant's contention. According to the appellate court, service by mail is not invalid simply because a party denies receiving it and Section 801(A) of the Act does not confer additional authority on the Board to entertain appeals beyond the 30-day time limit for this reason. The appellate court

found that the service by mail, under the facts of this case, satisfied the requirements of due process and that the Board properly ruled that it did not have jurisdiction to consider the claimant's untimely appeal.

ISSUE/DIGEST CODE	**Procedure/PR 430.2**
DOCKET/DATE	***Carroll v. Department of Employment Security*, 389 Ill.App.3d 329 Ill.Dec. 697, 907 N.E.2d 16 (1st Dist., 2009)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Taking & Perfecting Proceedings for Review**
SUBTITLE	**Timeliness**
CROSS-REFERENCE	**PR 145.05: Dismissal, Withdrawal, or Abandonment; PR 440: Judicial Review of Board of Review Decisions**

The claimant was denied benefits in a determination issued by the claims adjudicator. The determination was affirmed by the Referee which, in turn, was affirmed by the Board of Review in a decision issued on April 11, 2007. The claimant had 35 days in which to file a complaint for administrative review of the Board's decision in the circuit court, *e.g.*, until May 16, 2007. The claimant filed his complaint on May 18, 2007. The Board filed a motion before the circuit court to dismiss the complaint as being untimely filed. The circuit court granted the Board's motion and dismissed the claimant's complaint. The claimant timely filed an appeal to the appellate court.

HELD: In affirming the circuit court, the appellate court initially held that in computing the 35-day period in which to file a complaint seeking administrative review of a Board decision (1) calendar days are counted, not business days; (2) the day of mailing the decision is excluded from the computation; and (3) intervening weekend days and holidays are included, unless the last day of the 35-day period falls on a weekend day or holiday, in which case the last day to file would be the next working day. In the instant case, May 16, 2007 did not fall on a holiday or weekend day and, thus, it was the last day on which the claimant's complaint for administrative review had to be filed in order to be timely. Since the claimant did not file his complaint until May 18, 2007, his complaint was late and was properly dismissed by the circuit court for lack of jurisdiction.

The appellate court also held that (1) the Board did not violate the claimant's due process rights by not calculating the exact filing due date for the claimant and by not warning him to count calendar days, rather than business days, in computing the 35-day period; and (2) the Board met its burden of proving that it mailed its decision on April 11, 2007 by providing evidence of its office custom regarding the mailing of its decisions and evidence to corroborate that it followed that custom.

Timely Appeal PR 430.3

ISSUE/DIGEST CODE	**Procedure/PR 430.3**
DOCKET/DATE	***Maskevich v. Ill. Dep't of Emp. Sec., 2022 IL App (1st) 210779***
AUTHORITY	**Section 800 of the Act**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Timeliness of Appeal**
CROSS-REFERENCE	**PR 195.05, Due Process**

Claimant received unemployment insurance benefits from July to December 2018 but also received, during most of that same time, short-term disability benefits for a knee injury. IDES sent Claimant a "Notice of Fraud Decision," to Claimant's last known address seeking a refund of unemployment benefits and providing information on how to appeal that determination if Claimant disagreed. Claimant filed that administrative appeal to an IDES referee, who found that she lacked jurisdiction to hear the appeal, as Claimant filed the appeal more than 30 days after the Notice of Fraud was sent to him. Claimant appealed that ruling to the Board, which affirmed, likewise finding that jurisdiction was lacking because Claimant appealed too late. The circuit court affirmed the Board's final decision. Claimant appealed alleging that the manner in which IDES provided notice of the right to appeal violated "fundamental fairness" and "fair play." Specifically, Claimant alleged that "the placement of the notice within the overall, actual decision packet" was not "reasonably calculated" to actually give notice. He further claimed that he was denied due process when IDES ignored and overlooked facts, resulting in a determination that was against the manifest weight of the evidence.

HELD: The Act provides that "appeals from a claims adjudicator shall be taken to a Referee" and that, unless the claimant files an appeal within 30 days from the date the decision is mailed to him or her, the claims adjudicator's determination "shall be final." 820 ILCS 405/800 (West 2018). This is a mandatory provision that acts as a statute of limitations. The 30-day deadline

must be "strictly" complied with and is calculated from the date of service, that is, the mailing of the decision to the last known address of the party entitled to receive it. *Thompson v. Dep't of Empl. Sec*., 399 Ill. App. 3d 393 (2010) ("the statute does not confer additional authority on the Board to entertain appeals beyond the 30 days after a decision has been mailed"). The appellate court therefore concurred with the Board that it lacked statutory authority, or jurisdiction, to hear Claimant's appeal as Claimant filed the appeal beyond the 30-day deadline.

Furthermore, regarding Claimant's allegation of a due process violation, the appellate court stated that the government is not required to notify an individual of administrative appeal rights, as long as a statute, administrative rule, or some otherwise clear public notice is provided by the government explaining such appeal rights. But if the government chooses to provide notice of those appeal rights, the notice "must not be misleading" or prejudicially confusing. In this case the "Notice of Fraud Decision" included a paragraph on the back page of its notice that explained Claimant's appeal rights. The appellate court noted that the language was clear and unambiguous. This paragraph explaining Claimant's appeal rights was in the same size and font as the other paragraphs of the Notice of Fraud Decision. It was, in fact, the very first paragraph on the second page. It was not buried among other text but was its own freestanding paragraph. Neither the Illinois supreme court nor the appellate court has been receptive to the notion that a citizen is not required to flip a page to read on, beyond the front page of a government notice. The appellate court added that it is not asking too much of its citizenry to read a notice in full, even if the information continues beyond the front page.

ISSUE/DIGEST CODE	**Procedure/PR 430.3**
DOCKET/DATE	***Automated Professional Tax Services, Inc. v. IDES*, 612 N.E. 2d 1009 (1992)**
AUTHORITY	**Section 801**
TITLE	**Right of Review**
SUBTITLE	**Timely appeal**
CROSS-REFERENCE	**None**

The employer appealed the Department's determination awarding benefits to the claimant. The Referee affirmed. Forty-six days later, the employer wrote a letter to the Department asking it to "reevaluate" the award. The Board of Review considered the employer's letter as an appeal. Because the employer's appeal was not filed within the required thirty day period under Section 801 of the Act, the Board dismissed the appeal on the grounds that it lacked jurisdiction. The employer filed an appeal in the circuit court. The circuit court issued an order reversing the Board's dismissal holding that the employer's letter requesting the Department to reevaluate its decision should have been treated as a request for reconsideration. The circuit court then denied benefits to the claimant and ordered the Department to recoup the claimant's overpaid benefits. The appellate court reversed.

HELD: The appellate court held that the Board of Review had no jurisdiction under Section 801 to review the employer's appeal. The appellate court stated that except for an appeal, no other avenues exist for an aggrieved party to reverse the award of benefits. The court rejected the employer's contention that its letter should have been treated as a request for reconsideration under Section 703 of the Act. The court pointed out that Section 703 prohibits any reconsideration of a determination after a party appeals the determination a Referee under Section 800. The court also observed that the circuit court had no jurisdictional authority to grant the employer substantive relief in any case. Even if the circuit court believed that the employer's letter was properly filed as a request for reconsideration, the most it could do was to remand the case back to the Department to make a decision on the substantive issues.

ISSUE/DIGEST CODE	**Procedure/PR 430.3**
DOCKET/DATE	**ABR-21-23434/9-9-21**
AUTHORITY	**Sections 703 and 1508.1 of the Act**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Timely Appeal**
CROSS-REFERENCE	**Procedure/PR 275.05 Jurisdiction**

On 04/05/2020, the claimant became eligible for benefits pursuant to Section 601A and was first paid benefits on this claim the week ending 4/11/2020. On 05/18/2021, the claims adjudicator issued a determination finding the claimant ineligible under Section 601A of the Act from 12/27/2020. On 08/17/2021 the referee dismissed the matter pursuant to Section 2720.255 of the Benefit Rules.

HELD: Section 703 of the Act provides in pertinent part that a claims adjudicator may reconsider their determination at any time within one year after last day of the week for which the determination was made. Section 1508.1 of the Act provides in pertinent part the employer shall not be charged for benefits paid pursuant to Section 703 of the Act.
Acts or orders of an administrative agency which are unauthorized by the enabling statute are void. *See Weingart v. Department of Labor*, 122 Ill.2d 1 (1988).

The 05/18/2021 determination and the 08/17/2021 decision were void. The decision of the Referee was VACATED. Pursuant to 820 ILCS 405/1508.1, benefit wages or benefit charges attributable to the employer were cancelled for this matter. Pursuant to 820 ILCS 405/601A, the claimant was eligible for benefits, as to this issue only, from 04/05/2020.

Judicial Review of Board of Review Decisions PR 440

ISSUE/DIGEST CODE	**Procedure/PR 440**
DOCKET/DATE	***Carroll v. Department of Employment Security*, 389 Ill.App.3d 329 Ill.Dec. 697, 907 N.E.2d 16 (1st Dist., 2009)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Judicial Review of Board of Review Decisions**
SUBTITLE	**None**
CROSS-REFERENCE	**Procedure/PR 145.05 Dismissal: Withdrawal or Abandonment; PR 430.2: Taking & Perfecting Proceedings for Review, Timeliness**

The claimant was denied benefits in a determination issued by the claims adjudicator. The determination was affirmed by the Referee which, in turn, was affirmed by the Board of Review in a decision issued on April 11, 2007. The claimant had 35 days in which to file a complaint for administrative review of the Board's decision in the circuit court, *e.g*., until May 16, 2007. The claimant filed his complaint on May 18, 2007. The Board filed a motion before the circuit court to dismiss the complaint as being untimely filed. The circuit court granted the Board's motion and dismissed the claimant's complaint. The claimant timely filed an appeal to the appellate court.

HELD: In affirming the circuit court, the appellate court initially held that in computing the 35-day period in which to file a complaint seeking administrative review of a Board decision (1) calendar days are counted, not business days; (2) the day of mailing the decision is excluded from the computation; and (3) intervening weekend days and holidays are included, unless the last day of the 35-day period falls on a weekend day or holiday, in which case the last day to file would be the next working day. In the instant case, May 16, 2007 did not fall on a holiday or weekend day and, thus, it was the last day on which the claimant's complaint for administrative review had to be filed in order to be timely. Since the claimant did not file his complaint until May 18, 2007, his complaint was late and was properly dismissed by the circuit court for lack of jurisdiction.

The appellate court also held that (1) the Board did not violate the claimant's due process rights by not calculating the exact filing due date for the claimant and by not warning him to count calendar days, rather than business days, in computing the 35-day period; and (2) the Board met its burden of proving that it mailed its decision on April 11, 2007 by providing evidence of its office custom regarding the mailing of its decisions and evidence to corroborate that it followed that custom.

ISSUE/DIGEST CODE	**Procedure/PR 440**
DOCKET/DATE	***Twyman v. Department of Employment Security*, 2017 IL App (1st) 162367, 77 N.E.3d 1087, 413 Ill.Dec. 280 (1st Dist., 2017)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Judicial Review of Board of Review Decisions**
SUBTITLE	**None**
CROSS-REFERENCE	**Procedure/PR 145.05 Dismissal: Withdrawal or Abandonment: PR 430.2: Taking & Perfecting Proceedings for Review, Timeliness; MC 15.05 Absence; General**

The claimant was employed as a bus driver until he was discharged for excessive absenteeism. The claimant was scheduled to work but was a no call no show due to his assumption he was not scheduled to work that day. The claimant had been previously warned for excessive absenteeism. The claims adjudicator found the claimant ineligible for benefits. Following a hearing the referee affirmed the determination. The claimant appealed and the Board affirmed. The Board's decision advised plaintiff of his appeal rights, stating, "Notice of rights for further review by the courts: If you are aggrieved by this decision and want to appeal, you must file a complaint for administrative review and have summons issue in [the] circuit court within 35 days from the mailing date." The Board's decision advised the claimant that, in order to appeal, he "must" both (1) "file a complaint for

administrative review" and (2) "have summons issue in [the] circuit court." The decision also informed him that he "must" take these actions "within 35 days from the mailing date." The mailing date was May 3, 2016. Therefore, the complaint and summons were due by June 7, 2016. The claimant filed his *pro se* complaint on June 9, 2016.

