13.00

REFUSAL OF WORK

Sections 29(1)(c)(d)(e), 29(6)

Sections 29(1)(d), 29(6)

REFUSAL OF WORK, Failure to report for interview, Good cause, Loss of recall rights, Seniority, Suitable work

CITE AS: Keith v Chrysler Corp, 390 Mich 458 (1973).

Appeal pending: No

Claimant: John Keith
Employer: Chrysler Corporation
Docket No: B69 4276 38096

SUPREME COURT HOLDING: A one-year employee's dislike for assembly work, and his desire to keep his status at another plant, are not good cause for failing to interview for work which meets the requirements of suitability in a general manner.

FACTS: Mr. Keith was a washer-degreaser at the Detroit Tank Plant, with one year of seniority, when he was laid off. He was told verbally and by telegram to report for an interview at the Hamtramck Assembly Plant, but he failed to appear. "The basis of his inaction was dislike for assembly work and his desire not to lose his status at the Tank Plant."

DECISION: The decision in 41 Mich App 708 (1972) is affirmed by an evenly divided court. "We cannot find that in the case of a worker with slightly more than one year's seniority such dislikes and desires establish good cause for failure to merely attend an interview.

RATIONALE: "The establishment of suitable work under (Section) 29(1)(d) ... does not demand the specificity and in depth inquiry of (Section) 29(1)(e). When a claimant refuses to attend an interview, and bases this refusal on the unsuitability of the work that would probably be offered to him, the employer need only demonstrate that the probable employment meets in a general manner the requirements of (Section) 29(6). Cf. Michigan Tool Co. v Employment Security Commission, 346 Mich 673, 679-680; 78 NW2d 571 (1956)."

13.02

Sections 29(1)(d), 29(6)

REFUSAL OF WORK, Offer of former job, Personal reason, Recall after resignation, Successive disqualification, Suitable work,

CITE AS: Dueweke v Morang Drive Greenhouses 411 Mich 670 (1981)

Appeal pending: No

Claimant: Eric R. Dueweke
Employer: Morang Drive Greenhouses
Docket No: B75 17239 51074

SUPREME COURT HOLDING: The Board must pass on the suitability of the former work offered, and also (and separately) weigh the reasonableness of a claimant's refusal of it.

DECISION: Reversed and remanded to the Michigan Employment Security Board of Review for reconsideration.

FACTS: The claimant was disqualified in May, 1975 for voluntarily leaving his work as a retail supervisor. He was also disqualified again in October, 1975 for refusing, for personal reasons, to return to his former position.

RATIONALE: The Supreme Court declined to hold that former work can never be suitable since that work would probably meet the statutory criteria for suitable work. "However, the reasons for refusing to return to the work, including the fact that claimant previously quit the job offered, go to the question of good cause for refusing the offer." The Court cited Sec. 29(6) factors on suitability before the 1980 amendment: "[T]he Commission shall consider the degrees of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence." MCL 421.29(6); MSA 17.531(6).

Evidence should be considered regarding allegations by Claimant that overtime payment procedures violate the Federal Fair Labor Standards Act, 29 USC 207(a)(1), and the Michigan Minimum Wage Law of 1964, as amended, MCL 408.384; MSA 17.255(4a). The Court found implicit in the statute that an offer of work involving illegal working conditions would render the work unsuitable. Personal reasons may constitute good cause under 29(1)(e) of the MESA.

Section 29(b)

REFUSAL OF WORK, Distance to work, Recall rights, Suitable work

CITE AS: Gilliam v Chrysler Corp, 72 Mich App 538 (1976).

Appeal pending: No

Claimant: James Gilliam, et al
Employer: Chrysler Corporation
Docket No: B71 5700 41051

COURT OF APPEALS HOLDING: In determining the suitability of offered work, the loss of recall rights to local work must be considered. Further, a job is not automatically suitable because the distance is less than 45 miles.

FACTS: The claimants lived in Monroe and Newport, and worked in Trenton. One commuted 15 miles each way and the other drove 21 miles. Both were laid off and subsequently notified of work at other plants. The Monroe resident lived 44 miles from the Hamtramck plant at which he was offered work. The Newport resident was called by a Detroit plant, 42 miles from his home. Both claimants refused the offered work, citing the distance. If the claimants had accepted the offered work they would have lost their recall rights at the Trenton facility.

DECISION: The claimants are not disqualified for refusal of work.

RATIONALE: "In determining whether distance makes a job offer unsuitable the commission, referee and appeal board should consider where relevant, the age and health of the individual employee, the hours during which travel will be required, the time involved in traveling, traffic conditions and availability and reliability of a means of transportation, as well as any other facts which may relate to the distance factor and its bearing upon the suitability of the employment."

"Offered employment which is otherwise suitable may be unsuitable if it jeopardizes good prospects for recall to local work in an individual's customary occupation."