The Department and employer filed a motion to dismiss pursuant to section 2-619(a)(5) of the Code of Civil Procedure claiming a lack of subject matter jurisdiction. (735 ILCS 5/2-619(a)(5)) (providing for dismissal when "the action was not commenced within the time limited by law"). The trial court granted the motion to dismiss for lack of jurisdiction and dismissed the complaint with prejudice. The claimant moved to vacate the court's order which was denied. The claimant appealed. In his appeal, the claimant admitted receiving the decision. However, the claimant alleged that he was unaware of the 35-day requirement and stated that he'd sent a request to appeal the decision via a handwritten letter and a typed letter with proof of fax confirmation all within the 35-day window.

HELD: The appellate court found that the Department and employer satisfied the requirements for filing the motion to dismiss. The court next examined the claimant's two arguments: that he was unaware of the 35-day filing requirement and that he satisfied the requirement by allegedly faxing a letter to the Board. The court reviewed IL Supreme Court decisions and the statute (735 ILCS 5/3-103) which bar review of administrative decisions unless that review is sought within the time and manner provided. While section 3-102 provides for a limited exception when the jurisdiction of the administrative agency is in question, that section was not applicable here. As the claimant provided no case law to support his argument that his untimely filing due to ignorance was an excuse or his alleged faxing a letter to the Board within the 35 days, the court dismissed that argument. The court then discussed applying a good-faith exception in this case; that a faxed letter represents a good-faith attempt to serve a summons and complaint. The court stated that a faxed letter is not a complaint or summons as defined under S.Ct Rules 101 & 102 which govern the form and service of summons and complaint and the court found that the dismissal was warranted. Finally, the court stated that, even if they were to review the merits of the case, the dismissal was warranted. The court stated that the claimant's underlying claim raises an issue of fact, namely credibility. The claimant did not dispute that he was a no call no show but was under the impression that he was not scheduled to work that day. The employer, the referee and the Board did not accept his statement and the court deferred to the Board's credibility findings. The appellate court affirmed the trial court's decision.

Collateral Estoppel (Issue Preclusion) PR 440.5

ISSUE/DIGEST CODE	**Procedure/PR 440.5**
DOCKET/DATE	***Village of Oak Park v. IDES*, 772 N.E.2d 951 (2002)**
AUTHORITY	**Administrative law**
TITLE	**Res judicata**
SUBTITLE	**Collateral Estoppel (Issue Preclusion)**
CROSS-REFERENCE	**None**

The employer sought judicial review of a decision of the Board of Review. The Board found that the claimant was not ineligible for benefits due to misconduct. The employer discharged the claimant for violating several statutes governing the conduct of employees of the police department. The discharge was upheld at an administrative hearing and later affirmed by a court. The claimant filed for benefits. Sometime during the administrative process before the Department of Employment Security and the Board of Review, the employer introduced the transcript of the administrative hearing and its finding against the employee. The employer contended that its administrative finding that the claimant was discharged for misconduct was binding upon the Board of Review. The Board found that the employer had not shown by a preponderance of the evidence that the claimant was discharged for misconduct under Section 602 of the Act. The circuit twice remanded the case to the Board for clarification and eventually affirmed the Board's decision. The appellate court reversed.

HELD: The appellate court held that a prior administrative adjudication that grants the parties the opportunity to be heard and the right to cross examine witnesses is *res judicata* in subsequent administrative proceeding where three conditions are met: (1) the material fact issue decided in the earlier adjudication is identical to the one in the current proceeding; (2) there is a final judgment on the merits in the earlier adjudication; (3) the party against who the estoppel is asserted was a party or in privity with a party in the earlier adjudication.

Notice Requirements to Obtain Judicial Review PR 440.10

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Blumhorst v. IDES*, 783 N.E. 2d 654 (2002)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial review of Board of Review decision**
SUBTITLE **Notice requirement to secure judicial review**
CROSS-REFERENCE **None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that parties to judicial review of administrative action be served within thirty five days of the receipt of the administrative decision. Although the claimant filed a complaint for administrative review within thirty five days, the summons concerning his complaint was not sent out within that period. The circuit court denied the defendant's motion to dismiss on the grounds that the claimant satisfied the good faith exception excusing noncompliance. The appellate court reversed.

HELD: The appellate court stated that the procedures for service under the Administrative Review Law are mandatory, not jurisdictional. The court held that the claimant did not introduce sufficient evidence that he instructed the clerk of the court to issue the summons upon the defendant within the required thirty-five-day period to satisfy the good faith exception for noncompliance.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Burns v. IDES*, 795 N.E. 2d 972 (2003)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial review of Board of Review decision**
SUBTITLE **Notice requirement to secure judicial review**
CROSS-REFERENCE **None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that parties to judicial review of administrative action be served at the party's principal place of business. When the claimant went to the clerk of the circuit court to file her appeal, she was referred to the *pro se* help desk. The claimant brought the Board of Review decision she wanted to appeal with her. The employer had been represented by a service company before the Board of Review and its address was the only one on the decision. Section 804 of the Illinois Unemployment Insurance Act authorizes notice to a party's last known address in administrative proceedings before the Department. The claimant served the employer's service company within the thirty-five-day period set forth by the Administrative Review Law and the employer received actual notice of the summons. The circuit court dismissed the appeal on the grounds that the claimant had failed to serve the employer at its principal place of business as required by the Administrative Review Law. The circuit court also held that the claimant had failed to satisfy the good-faith exception for her failure to serve the employer. The appellate court reversed. The appellate court identified two primary issues. The first was whether the claimant properly served notice of appeal under the Administrative Review Law. The second was whether, if service was not proper, the claimant satisfied the good faith exception excusing noncompliance.

HELD: The appellate court held that the procedures for service under the Administrative Review Law should be read in conjunction with the service procedures set forth by the Unemployment Insurance Act. Nevertheless, because there was no affidavit from the claimant that she sent the summons to the employer's last known address as required by the Administrative Review Law, the court held the claimant failed to give proper notice. The court held that the claimant did satisfy the good faith excuse for noncompliance because the employer did receive actual notice and that the claimant acted in good faith by personally appearing at the clerk's office to serve proper notice upon the employer.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Fedorev v. Doherty*, 711 N.E. 2d 1223 (1999)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial review of Board of Review decision**
SUBTITLE **Notice requirement to secure judicial review**
CROSS-REFERENCE **None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be named and a summons served upon them within thirty five days of the receipt of the administrative decision. action. Although the claimant filed a complaint

for administrative review within thirty-five days, the claimant did not name the Board of Review or its members which issued the decision sought to be reviewed. The claimant's complaint only named the Director of the Department of Employment Security and the employer in the case. The circuit court dismissed the claimant's suit for lack of jurisdiction. The appellate court affirmed.

HELD: The appellate court held that the claimant's failure to name and serve the Board of Review or any of its members which issued the administrative decision at issue did not comply with the Administrative Review Law. The Director of the Department of Employment Security performs administrative functions with respect to the Board of Review but the Director does not control or direct the Board's administrative decisions. Accordingly, the court has no subject matter jurisdiction over the complaint.

ISSUE/DIGEST CODE	**Procedure/PR 440.10**
DOCKET/DATE	***New York Carpet World, Inc. v. IDES*, 769 N.E. 2d 1321 (1996)**
AUTHORITY	**Administrative Review Law**
TITLE	**Judicial review of Board of Review decision**
SUBTITLE	**Notice requirement to secure judicial review**
CROSS-REFERENCE	**None**

The employer sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty five days of the receipt of the administrative decision. Although the employer filed a complaint for administrative review within thirty five days, the complaint did not name the Board of Review as a party and no summons was served on the Board of Review within the thirty five period. The employer instead served the Department of Employment Security. The Board of Review did, however, receive a copy of the complaint and summons forwarded to it by the Department of Employment Security within the thirty five day period. The employer contended that the Board of Review was administered by the Department of Employment Security and that the Department was a misnomer for the Board of Review. The circuit court dismissed the claimant's suit for lack of jurisdiction. It also denied the employer's request to amend its complaint naming the Board of Review. The appellate court affirmed.

HELD: The appellate court stated that the Board of Review was the administrative agency required to be served under the Administrative Review Law as a condition for obtaining judicial review. The court held that there was no misnomer and that the employer could not amend its complaint naming the Board of Review as a party after the thirty five day period for review under the Administrative Review Law had expired.

ISSUE/DIGEST CODE	**Procedure/PR 440.10**
DOCKET/DATE	***Schwartz v. IDES*, 647 N.E. 2d 146 (1996)**
AUTHORITY	**Administrative Review Law**
TITLE	**Judicial review of Board of Review decision**
SUBTITLE	**Notice requirement to secure judicial review**
CROSS-REFERENCE	**None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty five days of the receipt of the administrative decision. action. Although the claimant filed a complaint for administrative review within thirty-five days, the summons concerning his complaint was not sent out to the claimant's employer. The employer corporation was a party to the administrative action. The claimant contended that the employer corporation was not a person required to be served under the Administrative Review Law. The circuit court dismissed the claimant's suit for lack of jurisdiction. The appellate court affirmed.

HELD: The appellate court stated that the employer corporation was a "person" required to be served under the Administrative Review Law as a condition for obtaining judicial review of administration decisions.

ISSUE/DIGEST CODE	**Procedure/PR 440.10**
DOCKET/DATE	***Shaw v. IDES*, 612 N.E. 2d 919 (1993)**
AUTHORITY	**Administrative Review Law**
TITLE	**Judicial Review of Board of Review decision**
SUBTITLE	**Notice requirement to obtain judicial review**

CROSS-REFERENCE **None**

The claimants sought judicial review of a decision of the Board of Review denying benefits under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty-five days of the receipt of the administrative decision. Although the claimant filed a complaint for administrative review within thirty-five days, the complaint did not name either the Director of the Department of Employment Security or the Board of Review as a party and did not serve them with a summons within the thirty five period. The claimants instead served the Department of Employment Security. The circuit court dismissed the claimant's suit for lack of jurisdiction. It also denied the employer's request to amend its complaint to name these parties. The appellate court dismissed the action due to lack of jurisdiction.

HELD: The appellate court held that the Board of Review was a necessary party to an action for judicial review under the Administrative Review Law and dismissed for lack of jurisdiction. It also stated that the Director of the Department of Employment Security was not a necessary party and did not need to be served. The court denied the claimant's request to amend its complaint after the thirty-five period had expired on the grounds that the proper filing of a complaint was a jurisdictional requirement for review under the Administrative Review Law.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Stanley v. IDES*, 602 N.E. 2d 73 (1992)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial Review of Board of Review decision**
SUBTITLE **Notice requirement to obtain judicial review**
CROSS-REFERENCE **None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty-five days of the receipt of the administrative decision. Although the claimant filed a complaint for administrative review within thirty-five days, the complaint did not name or serve the Board of Review. The circuit court dismissed the suit for lack of jurisdiction. The appellate court affirmed.

HELD: The appellate court held that the provisions of the Administrative Review Law require that a complaint for judicial review name and serve those who were necessary parties to the administrative action. Because the Board of Review was the final decision maker, it was a necessary party to any judicial action. The court also held that the claimant had failed to satisfy the good faith exception given by the Administrative Review excusing noncompliance.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Strang v. IDOT*, 564 N.E.2d 261 (1990)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial Review of Board of Review decision**
SUBTITLE **Notice requirement to obtain judicial review**
CROSS-REFERENCE **None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty-five days of the receipt of the administrative decision. Although the claimant filed a complaint for administrative review within thirty-five days, the complaint only named and was served on the Department of Employment Security. The complaint did not name nor was it served on the employer, the Board of Review, or the Director of the Department. The circuit court reversed the Board of Review's decision denying benefits. The appellate court reversed.

HELD: The appellate court held that the provisions of the Administrative Review Law require that a complaint for judicial review name those who were necessary parties to the administrative action. The court applied the decision of *Lockett v Chicago Police Board*, 549 N.E. 2d 1266 (1990), retroactively to hold that the Board of Review, the Director of the Department, and the employer are necessary parties to the complaint. The court accordingly dismissed the action for lack of jurisdiction. The court did not address the additional question whether the claimant's failure to serve the necessary parties within the thirty-five-day period would also require dismissal of the complaint.

ISSUE/DIGEST CODE	**Procedure/PR-440.10**
DOCKET/DATE	***McGaw Medical Center of Northwestern University v. Department of Employment Security*, 369 Ill.App.3d 37, 307 Ill.Dec. 817, 860 N.E.2d 471 (1st Dist., 2006)**
AUTHORITY	**Administrative Review Law**
TITLE	**Judicial Review of Board of Review Decisions**
SUBTITLE	**Notice requirement to obtain judicial review**
CROSS-REFERENCE	**None**

The plaintiff, McGaw Medical Center, timely filed an administrative review complaint pursuant to the Administrative Review Law and named as defendants the Illinois Department of Employment Security (IDES), Brenda A. Russell, in her capacity as the Director of IDES, and the claimant, but failed to name as a defendant the IDES Board of Review (Board) which had granted unemployment insurance benefits to the claimant. The defendants moved to dismiss the complaint on the grounds that plaintiff's failure to name the Board as a defendant deprived the court of subject matter jurisdiction. The plaintiff moved to amend its complaint. The trial court, however, granted defendants' motion to dismiss, denied plaintiff's motion for leave to amend and dismissed the complaint with prejudice. The plaintiff appealed.

HELD: The appellate court affirmed the trial court's decision to dismiss the plaintiff's complaint, rejecting the plaintiff's contention that it should have been permitted to amend the complaint under either (1) Section 2-616(d) of the Code of Civil Procedure [735 ILCS 5/2-616(d)] or (2) Sections 3-103 and 3-107 of the Administrative Review Law [735 ILCS 5/3-107]. The appellate court reasoned (1) that Section 2-616(d) of the Code does not apply to causes of action brought under the Administrative Review Law and (2) that the claimant failed to meet the requirements of Sections 3-103 and 3-107 and, thus, the exceptions contained therein could not be applied. Consequently, the plaintiff's failure to name the Board as a defendant necessitated the dismissal of its complaint with prejudice.

ISSUE/DIGEST CODE	**Procedure/PR-440.10**
DOCKET/DATE	***Van Milligen v. Department of Employment Security*, 373 Ill.App.3d 532, 311 Ill.Dec. 422, 868 N.E.2d 1083 (2nd Dist., 2007)**
AUTHORITY	**Administrative Review Law**
TITLE	**Judicial Review of Board of Review Decisions**
SUBTITLE	**Notice requirement to obtain judicial review**
CROSS-REFERENCE	**None**

The plaintiff timely filed an administrative review complaint in the Circuit Court pursuant to the Administrative Review Law and named as defendants the Illinois Department of Employment Security (IDES), Brenda A. Russell, in her capacity as the Director of IDES, and the former employer from which he had been separated from work. He did not name as a defendant the Board of Review (Board) which had found him ineligible for unemployment insurance benefits. IDES moved to dismiss the complaint because the plaintiff failed to name the Board as a defendant as required by Administrative Review Law. The plaintiff moved to amend its complaint. The trial court, however, granted defendant's motion to dismiss, denied plaintiff's motion for leave to amend and dismissed the complaint for lack of jurisdiction. The plaintiff appealed.

HELD: On appeal, the plaintiff argued that he was entitled to amend his complaint pursuant to: (1) sections 3-103 and 3-107 of the Review Law; (2) the "good faith" exception to the Review Law's requirements; (3) equitable tolling principles; (4) due process requirements; and (5) section 2-616(d) of the Code of Civil Procedure and Rule 15 of the Federal Rules of Civil Procedure. The court rejected all of the plaintiff's arguments, finding that (1) sections 3-103 and 3-107 of the Review Law did not apply because the Director and the Board are distinct and separate entities so that joining the Director as a defendant did not result in joining the Board; (2) to conclude that the plaintiff exhibited "good faith", where the statute clearly requires the Board to be joined as a defendant, would impermissibly broaden the "good faith" exception; (3) the principles of equitable tolling apply to statutes of limitations, not to limitations periods that are inherent parts of the right of action created by a statute, as is the 35-day filing period created by the Review Law; (4) the plaintiff cannot complain of a due process violation where the dismissal of his complaint was due to his own failure to satisfy the reasonable requirements of the Review Law; and, (5) the Federal Rules of Civil Procedure do not apply to state court proceedings and the plaintiff's argument with respect to section 2-616(d) of the Illinois Code of Civil Procedure has been repeatedly rejected by Illinois courts, citing, *inter alia*, *McGaw Medical Center of Northwestern University v. Illinois Department of Employment Security*, 369 Ill. App. 3d 37, 307 Ill Dec. 817, 860 N.E.2d 471 (1st Dist., 2006).

REFUSAL OF WORK

Refusal of Work RW 5
General RW 5.05

ISSUE/DIGEST CODE	**Refusal of Work/RW 5.05**
DOCKET/DATE	**ABR-85-5408/12-27-85**
AUTHORITY	**Sections 601 and 603 of the Act**
TITLE	**Refusal of Work**
SUBTITLE	**vs. Voluntary Leaving**
CROSS-REFERENCE	**VL 5.05, Voluntary Leaving; VL 315.05, New Work**

The claimant was working as a Secretary when her employer notified her that her job would be abolished, and that, at the same time, a job as a Riveter would be made available to her. The claimant feared that, if she took a job as a Riveter, her secretarial skills would decline, so she rejected the Riveter position, telling her employer she would rather quit.

The issue presented was whether the claimant's separation from work was a Voluntary Leaving cognizable under Section 601 or a Refusal of Work under Section 603.

HELD: Unless there is an interruption in the employment relationship, resulting in a worker becoming an unemployed individual prior to an offer of new work, a Refusal of Work issue under Section 603 cannot arise. In the instant case, the claimant was employed when her employer approached her about changing jobs. Therefore, Section 603 was inapplicable.

(See VL 315.05, New Work, for disposition of this case)

ISSUE/DIGEST CODE	**Refusal of Work/RW 5.05**
DOCKET/DATE	**ABR-88-338/3-25-88**
AUTHORITY	**Sections 601 and 603 of the Act**
TITLE	**Refusal of Work**
SUBTITLE	**vs. Voluntary Leaving**
CROSS-REFERENCE	**VL 5.05, Voluntary Leaving; RW 330.05, Offer of Work**

The claimant obtained work as a machinist through a temporary employment service (his employer) which would refer him to its clients. The employment service's policy was that workers, upon completion of assignments, should contact the service and apply for other assignments. Upon completion of an assignment which had run from February 13 through March 25, the claimant chose not to contact the employer's service.

The threshold issue was whether the claimant's actions were to be considered under Section 601A, Voluntary Leaving, or Section 603, Refusal of Work.

HELD: Whether a worker has quit a job or refused a job is determined by whether the worker was employed or unemployed at the time of a purported offer of new work. In this case, the claimant completed an assignment and was unemployed at the time new work was purportedly made available. Therefore, the issue was Refusal of Work, cognizable under Section 603 of the Act.

Attendance at School or Training Course RW 40
General RW 40.05
No decision

Citizenship or Residence Requirements RW 70
General RW 70.05
No decision

Conscientious Objection RW 90
General RW 90.05

ISSUE/DIGEST CODE	**Refusal of Work/RW 90.05**
DOCKET/DATE	***Frazee v. IDES*, 109 S.Ct. 1514 (1989)**
AUTHORITY	**Section 603 of the Act**
TITLE	**Conscientious Objection**
SUBTITLE	**Religion and Morals**
CROSS-REFERENCE	**RW 515.5, Working Conditions, Morals**

The claimant refused a job because it would have required him to work on Sunday. He stated that he refused because, as a Christian, although not a member of any particular sect, he felt it was wrong to work on Sunday.

He was denied unemployment benefits. He appealed, citing the First Amendment's Free Exercise Clause.
The appellate court held that, for a Free Exercise Clause claim to succeed, a claimant must sincerely believe in a tenet or dogma of, and belong to, an established religious sect. The court pointed out that assorted Christian denominations did not abstain from Sunday work and that the claimant did not belong to a particular sect that did abstain; therefore, he had been correctly denied benefits.

The claimant then appealed to the United States Supreme Court.

HELD: The denial of unemployment benefits, because an individual chooses fidelity to sincerely held religious beliefs over employment, violates the First Amendments' Free Exercise Clause.

The protection afforded by the Free Exercise Clause is not limited to responses to formal commands of particular religious organizations. Protection extends to an individual, even if he does not belong to such an organization, so long as his belief is both religious and sincere.

In this case, the claimant's refusal to work on Sunday was based upon his sincerely held religious belief.

He was entitled to First Amendment protection. The denial of unemployment benefits violated the Free Exercise Clause.

Customary Self-Employment, Return to RW 116
General RW 116.05
No decision

Discrimination RW 139
General RW 139.05
No decision

Distance to Work RW 150
General RW 150.05
No decision

Removal from Locality RW 150.15
No decision

Transportation and Travel RW 150.2

ISSUE/DIGEST CODE	**Refusal of Work/RW 150.2**
DOCKET/DATE	**ABR-85-5401/12-19-85**
AUTHORITY	**Section 603 of the Act**
TITLE	**Distance to Work**
SUBTITLE	**Transportation and Travel**
CROSS-REFERENCE	**None**

The claimant worked as an Executive Secretary until her lay off in December, 1984. In March, 1985, she refused an offer of work for a Personal Secretary. The claimant noted the differences between the jobs: Her previous work paid $14,400 per year and was a 20 minute drive from home; the new job would have paid between $13,000 and $14,000, while requiring at least a 30 minute drive in rush hour. The claimant wrote: "Salary too low (especially for distance to go to work)."

HELD: Excessive travel time, excessive travel expense, or undue transportation inconvenience renders work unsuitable. The terms "excessive" and "undue" must be interpreted in light of the length of the individual's unemployment and the prospects of obtaining local work, and, in general, by reasonableness.

An individual may, during the early period of her unemployment, limit herself to conditions of work similar to those of her most recent work, including working close to home. But, after she has had an opportunity to ascertain existing, unfavorable conditions, she must adjust to them, including expanding the scope of her search.

In the instant case, after being unemployed for 3 months, the claimant should have been willing to accept employment which was more readily obtainable than that which was closer to home as she stipulated. Further, aside from any consideration of the length of unemployment, the 30 minutes or so in rush hour would not have been excessive or unduly burdensome to a reasonable individual. In short, the new conditions were not dissimilar from the claimant's previous conditions and did not render the work unsuitable. The claimant refused the offer of work without good cause.

ISSUE/DIGEST CODE	**Refusal of Work/RW 150.2**
DOCKET/DATE	**ABR-88-3042/6-13-88**
AUTHORITY	**Section 603 of the Act**
TITLE	**Distance to Work**
SUBTITLE	**Transportation and Travel**
CROSS-REFERENCE	**RW 210.05, Good Cause**

The claimant worked second shift, 3 p.m. to 11 p.m., at a considerable distance from her home. She did not own a car, and, after 9 p.m., there was no public transportation that would take her home. So she rode to and from work with her sister, who owned a car and worked at the same place at the same hours.

The claimant was laid off. Her sister decided to move to Texas. Then the claimant was recalled to work, on the same terms. The claimant refused the offer to return to work, because she would now have no way to get home.

HELD: Section 603 provides that consideration must be given to the distance to work. This would include the availability of transportation.

In this case, the claimant had no transportation home from work. In this regard, the work was no longer suitable for her and she had good cause to refuse it.