Section 29(1)(d)

REFUSAL OF WORK, Current address, Failure to report for interview, Good cause, Non-receipt of telegram, Notice of interview

CITE AS: Chrysler Corp v Devine, 92 Mich App 555 (1979).

Appeal pending: No

Claimant: Kevin Devine
Employer: Chrysler Corporation
Docket No: B74 11199 47179

COURT OF APPEALS HOLDING: A former employee is not disqualified for failure to report for an interview unless the claimant had actual notice of the interview request.

FACTS: The claimant was laid off from the employer's Warren Tank Plant. Five months later, the employer sent him a telegram asking him to report for an interview at the Warren Truck Assembly Plant. The claimant did not receive the telegram, because his mother forgot to give him the notice of attempted delivery, and he no longer lived with his parents.

DECISION: The claimant is not disqualified for failure to report for an interview.

RATIONALE: The employer argued that since Devine had given the employer his mother's address, "she became his agent and that her receipt of notice should be imputed to him." The Court found the general principles of agency inapplicable and further held:

"The undisputed facts show that claimant was at all times ready and willing to attend a job interview upon receiving notice of such an appointment, and to return to work whenever it became available.

"Given the good faith of the claimant in this matter, actual non-receipt of the notice constituted good cause for his non attendance."

13.05

Section 29(6)

REFUSAL OF WORK, Offer of former position as a long term substitute, Substitute teacher, Suitable work

CITE AS: Zielinski v Bay City Public Schools & MESC No. 58867 (Mich App October 12, 1982).

Appeal pending: No

Claimant: Karen Zielinski
Employer: Bay City Public Schools
Docket No: B79 00344 66220

COURT OF APPEALS HOLDING: Work which is unsuitable at the beginning of unemployment may become suitable when consideration is given to the length of unemployment and the prospects of securing accustomed work.

FACTS: Claimant, a full time first and second grade teacher for three years, was laid off. After approximately eight months of unemployment, Claimant was hired as a long term substitute teacher at a salary of $42 per day. She was laid off at the end of the school year. In November, Claimant was again offered a position as a long term substitute teacher for a duration of six weeks. Claimant refused the work because she had no prior experience teaching physical education classes to sixth graders. Claimant was elementary certified to teach all subjects in grades one through six.

DECISION: Claimant is disqualified for refusal of work.

RATIONALE: The Court considered all the relevant statutory criteria in Sec. 29(6) of the Act in accordance with Dueweke v Morang Drive Greenhouses, Inc., 411 Mich 670, 678; 31 NW2d 712 (1981). "An offer of employment need not be identical to claimant's prior employment, and her apparent inexperience in teaching higher grade levels does not render the offered work unsuitable."

The Court cites Grace v Maine Employment Security Comm., 398 A2d 1233 (1979) to support the disqualification where a claimant is unable to secure a full time teaching position after more than two months of unemployment, and is unaware of any prospects for such employment.

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Sections 29(1)(e), 29(6)

REFUSAL OF WORK, Fear of crime, Geographical area, Offer of former job, Personal reason, Recall after resignation, Successive disqualification, Suitable work

CITE AS: Allied Building Service v ESC, 93 Mich App 500 (1979).

Appeal pending: No

Claimant: Stanley Stachow, Jr.
Employer: Allied Building Service Co.
Docket No: B76 914 50792

COURT OF APPEALS HOLDING: Where fear of the neighborhood is not sufficient cause for voluntary leaving, refusal of reemployment is disqualifying, especially if more security is offered.

FACTS: The claimant worked alone in an office at Woodward Avenue and Sproat Street in Detroit. After being threatened twice and robbed twice, he quit and was disqualified for voluntary leaving. Five days after leaving, the claimant was asked to return, with the addition of inside parking and escort service. He refused the offer.

DECISION: The claimant is disqualified for refusal of work.

RATIONALE: "Good cause to refuse work cannot be based upon purely personal reasons since the underlying policy of the Employment Security Act is to provide benefits for persons unemployed through no fault of their own, Losada v Chrysler Corp, 24 Mich App 656; 180 NW2d 844 (1970), LV DEN, 383 Mich 827 (1970).

"The Referee found that the claimant was aware of plaintiff's offer to provide security protection for his car and himself. Yet, claimant still refused to work for fear of the neighborhood. This fear was found to be insufficient cause for his quitting the job in the first place and does not constitute good cause for refusing the offer of reemployment, especially in light of the employer's offer to provide more security."

Section 29(1)(e)

REFUSAL OF WORK, Food handler's permit, Condition of employment, Tuberculin test, Recall from medical leave

CITE AS: King v K-Mart Corp, No. 50121 (Mich App April 15, 1981).

Appeal pending: No

Claimant: Rosemary King
Employer: K-Mart Corp
Docket No: B77 3814 55040

COURT OF APPEALS HOLDING: Where a recovered employee refuses to return from medical leave, and fails to obtain a required tuberculin test and food handler's permit, the claimant is disqualified for refusal of work.