Domestic Circumstances RW 155
General RW 155.05
No decision

Children, Care of RW 155.1

ISSUE/DIGEST CODE	**Refusal of Work/RW 155.1**
DOCKET/DATE	**ABR-20-26176/3-9-21**
AUTHORITY	**Section 603**
TITLE	**Domestic Circumstances**
SUBTITLE	**Care of Children**
CROSS-REFERENCE	**RW 210.05, Good Cause**

The claimant worked for the employer in the accounting department for approximately two years, at which time she took a voluntary leave of absence due to the COVID-19 pandemic threat. Claimant filed and was found eligible for benefits. The claimant continued to certify for benefits when, two months later, the employer called the claimant and asked her to return to work in her former job. The employer told claimant that it had cleaned the entire work premises and vehicles, and set up work layout and monitoring procedures, in compliance with DPH and CDC guidelines. The claimant declined the employer's request that she return to work for three reasons: 1) she had a young daughter, 2) she had a second job for a disabled immunocompromised adult, 3) she did not think that the employer took the COVID-19 pandemic seriously. The claimant did not inspect the employer's DPH and CDC health and safety compliant measures of the work premises, vehicles, or her designated workspace. At the hearing the Referee obtained a waiver of notice from both parties regarding the substantive issue and found the claimant ineligible under Section 601A.

HELD: The Board found the claimant ineligible for benefits, but modified the ruling as to the applicable Section from 601A to 603, as at the time she refused to return to work, the claimant was unemployed and could not quit a job she did not have. Instead, claimant had refused to return to work under Section 603. Claimant had failed, without good cause, to accept suitable work when offered by the employing unit. The claimant's failure to inspect the employer's safety measures, her fear of contracting COVID-19, her preference to work at home with her child, instead of sending the child to daycare, so as not "to mix with the children of hospital workers", was not sufficient to establish good cause for her refusal to work; especially, where there was no evidence that she, or anyone with whom she resided, was at high risk to contract COVID-19, and she had no direct knowledge that the employer's safety measures were inadequate.

Home or Spouse in another Locality RW 155.2
No decision

Household Duties RW 155.25
No decision

Housing RW 155.3
No decision

Illness or Death of Others RW 155.35
No decision

Parent, Care of 155.45
No decision

Employer Requirements RW 165
General RW 165.05
No decision

Employment Office or Other Agency Referral RW 170
General RW 170.05
No decision

Direction to Apply for Work RW 170.1

ISSUE/DIGEST CODE	**Refusal of Work/RW 170.1**
DOCKET/DATE	**ABR-86-1569/7-14-86**
AUTHORITY	**Section 603 of the Act**
TITLE	**Employment Office or Other Agency Referral**
SUBTITLE	**Direction to Apply for Work**
CROSS-REFERENCE	**RW 330.25, Offer, Terms**

Through the State Job Service, the claimant's former employer, a Building Maintenance Service, requested that the claimant, a Janitor, contact its office, in order to obtain the location, hours, and rate of pay for "any job" that it had to offer. When asked by Job Service to provide it with that specific information - location of employment, number of hours of work, and rate of pay - the employer responded:

> Cannot be specific as to rate of pay, it depends on the work site. The questions you are asking have never been asked before and I don't see that they are necessary...Our business is the type that job offers and locations could change from day to day.

The employer stated that the claimant failed to contact its office to see what positions were available and contended that she should have been disqualified under the provisions of Section 603.

HELD: An offer of work must be definite. It must contain sufficient information to establish that a specific job is available, and that it is for certain hours and at a specified rate of pay. Accordingly, an individual who is asked to come to an employer's office to discuss possible - but not specific - job openings does not refuse a definite offer of work when she fails to respond.

Similarly, when an individual is directed, by Job Service or the Director, to apply for work, adequate information for the purpose of that referral includes sufficient details as to hours, wages, and duties, so that the individual might make a reasonably informed decision as to whether or not the proffered work would be suitable. Even where a claimant is referred to work with a former employer, in which case the information given to the claimant need not be as detailed as when referring to a new employer (since it may be assumed that the claimant is familiar with the conditions of work), from the referral the claimant must be able to identify a particular job and its essential terms.

In the instant case, the employer suggested that some job might be available, for unspecified hours at an unspecified wage. The employer did not provide information which was sufficient to constitute a definite offer, nor, if this were to be treated as a referral, did the employer provide information sufficient for the claimant to identify a particular job and its essential terms, even if she had previously worked for the employer. Therefore, there was no refusal of work within the intent and meaning of Section 603.

Failure to Report to Employment Office RW 170.15
Refusal of Referral RW 170.2
No decision

Equipment RW 180
General RW 180.05
No decision

Evidence RW 190
General RW 190.05
No decision

Experience or Training RW 195
General RW 195.05

ISSUE/DIGEST CODE	**Refusal of Work/RW 195.05**
DOCKET/DATE	***Perkins v. Board of Review*, 485 N.E. 2d 575 (1985)**
AUTHORITY	**Section 603 of the Act**
TITLE	**Experience or Training**
SUBTITLE	**Whether Earlier Work is Still Suitable**
CROSS-REFERENCE	**RW 210.05, Good Cause; RW 510.4, Nature of Work**

In 1979, the claimant began working as a speech therapist for the Waukegan school district. Her salary was $20,668. For the 1982-83 school year, she was appointed co-chair of the speech-language department, an annually appointed, administrative position that paid a $168 yearly stipend.

During that school year, the claimant divided her time between speech therapy and the administrative position. At the end of the school year, the school district notified the claimant that, for budgetary reasons, her speech therapist job was being eliminated for the 1983-84 year; further, there would be only one chair of the speech-language department; the claimant was not reappointed.

Then a speech therapist position became available. It was offered to the claimant. Her salary would be in excess of $22,000. She refused the job, explaining that she was now over-qualified for this work. Only higher level administrative work would be suitable. To accept anything less, where there was no prospect of advancement, would have a negative impact upon future job prospects.

HELD: If an individual acquires additional skills and experience over a period of time, a position held in earlier years may well cease to be suitable (e.g., if it would result in an erosion of skills, not pay the deserved wage, etc.)

However, merely working in another capacity and speculating about future job prospects does not automatically render previous work unsuitable. A preference, without more, does not establish good cause for refusing work.

In this case, the job offered fell squarely within the field of the claimant's professional training. She would be earning at maximum capacity. There would be no loss of skills.

Her appointment to an administrative position had been temporary. It expired at year's end anyway and there was no reasonable claim to even a second year of administrative work. It would have been her preference, nothing more.

The claimant refused suitable work without good cause.

ISSUE/DIGEST CODE	**Refusal of Work/RW 195.05**
DOCKET/DATE	**83-BRD-15260/12-16-83**
AUTHORITY	**Section-603**
TITLE	**Experience or Training**
SUBTITLE	**Use of Highest Skill**
CROSS-REFERENCE	**None**

The claimant worked for the employer, a temporary employment agency, as a data processor for two years. She was laid off by one of the employer's clients due to lack of work. Her final wage was $5.50 per hour. Three days after the layoff, the employer offered the claimant a temporary assignment as a greeter of customers at a savings and loan institution. The assignment was for one month at a wage of $5.25 per hour. The claimant refused the employer's offer of work because she wanted to find a job in data processing.

HELD: The claimant refused an offer of work for good cause. The offered job was that of a receptionist and not related to the claimant's usual occupation. The offer was unsuitable work for the claimant. Therefore, the claimant is not subject to any disqualification.

Insufficient RW 195.1
No decision

Risk of Loss of Skill RW 195.15
No decision

Use of Highest Skill RW 195.2
No decision

Good Cause RW 210
General RW 210.05

ISSUE/DIGEST CODE	**Refusal of Work/RW 210.05**
DOCKET/DATE	**85-BRD-04831/6-27-85**
AUTHORITY	**Section 603 of the Act**
TITLE	**Good Cause**
SUBTITLE	**Personal Circumstances**
CROSS-REFERENCE	**None**

The claimant was made an offer of work which had to be accepted within two hours of the time of the offer. The claimant was unable to arrange for childcare within the two-hour notice period given, and, therefore, refused the offer of work.

HELD: An individual has good cause for refusing an offer of work if her action in refusing is that of a reasonable person interested in securing employment but precluded from doing so. Good cause for refusing work is not confined to causes directly attributable to the employer but may be determined from personal circumstances which existed at the time the offer was refused. In this case, the evidence established that the claimant was precluded from accepting employment due to personal circumstances, which, despite reasonable efforts to resolve, still existed at the expiration of the two hour notice period. The claimant refused an offer of work with good cause.

ISSUE/DIGEST CODE	**Refusal of Work/RW 210.05**
DOCKET/DATE	**ABR-20-15496/11-4-20**
AUTHORITY	**Section 603 of the Act**
TITLE	**Good Cause**
SUBTITLE	**General**
CROSS REFERENCE	**RW 330.25, Offer of Work, Terms**

The claimant was employed as an in-home caregiver whose last day of work was March 13, 2020. At that time, she had one client assigned to her care. She notified the employer two days later that she would no longer provide services to her assigned client, or accept any other clients, due to the COVID-19 pandemic. The claimant had several physical ailments and the State was under the Governor's "shelter in place" order at the time. The employer requested that, as an essential employee exempt from the order, she return to work with her assigned client or accept assignments with other clients. The claimant refused to do so, and cited her concerns about the pandemic, her health and safety and that of the employer's clients as her reasons for not returning to work. The Referee conducted a hearing and set aside a local office determination that denied the claimant benefits under Section 603 of Act. The employer appealed to the Board.

HELD: Section 603 has three elements that must be met in order to constitute a disqualifying refusal to return to work. First, the employer's offer of work must be definite and genuine as to the terms and conditions of the job. Here, the Board found that the employer's request to the claimant that she return to work with her assigned client or accept other clients was sufficient enough to be deemed a genuine offer of work. Next, the offer of work must be suitable for the claimant, in light of the claimant's prior experience and training, among other factors. The Board noted that the claimant worked in this position for thirteen years and concluded that it was suitable work for her.

The final element in determining disqualification for benefits under Section 603 is whether the claimant had good cause for refusing an offer of suitable work. Personal circumstances existing at the time the offer of work was made which preclude a claimant from accepting the offer may be sufficient to show good cause for refusing work that is otherwise suitable. In this case, the Board held that the claimant's underlying health conditions and the pandemic, neither of which she could control, presented a threat to her and the employer's clients' safety and welfare. She accordingly had good cause for refusing to return to work.

ISSUE/DIGEST CODE	**Refusal of Work/RW 210.05**
DOCKET/DATE	**ABR-88-3042/6-13-88**
AUTHORITY	**Section 603 of the Act**
TITLE	**Good Cause**
SUBTITLE	**Good Cause Applies to Conditions at Time of Refusal**
CROSS-REFERENCE	**RW 150.2, Distance to Work**

The claimant worked second shift, 3 p.m. to 11 p.m., at a considerable distance from her home. She did not own a car, and, after 9 p.m., there was no public transportation that would take her home. So she rode to and from work with her sister, who owned a car and worked at the same place at the same hours.

The claimant was laid off. Her sister decided to move to Texas. Then the claimant was recalled to work, on the same terms. The claimant refused the offer to return to work, because she would now have no way to get home.

HELD: In determining whether work is suitable or whether good cause exists for refusing work, consideration must be given to conditions as they exist at the time of refusal.

In this case, the claimant's work had been suitable; but, at the time of refusal, she did not have any transportation home from work. Therefore, she had good cause for refusing the offer.

ISSUE/DIGEST CODE	**Refusal of Work/RW 210.05**
DOCKET/DATE	**ABR91882/8-1-89**
AUTHORITY	**Section 603 of the Act**
TITLE	**Good Cause**
SUBTITLE	**Environment (Cigarette Smoke and No Ventilation)**
CROSS-REFERENCE	**RW 235.45, Health; RW 515.35, Working Conditions**

The claimant, an office clerk, had previously worked for the employer. The employer offered to rehire her, but the claimant refused, because co-workers smoked. The smoke would drift into her work area and there were no windows or any other type of ventilation. She did not want to be subjected to this second-hand smoke because of the possible danger to her health.

HELD: Where there is some medical evidence that working conditions pose a risk to a claimant's health, the claimant has good cause for refusing the offer of work.