FACTS: The claimant took a medical leave of absence because her hands had broken out in a rash. She was later released to return to work, but she refused, saying she lacked the required tuberculin test and food handler's permit.

DECISION: The claimant is disqualified for refusal of work.

RATIONALE: "[A]n employer's request of a claimant that he return to his former position is treated as an offer of suitable employment under (S) 29(1)(e). Allied Building Service Co. v MESC, 93 Mich App 500 (1979)." "Plaintiff's reason for leaving the position no longer existed, and the additional reasons advanced for her failure to return (lack of a required T.B. test and food handler's permit) appear to be excuses rather than reasons, since plaintiff could have obtained the test and permit if she had desired and since it was apparent from the circumstances that sanctions would not be imposed if she had returned to work."

13.08

Section 29(1)(e), 29(6)

REFUSAL OF WORK, Good cause, Length of unemployment, Recall rights, Physical fitness, Seniority, Suitable work

CITE AS: Lyscas v Chrysler Corp, 76 Mich App 55 (1977).

Appeal pending: No

Claimant: Henry B. Lyscas
Employer: Chrysler Corporation
Docket No: B74 6163 46125

COURT OF APPEALS HOLDING: Short unemployment, physical limitation and the desire to retain several years seniority in specialized work may constitute good cause for refusal of assembly work where the employer has not proven that the offered work is suitable for the claimant.

FACTS: The claimant was a grinder operator at a Dearborn plant, with several years experience, when he was laid off. Thirteen (13) days later the employer offered him assembly work at a Hamtramck facility. The claimant refused, citing his small stature and his desire to retain his seniority at the Dearborn location. The Referee found the claimant to be less than 5 feet tall and under 120 pounds.

DECISION: The claimant is not disqualified for refusal of work.

RATIONALE: "Acceptance of the offered employment would have required the claimant to lose the benefits of his prior training and experience. Certainly a temporary requirement that he do this should be weighed differently than a permanent one in determining the suitability of the offered employment. And a permanent loss of the benefit of one's prior training and experience would affect suitability differently if the period of unemployment had been lengthy and the prospects for recall were slight than it would if the period of unemployment had been brief and the prospects for recall were good. Loss of recall rights was, therefore a fact which in this case had a bearing on some of the [Section] 29(6) factors and should have been considered by the appeal board.

The Court cited Gilliam v Chrysler Corp, 72 Mich App 538 (1976), as authority.

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NA

Sections 29(1)(e), 29(6)

REFUSAL OF WORK, Good cause, Lack of transportation, Suitable work

CITE AS: Nelson v Beverly Manor, No. 78-296 AE, Genesee Circuit Court (January 10, 1979).

Appeal pending: No

Claimant: Denise A. Nelson
Employer: Beverly Manor
Docket No: B76 12761 54305

CIRCUIT COURT HOLDING: Lack of transportation must be considered in determining both the suitability and good cause elements of refusal of work.

FACTS: The claimant was a nurse's aide on the second shift. She rode to work with a co-worker. Following a medical leave of absence, the claimant was told to report for work on the first shift. Her previous position had been filled. The claimant refused the first-shift offer because she had no transportation for that shift.

DECISION: The claimant is not disqualified for refusal of work.

RATIONALE: The Court held that the decision of the Board of Review, " ... is contrary to law insofar as it totally excludes appellant's lack of available transportation from all consideration in determining both the suitability and good cause elements under Section 29(1)(e) of the Michigan Employment Security Act, Gilliam v Chrysler Corp., 76 Mich App 55 (1977), and for the reason that the same is not supported by competent, material, and substantial evidence on the whole record inasmuch as there is no evidence in the record relative to the full statutory criteria for determining the suitability of offered work under the Michigan Employment Security Act. Chrysler v Losada, 376 Mich 209 (1965); Lasher v Mueller Brass, 62 Mich App 171 (1975); Lyscas, supra."

Section 29(1)(e), 29(6)

REFUSAL OF WORK, Suitability, Wage differential

CITE AS: Youmans v Chelsea Community Hospital, No. 97579 (Mich App November 17, 1987).

Appeal pending: No

Claimant: Kathy Youmans
Employer: Chelsea Community Hospital
Docket No: B83 15104 93297

COURT OF APPEALS HOLDING: The offered work was not suitable under Section 29(6) because of the wage rate and travel distance, but even if it were suitable, claimant had good cause to refuse the offer because of the increase in her transportation and child care costs.

FACTS: Claimant worked for 2 years as a Child Development Services Coordinator for employer. Previously, she had been a teacher. Claimant's job was eliminated. Employer offered her a teaching position on a full-time basis at $5.50/hr. She had been earning $6.92/hr. and worked only 24 hours a week. Claimant refused because of the hourly wage reduction and because of extra travel and child care costs associated with full time work.