There is some medical evidence that second-hand smoke in an enclosed environment poses a health risk.

Here, the claimant's refusal of work was with good cause.

ISSUE/DIGEST CODE	**Refusal of Work/RW 210.05**
DOCKET/DATE	***Perkins v. Board of Review*, 485 N.E. 2d 575 (1985)**
AUTHORITY	**Section 603 of the Act**
TITLE	**Good Cause**
SUBTITLE	**Whether Earlier Work is Still Suitable**
CROSS-REFERENCE	**RW 195.05, Exper./Training; RW 510.4, Nature of Work**

In 1979, the claimant began working as a speech therapist for the Waukegan school district. Her salary was $20,668. For the 1982-83 school year, she was appointed co-chair of the speech-language department, an annually appointed, administrative position that paid a $168 yearly stipend.

During that school year, the claimant divided her time between speech therapy and the administrative position. At the end of the school year, the school district notified the claimant that, for budgetary reasons, her speech therapist job was being eliminated for the 1983-84 year; further, there would be only one chair of the speech-language department; the claimant was not reappointed.

Then a speech therapist position became available. It was offered to the claimant. Her salary would be in excess of $22,000. She refused the job, explaining that she was now over-qualified for this work. Only higher level administrative work would be suitable. To accept anything less, where there was no prospect of advancement, would have a negative impact upon future job prospects.

HELD: If an individual acquires additional skills and experience over a period of time, a position held in earlier years may well cease to be suitable (e.g., if it would result in an erosion of skills, not pay the deserved wage, etc.).

However, merely working in another capacity and speculating about future job prospects does not automatically render previous work unsuitable. A preference, without more, does not establish good cause for refusing work.

In this case, the job offered fell squarely within the field of the claimant's professional training. She would be earning at maximum capacity. There would be no loss of skills.

Her appointment to an administrative position had been temporary. It expired at year's end anyway and there was no reasonable claim to even a second year of administrative work. It would have been her preference, nothing more.

The claimant refused suitable work without good cause.

ISSUE/DIGEST CODE	**Refusal of Work/RW 210.05**
DOCKET/DATE	**ABR-20-26176/3-9-21**
AUTHORITY	**Section 603**
TITLE	**Good Cause**
SUBTITLE	**General**
CROSS-REFERENCE	**RW 155.1, Domestic Circumstances, Care of Children**

The claimant worked for the employer in the accounting department for approximately two years, at which time she took a voluntary leave of absence due to the COVID-19 pandemic threat. Claimant filed and was found eligible for benefits. The claimant continued to certify for benefits when, two months later, the employer called the claimant and asked her to return to work in her former job. The employer told claimant that it had cleaned the entire work premises and vehicles, and set up work layout and monitoring procedures, in compliance with DPH and CDC guidelines. The claimant declined the employer's request that she return to work for three reasons: 1) she had a young daughter, 2) she had a second job for a disabled immunocompromised adult, 3) she did not think that the employer took the COVID-19 pandemic seriously. The claimant did not inspect the employer's DPH and CDC health and safety compliant measures of the work premises, vehicles, or her designated workspace. At the hearing the Referee obtained a waiver of notice from both parties regarding the substantive issue and found the claimant ineligible under Section 601A.

HELD: The Board found the claimant ineligible for benefits, but modified the ruling as to the applicable Section from 601A to 603, as at the time she refused to return to work, the claimant was unemployed and could not quit a job she did not have. Instead, claimant had refused to return to work under Section 603. Claimant had failed, without good cause, to accept suitable work when offered by the employing unit. The claimant's failure to inspect the employer's safety measures, her fear of contracting COVID-19, her preference to work at home with her child, instead of sending the child to daycare, so as not "to mix with the children of hospital workers", was not sufficient to establish good cause for her refusal to work; especially, where there was no evidence that she, or anyone with whom she resided, was at high risk to contract COVID-19, and she had no direct knowledge that the employer's safety measures were inadequate.

Health or Physical Condition RW 235
General RW 235.05
No decision

Age RW 235.1
No decision

Hearing, Speech, or Vision RW 235.2
No decision

Illness or Injury RW 235.25
No decision

Loss of Limb (or use of) RW 235.3
No decision

Pregnancy RW 235.4
No decision

Risk of Illness or Injury RW 235.45

ISSUE/DIGEST CODE	**Refusal of Work/RW 235.45**
DOCKET/DATE	**ABR91882/8-1-89**
AUTHORITY	**Section 603 of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Risk of Illness (Cigarette Smoke and No Ventilation)**
CROSS-REFERENCE	**RW 210.05, Good Cause; RW 515.35, Working Conditions**

The claimant, an office clerk, had previously worked for the employer. The employer offered to rehire her, but the claimant refused, because co-workers smoked. The smoke would drift into her work area and there were no windows or any other type of ventilation. She did not want to be subjected to this second-hand smoke because of the possible danger to her health.

HELD: Where there is some medical evidence that working conditions pose a risk to a claimant's health, the claimant has good cause for refusing the offer of work.

There is some medical evidence that second-hand smoke in an enclosed environment poses a health risk.

Here, the claimant's refusal of work was with good cause.

ISSUE/DIGEST CODE	**Refusal of Work/RW 235.45**
DOCKET/DATE	**ABR-08-12952/2-11-09**
AUTHORITY	**Section 603 of the Act; 56 Ill. Adm. Code 2720.315(b)**
TITLE	**Health or Physical Condition**
SUBTITLE	**Risk of Illness or Injury**
CROSS-REFERENCE	**None**

The claimant worked for a school district as a teacher's aide and was then laid off. Sometime in 2008, she was offered a job by the same school district as a teacher's aide in the behavior intervention classroom at the same rate of pay and hours of work she had worked in her previous teacher's aide position. The claimant had worked in the offered position two years earlier, quit, and later asked to return to that position, but by then the job had been filled. If she had accepted the job in 2008, she would have received a refresher training course and would not be expected to physically restrain students, as she was required to do in her previous tenure in that position. She did not mention anxiety as a cause of her refusal either to the school district or to the claims adjudicator but first mentioned it during her testimony at the hearing before the Referee. In her appeal to the Board of Review, she presented a note from her doctor regarding her anxiety, but did not submit this additional evidence to the employer.

HELD: Under Section 603 of the Act, an individual will be deemed ineligible for benefits "if he has failed, without good cause...to accept suitable work...In determining whether or not any work is suitable for an individual, consideration shall be given to the degree of risk involved to his health, safety, morals, his physical fitness and prior training...", among other factors. In the instant case, the Board found that the claimant did not have good cause to refuse the job. The Board rejected as reasons for her refusal (1) that she lacked training for the job, since she would have received a training refresher course; (2) that back problems prohibited her from restraining students and caused her refusal, since restraining students was no longer part of the job; and, (3) that the job was unsuitable because she had tried it before and rejected it, noting that she had asked to be reinstated after she had quit.

The claimant also cited anxiety as a reason for her refusal. The Board found that the claimant's presentation of evidence regarding this health issue was untimely, noting that she never informed the employer or the claims adjudicator of this condition. She first raised the issue of anxiety at the hearing before the Referee, but presented no medical documentation to the Referee at that time. The claimant belatedly submitted a post-hearing note from her doctor, designed to excuse her from the taking the position. Under these circumstances, the Board found the note to be unconvincing. In any event, the Board found that it was prohibited from considering the note in reaching its decision since the claimant failed to comply with Section 2720.315(b) of the Department's Benefit Rules, which requires, among other things, that the party wishing to submit additional evidence into the record must certify that it has served a copy of its request upon the opposing party.

Interview and Acceptance RW 265
General RW 265.05
No decision

Agreement, Failure to Reach RW 265.1
No decision

Availability RW 265.15
No decision

Discharge or Leaving after Trial RW 265.2
No decision

Failure to Accept or Secure Job Offered RW 265.25
No decision

Failure to Report for Interview or Work RW 265.3

ISSUE/DIGEST CODE	**Refusal of Work/RW 265.3**
DOCKET/DATE	**84-BRD-883/1-23-84**
AUTHORITY	**Section-603**
TITLE	**Interview And Acceptance**
SUBTITLE	**Failure To Report For Interview Or Work**
CROSS-REFERENCE	**None**

The claimant received from the local office a notice designated as an "offer of work." The notice directed her to report to her former employer on a certain day but did not mention a specific reporting time. The claimant made other contacts during the early part of the day and reported to the former employer at 3:00 p.m. After a lengthy interview, the employer offered the

claimant her former position at a lower wage. The claimant insisted upon her prior wage. The employer further told the claimant that he had expected her to report at 8:30 a.m.

At the subsequent hearing, the employer admitted that he had filled the position by hiring another person at 2:00 p.m. on the day of the interview with the claimant.

HELD: The employer did not make an actual offer of work. Although the notice was labeled "offer of employment," no specific reporting time was mentioned. The claimant assumed that she was merely expected to report for an interview, and she did contact the employer for this purpose. Another candidate was actually hired for the job prior to the claimant's interview with the employer. The claimant is not disqualified for benefits.

Inability to Perform Offered Work RW 265.35
No decision

Necessity for Interview RW 265.4
No decision

Refusal or Inability to Meet Employer's Requirements RW 265.45
No decision

Length of Unemployment RW 295
General 295.05

ISSUE/DIGEST CODE	**Refusal of Work/RW 295.05**
DOCKET/DATE	**84-BRD-1494/1-31-84**
AUTHORITY	**Section-603**
TITLE	**Length of Unemployment**
SUBTITLE	**General**
CROSS-REFERENCE	**RW 450.154, Nights under Time**

After approximately two months of unemployment, the claimant was offered a job in her prior work until and at the same wages. The claimant would have been required to work evenings until 9:00 p.m. on a rotating basis and Saturdays. The claimant refused the offer with the statement that she had never worked evenings during the five years she was employed with her employer. The claimant had no personal obligations which would require her presence at home in the evenings.

HELD: Refusal of work because the hours of proffered work would cause inconvenience or are not the hours preferred is without good cause. Although an unemployed individual may, during the early period of her unemployment, limit herself to conditions of work similar to those which she had previously enjoyed, the claimant had remained unemployed for approximately two months, and no good cause existed for refusing the work. The claimant is disqualified for benefits.

New Work RW 315
General RW 315.05
No decision

Offer of Work RW 330
General RW 330.05

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.05**
DOCKET/DATE	**ABR-88-338/3-25-88**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**An Offer Must Be Definite**
CROSS-REFERENCE	**VL 5.05, Voluntary Leaving; RW 5.05, Refusal of Work**

The claimant obtained work as a machinist through a temporary employment service (his employer) which would refer him to its clients. The employment service's policy was that workers, upon completion of assignments, should contact the service to

see if other assignments were available and apply. Upon completion of an assignment which had run from February 13 through March 25, the claimant chose not to contact the employer's service.

The issue was whether the claimant refused an offer of available suitable work.

HELD: An offer of work must be definite. A direction to apply for work is not a definite offer of work. An employer's policy requiring workers to report is not an offer of work. In this case there was no offer of work. The claimant could not be disqualified under Section 603.

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.05**
DOCKET/DATE	**ABR-85-2578/9-20-85**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**An Offer Must Be Definite and Genuine**
CROSS-REFERENCE	**None**

For 3-1/2 years, the claimant had been employed as a Secretary on the county States Attorney's staff. The States Attorney was an elected official, and when he was not re-elected, the claimant was informed by her office manager that her last day of work would coincide with the last day of the States Attorney's term in office. The claimant later testified that, traditionally, at the end of an incumbent's term, employees would be discharged - the new States Attorney bringing with him his own staff, including clerical personnel. On the last day of the States Attorney's term in office, the claimant left work.

Representatives of the newly elected States Attorney appeared and testified. They stated that, prior to the claimant leaving work, they had announced to the newspapers that employees of the former States Attorney would be welcome to apply for jobs with the newly elected States Attorney. The representatives argued that the claimant, by leaving work and not responding to the announcement regarding jobs, refused an offer of work without good cause.

HELD: For the disqualifying provisions of Section 603, Refusal of Work, to be applicable, it is necessary that, among other considerations, the alleged "offer of work" be definite and genuine. A general opportunity to apply for work is not a definite offer of work. A general announcement in the newspaper that work is available is not a definite offer of work. In the instant case, there was only a general statement in the press that former employees would be considered for re-hire; there was no specific offer of work for a specific job made to the claimant by any representative of the new States Attorney. There was no definite offer of work, and, given the traditional, customary turnover in personnel, there was no genuine offer of work. Therefore, the claimant was not subject to a disqualification under the provisions of Section 603.

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.05**
DOCKET/DATE	**84-BRD-1012/1-24-84**
AUTHORITY	**Section-603**
TITLE	**Offer of Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant's job as a physical plant specialist was eliminated and ended in February. Before termination, he had been asked if he would be interested in a custodial position that would begin in April. Wages were not discussed. He told the employer that he would not be interested.

HELD: The language of Section 603 is clear and unambiguous, and its provisions may be applied to a claimant only if he was actually offered available suitable employment which he refused. In this instance, the employer's inquiry did not amount to a definite offer of work. Furthermore, the period under review is in the month of February, and the purported job offer was to begin in April. The claimant is not disqualified for benefits.

Genuineness RW 330.1
No decision

Means of Communication RW 330.15

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.15**
DOCKET/DATE	**83-BRD-1007-EB/11-10-83**
AUTHORITY	**Section-603**
TITLE	**Offer of Work**
SUBTITLE	**Means of Communication**
CROSS-REFERENCE	**None**

The employer stated that, subsequent to the layoff, a letter of recall was sent to the claimant's last known address, and no response was received. The claimant had relocated to his mother's home out of state, and he notified his employer of the address change. He received two vacation paychecks, but he did not receive the offer of work. The claimant stated that he would have accepted the offer had he received it.

HELD: The claimant did not receive the employer's offer of work because it was not mailed to his current address. Therefore, no offer of work was ever communicated to the claimant, and he could neither accept it nor reject it. The claimant did not refuse an offer of work and was not subject to any disqualification.

Necessity RW 330.2

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.2**
DOCKET/DATE	**ABR-85-7324/3-24-86**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**Hypothetical-Offer/Contingency**
CROSS-REFERENCE	**None**

The claimant, a Quality Control Manager, was laid off from his $35,000 per year job. About a week later, the owner of the company called him and asked if he would be interested in getting back to work. The owner stated that, although business was still slow, he wanted to know if he could count on the claimant in the event that business picked up. The owner added, however, that he would not be able to afford to pay the claimant his previous $35,000 salary and asked if he would be willing to take a $10,000 pay cut. The claimant expressed his displeasure at that. The conversation ended with the claimant telling the owner to give him another call if and when business picked up.

HELD: The disqualifying provisions of Section 603 do not apply unless an offer of work is definite. For an offer of work to be definite, it must be shown that the employer would place the worker in employment. A hypothetical question, such as "Would you consider a job with us when we have a vacancy?", is not an offer of work which is definite. An offer which is dependent upon a contingency, such as "If we get the contract..." is not an offer of work which is definite.

In the instant case, the employer's "offer" was for work which might be available if/when business picked up. It was not an offer of work which was definite. Therefore, the disqualifying provisions of Section 603 were inapplicable (and the issue of the offered wages being low in comparison with the claimant's previous wages was moot).

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.2**
DOCKET/DATE	**ABR-85-8610/6-10-86**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**Contingency**
CROSS-REFERENCE	**None**

The claimant was interviewed for a job selling stock. He was informed that if he would pay a $100 fee to enroll in - and then successfully completed - a 2 week training course, he could anticipate being hired.

HELD: It is necessary that an alleged "offer of work" be definite and without extraneous conditions; an "offer" which is dependent upon a contingency is not an offer. In instances where no definite offer of work is made, but an individual has an opportunity to apply for work, in the absence of a directive by the State Job Service or the Director to apply, the disqualifying provisions of 603 are inapplicable.

In the instant case, the "offer of work" was contingent upon enrollment in and successful completion of a training course; therefore, there was no offer. This was not a case where the claimant had been directed to apply for work by Job Service or by the Director. Therefore, the disqualifying provisions of Section 603 were inapplicable.

Terms RW 330.25

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.25**
DOCKET/DATE	**ABR-86-1569/7-14-86**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**Terms**
CROSS-REFERENCE	**RW 170.1, Employment Office or Other Agency Referral**

Through the State Job Service, the claimant's former employer, a Building Maintenance Service, requested that the claimant, a Janitor, contact its office, in order to obtain the location, hours, and rate of pay for "any job" that it had to offer. When asked by Job Service to provide it with that specific information - location of employment, number of hours of work, and rate of pay - the employer responded:

> Cannot be specific as to rate of pay, it depends on the work site. The questions you are asking have never been asked before and I don't see that they are necessary...Our business is the type that job offers and locations could change from day to day.

The employer stated that the claimant failed to contact its office to see what positions were available and contended that she should have been disqualified under the provisions of Section 603.

HELD: An offer of work must be definite. It must contain sufficient information to establish that a specific job is available, and that it is for certain hours and at a specified rate of pay. Accordingly, an individual who is asked to come to an employer's office to discuss possible – but not specific – job openings does not refuse a definite offer of work when she fails to respond.

Similarly, when an individual is directed, by Job Service or the Director, to apply for work, adequate information for the purpose of that referral includes sufficient details as to hours, wages, and duties, so that the individual might make a reasonably informed decision as to whether or not the proffered work would be suitable. Even where a claimant is referred to work with a former employer, in which case the information given to the claimant need not be as detailed as when referring to a new employer (since it may be assumed that the claimant is familiar with the conditions of work), from the referral the claimant must be able to identify a particular job and its essential terms.

In the instant case, the employer suggested that some job might be available, for unspecified hours at an unspecified wage. The employer did not provide information which was sufficient to constitute a definite offer, nor, if this were to be treated as a referral, did the employer provide information sufficient for the claimant to identify a particular job and its essential terms, even if she had previously worked for the employer. Therefore, there was no refusal of work within the intent and meaning of section 603.

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.25**
DOCKET/DATE	***Glen Behling v. IDOL*, 525 N.E. 2d 1021 (1988)**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**Terms**
CROSS-REFERENCE	**None**

The claimant worked as a security guard for 3 years until his layoff. The same employer then mentioned that there were other employment positions available, at another site, part-time and on holidays. Specific terms were not mentioned. The claimant did not accept any other job and, subsequently, he was held ineligible, under Section 603, for refusing work.

At no time during the appeal hearing did the employer testify as to the type of work or job duties that the claimant would be required to perform, or what his rate of pay would be. The claimant testified that he was unsuccessful in ascertaining the specifics of the work offered.

HELD: If an offer of work does not identify a particular job and its essential terms, then it cannot be determined whether the work is suitable. If it cannot be determined whether work is suitable, there can be no disqualification under Section 603.

In this case, the information and details of work were so sketchy (almost nonexistent) that the claimant could not have been expected to accept the work as suitable. The decision holding him ineligible was set aside.

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.25**
DOCKET/DATE	**ABR-20-15496/11-4-20**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**Terms**
CROSS REFERENCE	**RW 210, General**

The claimant was employed as an in-home caregiver whose last day of work was March 13, 2020. At that time, she had one client assigned to her care. She notified the employer two days later that she would no longer provide services to her assigned client, or accept any other clients, due to the COVID-19 pandemic. The claimant had several physical ailments and the State was under the Governor's "shelter in place" order at the time. The employer requested that, as an essential employee exempt from the order, she return to work with her assigned client or accept assignments with other clients. The claimant refused to do so, and cited her concerns about the pandemic, her health and safety and that of the employer's clients as her reasons for not returning to work. The Referee conducted a hearing and set aside a local office determination that denied the claimant benefits under Section 603 of Act. The employer appealed to the Board.

HELD: Section 603 has three elements that must be met in order to constitute a disqualifying refusal to return to work. First, the employer's offer of work must be definite and genuine as to the terms and conditions of the job. Here, the Board found that the employer's request to the claimant that she return to work with her assigned client or accept other clients was sufficient enough to be deemed a genuine offer of work. Next, the offer of work must be suitable for the claimant, in light of the claimant's prior experience and training, among other factors. The Board noted that the claimant worked in this position for thirteen years, and concluded that it was suitable work for her.

The final element in determining disqualification for benefits under Section 603 is whether the claimant had good cause for refusing an offer of suitable work. Personal circumstances existing at the time the offer of work was made which preclude a claimant from accepting the offer may be sufficient to show good cause for refusing work that is otherwise suitable. In this case, the Board held that the claimant's underlying health conditions and the pandemic, neither of which she could control, presented a threat to her and the employer's clients' safety and welfare. She accordingly had good cause for refusing to return to work.

Time RW 330.3
No decision

Withdrawal RW 330.35
No decision

Offer of Work Previously Refused RW 335
General RW 335.05
No decision

Period of Disqualification RW 350
General RW 350.05
No decision

Aggravating Circumstances RW 350.1
No decision

Mitigating Circumstances RW 350.3
No decision

Personal Affairs RW 360
General RW 360.05
No decision

Personal Appearance RW 363
General RW 363.05
No decision

Prospect of Other Work RW 365
General RW 365.05

ISSUE/DIGEST CODE	**Refusal of Work/RW 365.05**
DOCKET/DATE	**ABR-86-1245**
AUTHORITY	**Sect. 603 of the Act**
TITLE	**Prospect of Other Work**
SUBTITLE	**Definite or Reasonable Prospects**
CROSS-REFERENCE	**None**

The claimant was referred to a prospective job opportunity by the State Job Service. She attended an interview for the position and was offered the job.

In the meantime, she had been seeking work independently, and was scheduled with a different employer for an interview, following which she was offered full-time work, to begin immediately, which would pay $2000 per year more than the work previously offered. The claimant then refused the earlier, lower paying offer.

HELD: In general, it may be said that a refusal of work is with good cause if the individual has definite prospects of immediate work or has reasonable prospects of securing more skilled or more remunerative work.

In the instant case, the claimant's refusal of the first offer was prompted by a definite prospect of immediate work paying greater remuneration. This constituted good cause for her refusal.

Time RW 450
General RW 450.05

ISSUE/DIGEST CODE	**Refusal of Work/RW 450.05**
DOCKET/DATE	**83-BRD-13915/11-28-83**
AUTHORITY	**Section-603**
TITLE	**Time**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was offered work during the opera season as a musician. He had been under contract for and had performed such work during the prior three seasons for the same employer. He refused the offer because of the seasonal nature of the work.

HELD: The claimant had a history of seasonal work with the employer, and the fact that the work was seasonal did not render the work unsuitable. He refused an offer of suitable work without good cause, and he is disqualified for benefits.

Days of Week RW 450.1
No decision

Hours RW 450.15
No decision

General 450.151
No decision

Irregular RW 450.152

No decision

Long or Short RW 450.153

ISSUE/DIGEST CODE	**Refusal of Work/RW 450.153**
DOCKET/DATE	**85-BRD-05039/7-8-85**
AUTHORITY	**Section 603 of the Act**
TITLE	**Time**
SUBTITLE	**Hours, Long or Short**
CROSS-REFERENCE	**None**

The claimant had been employed as a Home Health Care Worker, whose employer would assign her to work, as needed, with elderly clients who required transportation, cooking, cleaning, or general care. After refusing two full-time assignments, the claimant explained to her employer that she wished to work less than full-time, and limit her earnings to $39 per week, in order that she would remain eligible for unemployment benefits.

HELD: An individual has good cause for refusing an offer of work if her action in refusing is that of a reasonable person interested in securing employment, but precluded from doing so. If a claimant insists upon working shorter hours than those usually offered in the occupation, it is necessary to establish compelling reasons for this restriction. In this case, the claimant exhibited a disinclination to accept work which paid in excess of $39, so that she would not have to forego receipt of unemployment insurance benefits. Such a reason for refusing work was not compelling in nature and did not constitute good cause for refusing an offer of otherwise suitable work for the claimant.