DECISION: Claimant is not disqualified for benefits pursuant to Section 29(1)(e) of the Act.

RATIONALE: "Clearly, however, the decisive factor at all levels below has been the wage differential between plaintiff's part-time coordinator job and the offered full-time teaching position. Plaintiff's prior earnings were $6.92 per hour, 24 hours per week, or $166.08 per week. The offered job paid $5.50 per hour, 40 hours per week, or $220.00 per week. The referee focused on the hourly pay differential of $1.42 per hour. The Board of Review, on the other hand, did not consider the hourly wages involved, but instead looked at weekly pay, a $54 increase. We believe that the Board of Review erred as a matter of law in looking exclusively at weekly pay without taking into account the number of working hours needed to generate the pay. Plaintiff's "prior earnings" were $166 for 24 hours' work. This compares with a $54 per week increase provided plaintiff worked 16 additional hours. We do not think that a job offering in excess of 20 percent less pay for a comparable number of hours of work can as a matter of law, be deemed 'suitable', even with enhanced benefits of specified value."

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Section 29(1)(e)

REFUSAL OF WORK, Burden of proof, Suitable work, Unrefuted testimony, Unsworn written statement

CITE AS: Wilkins v Ice Cream Parlor, No. 8-250, St. Clair Circuit Court (April 19, 1978).

Appeal pending: No

Claimant: Ilene Wilkins
Employer: Ice Cream Parlor
Docket No: B75 10698 49416

CIRCUIT COURT HOLDING: The employer has the burden of proving a refusal of suitable work; an unsworn written statement will not meet this burden where the claimant testifies that the work is not suitable, and offers the testimony of a witness.

FACTS: The claimant was laid off after working on the first shift for some time. The employer later offered her a position on the second shift. The claimant declined. "Her testimony was that she refused this work because she was unable to perform it due to her health and that there was a difference in duties between the first shift and the second shift at the employer's Ice Cream Parlor." The only evidence from the employer was an unsworn written statement.

DECISION: The claimant is not disqualified for refusal of work.

RATIONALE: "The record reflects that no testimony was entered before the referee in behalf of defendant and that further testimony which was offered in behalf of plaintiff was not accepted based on witness's possible bias.

"It is the opinion of this Court that this case falls within the guidelines of Court of Appeals case Dann v Employment Security Commission, 38 Mich App 608 (1972)."

"Since in the instant case, defendant offered no testimony of any nature at the hearing and in fact did not even appear at the hearing, this Court fails to understand how he could meet the burden of proof as established by the Court of Appeals."

Sections 29(1)(e), 29(6)

REFUSAL OF WORK, Distance to work, Offer of former job, Recall after resignation, Suitable work

CITE AS: Korhonen v Brown and Winckler, No. 23110, Ingham Circuit Court (December 20, 1979).

Appeal pending: No

Claimant: Joan I. Korhonen
Employer: Brown and Winckler
Docket No: B76 21570 RO 60787

CIRCUIT COURT HOLDING: Where an individual leaves nearby work and moves 75 miles away for personal reasons, the separation is disqualifying but a refusal to return to the former employment is not disqualifying.

FACTS: The claimant worked as a legal secretary. She was disqualified for voluntarily leaving a Lansing position in order to move from Lansing to Northville. The claimant requalified, but refused an offer of recall to the Lansing job, because the distance from her home was 75 miles.

DECISION: The claimant is not disqualified for refusal of work.

RATIONALE: "The appellants assert that she had a job here in Lansing which was open, available to her which she could come to and earn a wage. That, therefore, she was not seeking work pursuant to the statute because she did not accept the employment with them.

"The Court finds, contrary to the assertion of the appellants, however, that she need not be available for work in Lansing because of the distance which exists between Northville, Michigan and Lansing, Michigan."

"The Commission correctly found, the Referee correctly found, and the Board of Review correctly found that the work offered to the claimant by the appellant was unsuitable because of the distance involved which she would have to travel to in order to enjoy that work."

Sections 29(1)(e), 29(6)

REFUSAL OF WORK, Burden of proof, Good cause for refusing employment with former employer, Suitability factors

CITE AS: Munising Memorial Hospital v Mary J. Ward No. 83-1415 AE, Alger Circuit Court (April 2, 1984).

Appeal pending: No

Claimant: Mary J. Ward
Employer: Munising Memorial Hospital
Docket No: B83 10109 91302W

CIRCUIT COURT HOLDING: Where Claimant, who had been the Director of Nursing, was discharged and refused reemployment as a Supervisor with the same employer, and the position meets the statutory suitability factors, Claimant is disqualified, unless a valid reason exists for rejecting the work.

FACTS: Claimant was discharged as Director of Nursing because she had so many job related responsibilities that she became ineffective as the Director. Claimant was offered three other positions, one of which was Supervisor of OR, ER and Central Supply. There would have been no reduction of pay or fringe benefits, but the position did not have the authority, control, or status of the former job. Claimant refused the work.

DECISION: Claimant is disqualified for refusal of work.

RATIONALE: The issues are (1) whether the claimant was offered suitable work; and (2) if she was offered suitable employment, whether it was refused with good cause. Citing Dueweke v Morang Greenhouses, 411 Mich 670 (1981), the Court found that the offer of work did not involve risk to Claimant's health, safety, morals, and physical fitness; nor did it compromise prior training, experience, prior earnings, length of unemployment, prospects for securing local work in the customary occupation or distance to work from residence, MCL 421.29(6); MSA 17.531(6). As for good cause, the Court found that the claimant's reason for rejecting the proffered employment was totally personal and not attributable to the employer. A personal reason may constitute good cause for rejecting offered employment, but only when it "would be determined by reasonable men and women valid and not indicative of an unwillingness to work."

Section 29(1)(e), 29(6)

REFUSAL OF WORK, Refusal to cross picket line, Fine imposed by union, Interim employment, Labor dispute, Recall during strike, Suitable work, Termination of disqualification

CITE AS: Anderson v Top O'Michigan Rural Electric, 118 Mich App 275 (1982).

Appeal pending: No

Claimant: Noah E. Anderson, et al
Employer: Top O'Michigan Rural Electric
Docket No: B79 12197 RO1 70219

COURT OF APPEAL HOLDING ... Refusal to accept an offer of work from an employer who is involved in a labor dispute will not work a Section 29(1)(e) disqualification.

FACTS: The claimants were each employed as line trade employees or as field technician employees. A third bargaining unit made up of office workers was also a member of the union. The office workers went on strike. Claimants refused to cross the office workers' picket line.

When the claimants initially applied for benefits under the Michigan Employment Security Act they were found to be disqualified under Section 29(8)(iv) because they were involved in a labor dispute in progress.

Claimants thereafter obtained employment with employers other than Top O'Michigan. When claimants were laid off from those jobs they applied for benefits. At that time the MESC determined that under Section 29(8) the prior disqualification had been terminated.

Top O'Michigan wrote to claimants stating that their jobs were available to them. Claimants refused that offer of work. The labor dispute was still in progress.

DECISION: The work offered was not suitable work under Section 29(7) and the disqualification of Section 29(1)(e) of the MES Act does not apply.

RATIONALE: To read the Act as the employer has done would render wholly ineffective the provision contained in Section 29(8) for terminating a labor dispute disqualification.

The Court used the language of Great Lakes Steel Corp. v Employment Security Commission, 6 Mich App 656 at 662; 150 NW2d 547 (1967) that striking workers who are laid off after obtaining interim employment are entitled to receive unemployment benefits.

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Section 29(1)(e)

REFUSAL OF WORK, Attachment to labor market, Restrictions on availability, Substantial field of employment, Burden of proof

CITE AS: Pritchett (PCHA Outer Drive Hospital) 1982 BR 61289 (B78-52550).

Appeal pending: No

Claimant: Mamie Pritchett
Employer: PCHA Outer Drive Hospital
Docket No: B78 52550 61289

BOARD OF REVIEW HOLDING: Good cause for refusal of work may be found where a claimant can demonstrate that there exists no reasonable alternative means for discharging domestic duties, such as child care, during the hours of the proffered work.

FACTS: Claimant, a nurse's aide on the midnight shift, became unemployed for lack of work. The employer offered weekend work on the afternoon shift from 3:00 P.M. to 11:30 P.M. Claimant had three children and two grandchildren residing with her. The eighteen year old was subject to seizures and could not be left unattended; the seventeen year old had a weekend job and could not be home at night until 9:30 P.M. Claimant was separated from her husband, who was also an invalid.

DECISION: Claimant is not disqualified for refusal of work nor ineligible for benefits under availability provisions.

RATIONALE: The Board of Review followed the rationale of the California Supreme Court in Sanchez v Unemp. Ins. Appeals Bd., Sup., 141 Cal. Rptr. 146 (Cal. Sup. Ct. 1978) wherein that Court said: "We conclude that a claimant who is parent or guardian of a minor has 'good cause' for refusing employment which conflicts with parental activities reasonably necessary for the care or education of the minor if there exist no reasonable alternative means of discharging those responsibilities."

As for eligibility, the Board of Review cited the Court's holding in Sanchez, supra, that: "Availability for work ... requires no more than (1) that an individual claimant be willing to accept suitable work which he has no good cause for refusing and (2) that the claimant thereby make himself available to a substantial field of employment " 141 Cal. Rptr. at 154. The Commission did not establish that Claimant had limited herself to an insubstantial field of employment.

The decision of the Referee is reversed by a majority of the full Board of Review.