Night RW 450.154

ISSUE/DIGEST CODE	**Refusal of Work/RW 450.154**
DOCKET/DATE	**84-BRD-1494/1-31-84**
AUTHORITY	**Section-603**
TITLE	**Time**
SUBTITLE	**Nights**
CROSS-REFERENCE	**General under Length of Unemployment**

After approximately two months of unemployment, the claimant was offered a job in her prior work unit and at the same wages. The claimant would have been required to work evenings until 9:00 p.m. on a rotating basis and Saturdays. The claimant refused the offer with the statement that she had never worked evenings during the five years she was employed with her employer. The claimant had no personal obligations which would require her presence at home in the evenings.

HELD: Refusal of work because the hours of proffered work would cause inconvenience or are not the hours preferred is without good cause. Although an unemployed individual may, during the early period of her unemployment, limit herself to conditions of work similar to those which she had previously enjoyed, the claimant had remained unemployed for approximately two months, and no good cause existed for refusing the work. The claimant is disqualified for benefits.

Prevailing Standards, Comparisons with RW 450.155

No decision

Statutory or Regulatory Standards, Comparison with RW 450.156

No decision

Irregular Employment RW 450.2

No decision

Overtime RW 450.35

No decision

Part-Time or Full-time RW 450.4

ISSUE/DIGEST CODE	**Refusal of Work/RW 450.4**
DOCKET/DATE	**ABR-84-4-EB/9-6-85**
AUTHORITY	**Section 603 of the Act**
TITLE	**Time**
SUBTITLE	**Part-Time or Full-Time (Contractual Obligation)**
CROSS-REFERENCE	**None**

The claimant, who had been a full-time worker, was seeking full-time work in computer programming or sales, when he was offered a part-time teaching position. The hours were to be 1 p.m. to 3:30 p.m., two days per week, and the work was to pay him $30 per week. The claimant refused the offer of work. He later testified that if he had accepted the offer of work he would have been contractually obligated to work 16 weeks, and this would have prevented him from accepting full-time work.

HELD: Where the acceptance of part-time work would prevent a full-time worker from seeking or obtaining full-time work, that individual will have good cause for refusing the offer of part-time work. In the instant case, the claimant's acceptance of part-time work would have precluded him from obtaining full-time work. Under those circumstances, he refused the offer of work with good cause.

Seasonal RW 450.45
No decision

Shift RW 450.5
No decision

Temporary RW 450.55
No decision

Union Relations RW 475
General RW 475.05
No decision

Agreement with Employer RW 475.1
No decision

Hours RW 475.25
No decision

Matter in Dispute Not Settled RW 475.4
No decision

Means of Offer in Violation of Union Rule RW 474.45
No decision

No Union Shop or Supervisor RW 475.55
No decision

Remuneration RW 475.65
No decision

Requirement to Join Company Union RW 475.7
No decision

Requirement to Join or Retain Membership in Bona Fide Labor Organization RW 475.75
No decision

Requirement to Resign from or Refrain from Joining Bona Fide Labor Organization RW 475.8
No decision

Restriction as to Type of Work RW 475.85
No decision

Vacant Due to Labor Dispute RW 480
General RW 480.05
No decision

Wages RW 500
General RW 500.05
No decision

Apprenticeship RW 500.15
No decision

Benefit Amount, Comparison with RW 500.2
No decision

Expenses Incident to Job RW 500.25
No decision

Former Rate, Comparison with RW 500.35
No decision

Living Wage RW 500.45
No decision

Low RW 500.5

ISSUE/DIGEST CODE	**Refusal of Work/RW 500.5**
DOCKET/DATE	**ABR-87-925/1-29-88**
AUTHORITY	**Section 603 of the Act**
TITLE	**Wages**
SUBTITLE	**Low**
CROSS-REFERENCE	**None**

The claimant worked until February, 1986, as a data processor, at a final wage of $7 per hour. Following his separation from that job, he worked for a temporary agency until the end of March, for $5.25 per hour. But he rejected similar work for that wage in April. Because he rejected work he was disqualified under Section 603.

The claimant testified that he had not been unemployed very long and he wished to see if he might obtain work similar in remuneration to that he earned prior to accepting the temporary March assignment. He also presented evidence to show that the median wage paid data processors was above the wage offered to him by the temporary agency. In May, he obtained a job as a computer operator, at a wage of $6 per hour.

HELD: During the early period of unemployment, an individual may limit himself to conditions of work similar to those he enjoyed in the recent past.

In this case, in view of the claimant's relatively brief period of unemployment, the higher wage he recently obtained, and the predominantly higher wage paid for similar work in the community, the work offered was unsuitable.
The claimant was allowed benefits without disqualification.

Minimum RW 500.6
No decision

Piece Rate, Commission Basis, or other Method of Computation RW 500.65
No decision

Prevailing Rate RW 500.7
No decision

Work, Nature of RW 510
General RW 510.05
No decision

Customary RW 510.1
No decision

Former Employer or Employment RW 510.2

ISSUE/DIGEST CODE	**Refusal of Work/RW 510.2**
DOCKET/DATE	**ABR-85-8146/5-12-86**
AUTHORITY	**Section 603 of the Act**
TITLE	**Work, Nature of**
SUBTITLE	**Former Employer**
CROSS-REFERENCE	**None**

While previously working 7 hours per day for this employer, as a Cleaning Service Supervisor earning $5 per hour, the claimant had been involved in an ongoing wage dispute. The employer had owed him 3 months of back pay and continually misrepresented that payment would be made promptly. Payment was eventually made. Then the claimant was laid off when the employer lost a contract.

One month later, the employer offered the claimant non-supervisory work, paying $4.50 per hour. The employer told the claimant that he would be scheduled to work 5 hours per day. Before accepting the job, the claimant inspected the job site, which was 20 miles further away, and spoke with the foreman there. He learned from the foreman that the job involved only 4 hours' work per day, not 5 as the employer had stated.

The claimant refused the offer of work, stating that the distance to work (travel expense) was too great when coupled with the reduced wage and reduced hours for non-supervisory work. Also, the claimant was apprehensive about the employer's representations concerning the work, since the employer had previously misled him about back pay and was currently misrepresenting the hours.

HELD: Good cause for refusal of work offered by a former employer is determined by the same principles and policies which govern any other refusal of work, except that a strained relationship between a former employer and its former employee is an important element to consider. Where that relationship is shown to be unduly strained, the refusal of work is with good cause.

In the instant case, it may or may not have been that the job itself - non-supervisory work, at reduced wages and hours, at greater travel expense - was unsuitable. But those factors, in conjunction with the claimant's reasonable, substantial apprehension about his former employer's representations, showed that the relationship between the parties was unduly strained and established good cause for the claimant's refusal.

ISSUE/DIGEST CODE	**Refusal of Work/RW 510.2**
DOCKET/DATE	***Lester v. IDES*,**
AUTHORITY	**Section 603 of the Act**
TITLE	**Nature of Work**
SUBTITLE	**Former Employer or Employment**
CROSS-REFERENCE	**RW 150.05, Distance to Work**

The claimant was employed as a diverting coordinator for the employer. The claimant’s work location was 1.3 miles from her home, and she worked 35 hours per week at an annual salary of $70,200 plus benefits. The claimant was laid off for lack of work on May 23, 2001. On July 18, 2001, the employer offered the claimant a position as a lead coordinator at an annual salary of $70,200 plus benefits and two guaranteed quarterly bonuses of $4,000 each. The lead coordinator position was at a work location 30 miles from the claimant’s home, and required 40 hours of work per week. The claimant refused the position, and filed a claim for unemployment insurance benefits.

The claimant argued at hearing that the offered salary was insufficient because the lead coordinator position required her to work at least 40 hours per week and to manage at least one person, and that the salary should have been adjusted because of her experience, the increased management responsibilities, and the increased distance from her home. The employer testified it valued the claimant's work and needed someone strong in the lead coordinator position, that one person would have worked under the claimant, that the only difference in duties between a diverting coordinator and a lead coordinator was that a lead coordinator served as the primary liaison between the employer's diverting supervisor and the partnership account, and that the salary offered to the claimant was generous since a typical lead coordinator earned a maximum salary of only $54,000.

The Board held that the claimant was ineligible for benefits under Section 603 of the Act because she had refused suitable work without good cause. Specifically, the claimant was offered a comparable salary and benefits, the distance of travel was not excessive, the area where the claimant would have worked was local and accessible by local highways, the travel time would have been less than one hour, and the added responsibility of liaison would not have been unduly burdensome as the claimant had experience in the field and was competent. The circuit court affirmed the Board.

HELD: Affirmed. The claimant was offered an annual salary of $70,200, benefits and guaranteed bonuses, which was more than a typical lead coordinator would receive. The additional travel time, working 40 instead of 35 hours per week, and the added liaison responsibility did not make the offered position unsuitable. The offered position did not require the claimant to perform tasks beyond her experience, skill and competency, and her rate of pay actually increased as she was offered the same salary and benefits as she had before plus two guaranteed quarterly bonuses. The Board's decision is not against the manifest weight of the evidence.

Inside or Outside RW 510.3
No decision

Light or Heavy RW 510.35
No decision

Preferred Employer or Employment RW 510.4

ISSUE/DIGEST CODE	**Refusal of Work/RW 510.4**
DOCKET/DATE	***Perkins v. Board of Review*, 485 N.E. 2d 575 (1985)**
AUTHORITY	**Section 603 of the Act**
TITLE	**Nature of Work**
SUBTITLE	**Preferred Employment**
CROSS-REFERENCE	**RW 195.05, Experience/Training; RW 210.05, Good Cause**

In 1979, the claimant began working as a speech therapist for the Waukegan school district. Her salary was $20,668. For the 1982-83 school year, she was appointed co-chair of the speech-language department, an annually appointed, administrative position that paid a $168 yearly stipend.

During that school year, the claimant divided her time between speech therapy and the administrative position. At the end of the school year, the school district notified the claimant that, for budgetary reasons, her speech therapist job was being eliminated for the 1983-84 year; further, there would be only one chair of the speech-language department; the claimant was not reappointed.

Then a speech therapist position became available. It was offered to the claimant. Her salary would be in excess of $22,000. She refused the job, explaining that she was now over-qualified for this work. Only higher level administrative work would be suitable. To accept anything less, where there was no prospect of advancement, would have a negative impact upon future job prospects.

HELD: If an individual acquires additional skills and experience over a period of time, a position held in earlier years may well cease to be suitable (e.g., if it would result in an erosion of skills, not pay the deserved wage, etc.).

However, merely working in another capacity and speculating about future job prospects does not automatically render previous work unsuitable. A preference, without more, does not establish good cause for refusing work.

In this case, the job offered fell squarely within the field of the claimant's professional training. She would be earning at maximum capacity. There would be no loss of skills.

Her appointment to an administrative position had been temporary. It expired at year's end anyway and there was no reasonable claim to even a second year of administrative work. It would have been her preference, nothing more.

The claimant refused suitable work without good cause.

Veterans' Reemployment RW 510.5
No decision

Working Conditions RW 515
No decision

General RW 515.05
No decision

Advancement, Opportunity for RW 515.1
No decision

Environment RW 515.35

ISSUE/DIGEST CODE	**Refusal of Work/RW 515.35**
DOCKET/DATE	**ABR91882/8-1-89**
AUTHORITY	**Section 603 of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Environment (Cigarette Smoke and No Ventilation)**
CROSS-REFERENCE	**RW 210.05, Good Cause; RW 235.45, Health**

The claimant, an office clerk, had previously worked for the employer. The employer offered to rehire her, but the claimant refused, because co-workers smoked. The smoke would drift into her work area and there were no windows or any other type of ventilation. She did not want to be subjected to this second-hand smoke because of the possible danger to her health.

HELD: Where there is some medical evidence that working conditions pose a risk to a claimant's health, the claimant has good cause for refusing the offer of work.

There is some medical evidence that second-hand smoke in an enclosed environment poses a health risk.

Here, the claimant's refusal of work was with good cause.