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Sections 28(1)(c), 29(1)(e), 29(6)

REFUSAL OF WORK, Offer of former job, Distance, Out of state, Residence, Requalification

CITE AS: Bingham v American Screw Products Co, 398 Mich 546 (1976).

Appeal pending: No

Claimant: Arlie K. Bingham
Employer: American Screw Products
Docket No: B70 2410 38743

SUPREME COURT HOLDING: 1. Claimant who established credit weeks in Michigan can requalify for benefits by being able and available in Kentucky. 2. Since claimant resided in Kentucky his previous Michigan employer's offer of work was not suitable as it was too distant from his residence in Kentucky.

FACTS: Claimant left a Michigan job because he could not find adequate housing at a price he could afford. He was disqualified for voluntary leaving. He returned home to Kentucky, and registered for work with the appropriate employment office there. Thereafter he diligently sought and made himself available for suitable work, but turned down a job offer from his former Michigan employer due to the distance from his Kentucky residence.

DECISION: (1) Claimant requalified for benefits after serving the period of disqualification under the Act, and (2) was not disqualified for refusing his former employer's job offer because the offer was not an offer of "suitable work" due to the fact the job was too distant from his residence.

RATIONALE: 1. When a claimant moves to a locality other than where he earned credit weeks, his being able and available should be determined by whether he was genuinely attached to the labor market in his new locality.

2. In determining whether the Michigan employer's offer of work was suitable the Court found claimant's residence was in Kentucky as this is where he actually lived. The Court of Appeals erred in holding the Michigan employment offer was suitable, when it determined claimant's residence as a matter of law was both where he resides and where he earned credit weeks. To hold otherwise would restrict an unemployed person's right of freedom of movement to seek a job where it is best for him.

Section 29(1)(e)

REFUSAL OF WORK, Suitable work, Part-time work, Fringe benefits

CITE AS: Jarvis (Peoples State Bank), 1982 BR 78618 (B81 08578).

Appeal pending: No

Claimant: Patricia Jarvis
Employer: Peoples State Bank
Docket No: B81 08587 78618

BOARD OF REVIEW HOLDING: A claimant may refuse an offer of work without disqualification if acceptance of the offered work would result in an immediate and substantial economic loss.

FACTS: Claimant worked for the employer and its predecessor as a full-time bank teller for eight years. Her full-time status entitled her to a package of fringe benefits, including paid vacation, medical insurance, sick pay and a pension plan. As a result of a merger and consolidation of offices, claimant's full-time position was eliminated. While still on the employer's payroll she was offered a part-time position without fringe benefits, which she refused.

DECISION: Claimant is not disqualified for refusal of work.

RATIONALE: When evaluating a refusal of work situation, the suitability of the work, in light of various factors, including prior earnings, must be considered. "[T]he claimant was not yet unemployed when she refused the offer of part-time work. She was under no duty to bury her financial sights instantaneously. We hold that the offered work was unsuitable. By excluding paid vacations, medical insurance, life insurance, sick leave and participation in a pension plan, the offer was immediately and substantially below the claimant's prior earnings."

Section 29(1)(e), 29(6)

REFUSAL OF WORK, Burden of proof, Suitability

CITE AS: Lasher v Mueller Brass Co, 62 Mich App 171 (1975).

Appeal pending: No

Claimant: Gary Lasher
Employer: Mueller Brass Company
Docket No: B70 6233 39380

COURT OF APPEALS HOLDING: The burden of proving disqualification for refusal of work, including that the offered work was suitable, is on the employer. Suitability of offered work is to be determined at the time when the offer was made.

FACTS: Claimant was laid off in May, 1970. At the time of lay off he was classified as a "center list grinder, set-up service and operator" earning $3.54 per hour. In July, 1970 the employer offered claimant a job as a janitor at $2.80 per hour.

Claimant, his union representative and the personnel manager all expected he would be recalled to his old job within two weeks. In fact, he subsequently was called back two weeks later, on July 20, 1970.

On July 6th, however, claimant refused the janitor job. This refusal was partly based upon the personnel manager's advice that refusal would only jeopardize his unemployment benefits for one week. On July 13th, claimant notified the company he would take any work available.

DECISION: Appeal Board decision reversed. The matter was remanded for further evidence on the suitability of the work offered.

RATIONALE: The Appeal Board incorrectly relied on claimant's July 13th statement he would take any position as determinative the July 6th job offer was "suitable". The court held the determination as to whether the work was suitable must be confined to the time the offer was made. As such, the matter must be remanded because the Board applied the improper standard. On remand the burden of proving disqualification is on the employer. The Board is to first determine if the work offered was suitable, then determine the question of good cause, if necessary.

13.19

Section 29(1)(e)/29(6)

REFUSAL OF WORK, Suitable work, Fringe benefits, Preferred occupation.

CITE AS: Vandervoort v B.S. Greenhouses Corp., Wayne Circuit Court, No. 95-531278-AV (May 9, 1996).

Appeal pending: No

Claimant: Phyllis Vandervoort
Employer: B.S. Greenhouses Corporation
Docket No. B93-01574-127092W

CIRCUIT COURT HOLDING: Where claimant was offered a full-time position doing work she had been performing on a part-time basis, the work was suitable and claimant did not have good cause to refuse the offer because no fringe benefits were offered and claimant wanted to look for work in "her field."

FACTS: Claimant worked part-time for employer and full-time as a caregiver in a group home. When claimant lost her full-time job she applied for and received unemployment benefits. Employer offered claimant full-time work with no benefits. Claimant declined offer because of lack of benefits, low pay and desire to look for job in her "field" - as a caregiver. Employer discharged her from her part-time position for refusing to make herself available for full-time hours.

DECISION: Claimant is disqualified for benefits under Section 29(1)(e).

RATIONALE: The work offered claimant was plainly "suitable" because she had already been doing it when it was offered on a full-time basis. Lack of fringe benefits does not render work unsuitable nor does it amount to good cause to refuse the work. Need for time to look for employment in her preferred "field" also does not provide claimant with good cause to refuse.

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Section 29(1)(e)

REFUSAL OF WORK, Suitable work, Pay reduction.

CITE AS: Anthony v Nottawa Gardens, Branch Circuit Court, No. 85-03-160AE (May 6, 1986).

Appeal pending: No

Claimant: David Anthony
Employer: Nottawa Gardens
Docket No. B84-09806-97986W

CIRCUIT COURT HOLDING: Where employer had work available and offered claimant re-employment at a lower wage than he previously received to perform the same or similar job, the work offered was suitable and claimant did not have good cause to refuse it.

FACTS: The claimant quit his job with employer to pursue other opportunities. Subsequently, he applied for benefits at which point the employer offered him his position but at a lower rate of pay. The claimant refused the offer because of health and safety concerns and because he was offered $1.00 less per hour than he had previously earned. Claimant further alleged that the offer was a sham and made only for the purpose of avoiding charges to employer's account.

DECISION: Claimant is disqualified for refusing an offer of suitable work without good cause.

RATIONALE: The fact that employer offered re-employment coincidentally to claimant's effort to obtain benefits does not render the offer a "sham" so long as employer actually had work available that claimant could do. Claimant had no right to expect same pay as he received previously because he quit for personal reasons. Claimant had not complained of health and safety conditions prior to quitting so they cannot be raised later to show work offered is unsuitable.

7/99
3, 11: N/A

Section 29(1)(e)

REFUSAL OF WORK, Suitable work, Wage differential, Child care, Availability, Shift limitation

CITE AS: Koetje v Teamwork, unpublished per curiam Court of Appeals May 26, 1998 (No. 200118).

Appeal pending: No

Claimant: Marie Koetje
Employer: Teamwork, Inc.
Docket No. B95-09004-137801

COURT OF APPEALS HOLDING: 1) A substantially similar position paying approximately 20% less is not unsuitable. 2) The fact that an employee might incur additional child care expenses because of a shift change does not provide good cause for refusal of suitable employment. 3) By limiting herself to first shift work, the claimant was not fully available.

FACTS: The claimant applied for work with the involved employer and was assigned to a client as a general factory laborer. Wages for the assignment began at $8.00 per hour and increased to $9.49 three months later. They remained at that level until her assignment terminated. Shortly thereafter the employer offered to place the claimant in a similar position on second shift at a rate of $7.80 per hour. The claimant declined the assignment, indicating that not only would the second shift assignment require her to incur day care expenses for both her children but would pay her less. Subsequently, another position was offered to the claimant at $7.00 per hour which she also declined.

DECISION: The claimant was disqualified under 29(1)(e) and held ineligible under Section 28(1)(c).

RATIONALE: 1) The two offers of work at a reduced wage "were appropriate given [claimant's] qualifications and previous experience as well as the available job market." 2) Under the circumstances the need for additional child care did not provide the claimant with good cause as the Department of Social Services would have helped her defray any additional expenses. 3) One who restricts her employment to certain hours of the day is not "available" for work if the work for which she is qualified is not likewise limited.

Note: The court declined to consider the length of claimant's unemployment when evaluating the suitability of the work offered. Also, Section 29(6) of the Act has been amended since the facts of this case arose.

7/99
24, 16, d12: N/A

Sections 29(1)(c), 29(1)(e)

REFUSAL OF WORK, Bona fide offer, Posting

CITE AS : Health Alliance Plan of Michigan v Graham, Wayne Circuit Court, No. 89-908418-AE (October 17, 1989).

Appeal pending: No

Claimant: Sandra Graham
Employer: Health Alliance Plan of Michigan
Docket No. B87-13500-107918

CIRCUIT COURT HOLDING: Claimant cannot be disqualified under Section 29(1)(e) when a job was posted but not specifically offered to her.