Fellow Employee RW 515.4
Method or Quality of Workmanship RW 515.45
Morals RW 515.5

ISSUE/DIGEST CODE	**Refusal of Work/RW 515.5**
DOCKET/DATE	***Frazee v. IDES*, 109 S. Ct. 1514 (1989)**
AUTHORITY	**Section 603 of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Morals**
CROSS-REFERENCE	**RW 90.05, Conscientious Objection, Religion**

The claimant refused a job because it would have required him to work on Sunday. He stated that he refused because, as a Christian, although not a member of any particular sect, he felt it was wrong to work on Sunday.

He was denied unemployment benefits. He appealed, citing the First Amendment's Free Exercise Clause.

The appellate court held that, for a Free Exercise Clause claim to succeed, a claimant must sincerely believe in a tenet or dogma of, and belong to, an established religious sect. The court pointed out that assorted Christian denominations did not abstain from Sunday work and that the claimant did not belong to a particular sect that did abstain; therefore, he had been correctly denied benefits.

The claimant then appealed to the United States Supreme Court.

HELD: The denial of unemployment benefits, because an individual chooses fidelity to sincerely held religious beliefs over employment, violates the First Amendment's Free Exercise Clause. The protection afforded by the Free Exercise Clause is not limited to responses to formal commands of particular religious organizations. Protection extends to an individual, even if he does not belong to such an organization, so long as his belief is both religious and sincere.

In this case, the claimant's refusal to work on Sunday was based upon his sincerely held religious belief.

He was entitled to First Amendment protection. The denial of unemployment benefits violated the Free Exercise Clause.

Prevailing; or Consistent with Labor Standards RW 515.55
No decision

Production Requirements or Quality of Duties RW 515.6
No decision

Safety RW 515.65
No decision

Sanitation RW 515.7
No decision

Seniority RW 515.75
No decision

Supervisor RW 515.8
No decision

Temperature or Ventilation RW 515.85
No decision

Weather or Climate RW 515.95
No decisio

TOTAL AND PARTIAL UNEMPLOYMENT

Total and Partial Unemployment TPU 5
General TPU 5
No decision

Amount of Compensation TPU 20
General TPU 20.05
No decision

More or Less than Benefit Amount TPU 20.1
No decision

Apprenticeship or Preparatory Services TPU 30
General TPU 30.05
No decision

Attendance at School or Training Course TPU 40
General TPU 40.05
No decision

Compensation Not Payable or No Work Done TPU 80
General TPU 80.05
No decision

Alternate or Staggered Work Periods TPU 80.1
No decision

Leave of Absence or Vacation TPU 80.15
No decision

Shutdown TPU 80.2
No decision

Contract Obligation TPU 105
General TPU 105.05
No decision

Corporate or Union Officer TPU 110
General TPU 110
No decision

Evidence TPU 190
General TPU 190.05
No decision

Burden of Proof and Presumptions TPU 190.1
No decision

Weight and Sufficiency TPU 190.15
No decision

Military Service TPU 305
General TPU 305.05
No decision

Odd-Job or Subsidiary Work TPU 325
General TPU 325.05
No decision

Public Service TPU 370
General TPU 370.05
No decision

Relief Work or Public Assistance TPU 395
General TPU 395.05
No decision

Self-Employment or Other Work TPU 415
General TPU 415.05
No decision

Agriculture TPU 415.1
No decision

Commercial Enterprise TPU 415.15
No decision

Family Enterprise TPU 415.2
No decision

Professional TPU 415.25
No decision

Salesman TPU 415.3
No decision

Time of Services TPU 455
General TPU 455.05
No decision

Full-Time or Part-Time TPU 455.1

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 455.1**
DOCKET/DATE	**ABR-94-11982/2-24-95**
AUTHORITY	**Section 239 of the Act**
TITLE	**Full-Time or Part-Time**
SUBTITLE	**Section 239 Distinguished from Exemptions**
CROSS-REFERENCE	**None**

During the period under review, the claimant worked full-time as an insurance agent. He filed a claim for unemployment benefits because his earnings were low. He argued that he was entitled to benefits because he was unemployed; that is, he was unemployed because his services were exempt from the definition of "employment" under Section 228, which provides that the term "employment" shall not include services performed by an individual as an insurance agent ...

HELD: Section 228 is not in any way applicable in ascertaining whether or not an individual is unemployed. An exemption from "employment" is applicable only in ascertaining whether a claimant has base period wages for insured work to establish monetary eligibility. The term "unemployed" is defined in Section 239, which provides that an individual is unemployed only if no wages are payable to him and he performs no services, or, if he works less than full time and earns less than his weekly benefit amount. The claimant did not meet these criteria. He was not unemployed. He was ineligible for benefits.

Intermittent Work TPU 455.15
No decision

Union Relations TPU 460
General TPU 460.05
No decision

Board and Lodging TPU 460.1
No decision

Bonus TPU 460.15
No decision

Commission TPU 460.2
No decision

Credit TPU 460.25
No decision

Damages or Other Awards TPU 460.3
No decision

Dismissal or Separation Pay TPU 460.35

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.35**
DOCKET/DATE	***Kroger Co. v. Blumenthal*, 148 N.E. 2d 734 (1958)**
AUTHORITY	**Sections 239 and 402 of the Act**
TITLE	**Type of Compensation**
SUBTITLE	**Dismissal or Separation Pay**
CROSS-REFERENCE	**TPU 460.6, Past or Future Services**

After the claimant separated from employment, his employer paid him separation pay equal to what his wages would have been for 36 weeks.

The separation pay was fixed, without respect to the probable or actual duration of his unemployment. It would not have been diminished if he found a job the next day. There was no condition upon which the amount of pay would have been "earned" or increased. In short, there were no conditions attached.

The question presented was whether the separation pay constituted wages affecting the claimant's eligibility for benefits or the amount of benefits to be paid.

HELD: Only "unemployed" individuals are eligible for benefits. Section 239 of the Act provides, in pertinent part, that an individual is unemployed in any week with respect to which no "wages" are payable to him or in which wages are less than his weekly benefit amount. Section 402 provides that wages are to be deducted from an individual's weekly benefit amount.

If separation pay constitutes wages with respect to a week, an individual is not unemployed and is ineligible for benefits for that week, or, if he is still unemployed (because the wages are less than his weekly benefit amount), the wages shall be deducted from his weekly benefit amount.

In many instances, separation pay is an accommodation for a worker's past services. It is made without conditions and irrespective of future conduct. Because such separation pay is made only with respect to weeks prior to the worker's separation from employment - weeks for which wages were already payable and not with respect to weeks for which he is filing for benefits, it cannot constitute wages.

In the instant case, because the amount the claimant was to receive was fixed without conditions and irrespective of his actions during the weeks he would claim benefits, it did not constitute wages. The claimant was "unemployed" within the meaning of Section 239 of the Act and there was nothing to deduct under Section 402.

Drawing Account TPU 460.4
No decision

Expenses TPU 460.45
No decision

Gratuity TPU 460.5
No decision

Pension or Retirement Pay TPU 460.55

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.55**
DOCKET/DATE	**83-BRD-13610/11-22-83**
AUTHORITY	**Section 611(A)(1)**
TITLE	**Type of Compensation**
SUBTITLE	**Pension Or Retirement Pay**
CROSS-REFERENCE	**None**

The claimant was laid off after thirty-one years of employment, and she subsequently elected to take a pension funded solely by employer contributions.

HELD: The entire amount of retirement pay received by the claimant constitutes disqualifying income deductible from benefits to which the claimant might otherwise be entitled, because the pension was entirely employer funded.

Remuneration for Past or Future Services TPU 460.6

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.6**
DOCKET/DATE	**84-BRD-1/1-5-84**
AUTHORITY	**Section 500C and Section 239**
TITLE	**Type of Compensation**
SUBTITLE	**Remuneration For Past Or Future Services**
CROSS-REFERENCE	**None**

When the claimant's job was eliminated, he resigned pursuant to an agreement whereby for a period of six months he was to receive weekly payments in the same amount as his prior wages. The claimant was under no obligation to render further services to the employer following the submission of his resignation. Two days after his resignation, the claimant filed an initial claim for benefits alleging that he was an unemployed individual.

HELD: Section 500C of the Act requires, as a condition of eligibility, that the claimant be an "unemployed individual" during the weeks for which he filed his claim for benefits. Section 239 in conjunction with Section 500C governs eligibility and provides that an individual shall be deemed to be unemployed in any week with respect to which no wages are payable to him and during which he performed no services, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. In determining whether payments received by a worker after his separation constitute wages, it is necessary to determine whether such payments can be properly allocated to services rendered the employer after the claimant's separation from work.

In this case, the claimant did not perform any services for his employer after his separation from work, nor was he obligated to do so. The payments received by the claimant were based totally on his past performance of services for the employer.

The payments received by the claimant after his separation from work did not constitute wages within the meaning of the Act such as to preclude the claimant from being determined an unemployed individual. At such, the payments are not deductible from benefits the claimant may be otherwise eligible to receive.

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.6**
DOCKET/DATE	***Kroger Co. v. Blumenthal*, 148 N.E. 2d 734 (1958)**
AUTHORITY	**Sections 239 and 402 of the Act**
TITLE	**Type Of Compensation**
SUBTITLE	**Past or Future Services**
CROSS-REFERENCE	**TPU 460.35, Dismissal or Separation Pay**

After the claimant separated from employment, his employer paid him separation pay equal to what his wages would have been for 36 weeks.

The separation pay was fixed, without respect to the probable or actual duration of his unemployment. It would not have been diminished if he found a job the next day. There was no condition upon which the amount of pay would have been "earned" or increased. In short, there were no conditions attached.
The question presented was whether the separation pay constituted wages affecting the claimant's eligibility for benefits or the amount of benefits to be paid.

HELD: Only "unemployed" individuals are eligible for benefits. Section 239 of the Act provides, in pertinent part, that an individual is unemployed in any week with respect to which no "wages" are payable to him or in which wages are less than his weekly benefit amount. Section 402 provides that wages are to be deducted from an individual's weekly benefit amount.

If separation pay constitutes wages with respect to a week, an individual is not unemployed and is ineligible for benefits for that week, or, if he is still unemployed (because the wages are less than his weekly benefit amount), the wages shall be deducted from his weekly benefit amount.

In many instances, separation pay is an accommodation for a worker's past services. It is made without conditions and irrespective of future conduct. Because such separation pay is made only with respect to weeks prior to the worker's separation from employment - weeks for which wages were already payable and not with respect to weeks for which he is filing for benefits, it cannot constitute wages.

In the instant case, because the amount the claimant was to receive was fixed without conditions and irrespective of his actions during the weeks he would claim benefits, it did not constitute wages. The claimant was "unemployed" within the meaning of Section 239 of the Act and there was nothing to deduct under Section 402.

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.6**
DOCKET/DATE	***Lee v. IDES* (4-97-0132 -- Unpublished)**
AUTHORITY	**Section 239 of the Act**
TITLE	**Type of Compensation**
SUBTITLE	**Past or Future Services**
CROSS REFERENCE	**None**

The employer's plant closed. Because of the claimant's length of service, he was eligible to receive pay for one year after the plant closed, provided he report daily to a career transition center, through which he might perform community service. The claimant reported to the center and was paid for doing so, although he performed no community service. In the meantime, he filed a claim for unemployment benefits.

HELD: In some instances, separation pay is simply an accommodation for a worker's past services, made without conditions and irrespective of future conduct, and is not payable with respect to weeks for which the claimant is filing for benefits; in those instances, the separation pay does not constitute wages and the receipt of unemployment benefits is unaffected. (*See, Kroger v. Blumenthal*, 148 N.E. 2d 734 (1958); in this Digest, at TPU 460.6). However, in the present case, although threshold eligibility for salary continuation depended upon past factors, the pay offered during the weeks being claimed was conditioned upon conduct during those weeks (whether the conduct proved productive or not). The payments were payable to those weeks and constituted wages. The claimant was not unemployed under Section 239.

Supplemental Unemployment Benefits TPU 460.62
No decision

Union Payment or Benefit TPU 460.65

No decision

Use of Property TPU 460.7
No decision

Vacation or Holiday Pay TPU 460.75
No decision