FACTS: Claimant was laid off from her non-medical secretary position on August 4, 1987. Previously claimant requested a job upgrade but could not be offered the upgraded position without meeting the minimum job qualifications including typing 60 wpm. Claimant refused to take a typing test. Also, as required by contract, employer posted the upgraded position so that all of its employees could bid on it. On July 31, 1987, claimant interviewed for a non-medical secretary position in a different department but declined the position because she considered it primarily receptionist rather than secretarial. Furthermore, it required evening hours which were unacceptable to claimant for personal safety reasons.

DECISION: Claimant is not disqualified for benefits under Sections 29(1)(c) or 29(1)(e) of the MES Act.

RATIONALE: The provisions of 29(1)(c) are not applicable. Therefore, the Referee properly framed the issue in terms of whether or not the claimant refused an offer of suitable work. General posting of a position is not an offer of work within the meaning of 29(1)(e). Claimant was not offered the upgraded position. As it is undisputed the claimant was laid off, her unwillingness to take the typing test does not convert the separation into a voluntary leaving. As to the other position for which claimant interviewed, her undisputed, credible testimony was that the position was of a lesser stature and, therefore, not suitable.

7/99
14, 4, d3: N/A

13.23

Section: 29(1)(e)

REFUSAL OF WORK, Suitable work, Statutory construction

CITE AS : Klok v Caretec, Inc., Kalamazoo Circuit Court, No. 93-3161-AE (May 5, 1995).

Appeal pending: No

Claimant: Christina Klok
Employer: Caretec, Inc.
Docket No. B92-01514-121853W

CIRCUIT COURT HOLDING: Where claimant was offered a job similar to one she held previously, even though there were some changes in benefits and other conditions of employment, the work offered was suitable and claimant did not establish good cause to refuse it.

FACTS: Claimant's employer was bought by Caretec and claimant was offered a job by the new employer, which she declined. Claimant believed her job would be phased out, that all material terms and conditions of the employment were not disclosed when the offer was made, and that the offer was not suitable because there was no assurance the work would be substantially similar to her former job. There was to be an increase in her premium for health insurance.

DECISION: Claimant is disqualified for refusing an offer of suitable work without good cause.

RATIONALE: Claimant was aware of what her job duties would be even though a job description was not provided at the time of the offer. The work offered must be suitable but under Section 29(6) - it need not be "substantially similar" to former job. Increase in bi-weekly premium for insurance was minor issue since new employer eliminated the deductible. Final clause of Section 29(1)(e) concerning "direction by the commission" refers to self-employment and not to the acceptance of suitable work clause.

7/99
19, 17, d22: N/A

Sections 28(1)(c)and 29(1)(e)

REFUSAL OF WORK, Good cause, Eligibility, Ability, Last job

CITE AS: Henry Ford Health System v Morin, Macomb Circuit Court, No. 2000-1462-AE (January 2, 2001)

Appeal pending: No

Claimant: Anne E. Morin
Employer: Henry Ford Health System
Docket No. B1999-02088-RM1-152194W

CIRCUIT COURT HOLDING: Where claimant's refusal of offered work did not indicate an unwillingness to work, but demonstrated a "reasonable concern for her immediate health and safety and adherence to her physician's directives," she is not disqualified under Section 29(1)(e). A claimant is not required to be able and available to perform her last job under 28(1)(c).

FACTS: Claimant worked as a full-time patient care counselor in employer's psychiatric hospital. Claimant took a medical leave of absence due to stress and anxiety in February, 1998 brought on by two incidents with violent patients. Claimant was also concerned for her safety due to staff shortages. Claimant's physician released her to return to work in September, 1998 without restrictions. In November employer offered claimant a position as a full-time patient care counselor in the same facility and same capacity she worked in before the leave of absence. Claimant declined the offer asserting the position would jeopardize her health and safety. In December claimant's physician submitted a medical statement to the Agency indicating that claimant could work as a patient care counselor but not in the same work environment.

DECISION: Claimant is eligible and not disqualified for benefits.

RATIONALE: Accepting employer's offer would have "compelled claimant to disregard her doctor's advice." In light of her doctor's statement, and claimant's strong belief returning to the same work would jeopardize her health and safety, claimant had good cause to refuse employer's offer under 29(1)(e).

Section 28(1)(c) "does not mandate that a claimant must be able to perform his last job, but only that he is able and available to perform full-time work for which he has previously received wages." Claimant's doctor's statement allowed claimant to work as a patient care counselor in a different environment. Claimant sought work as a social worker, "work of a character generally similar to" work as a patient care counselor.

11/04

Section 29(1)(c)

REFUSAL OF WORK, Offer, Posting

CITE AS: Cass County Medical Care Facility v Williams, Cass Circuit Court, No. 99-561-AE (January 12, 200)

Appeal pending: No

Claimant: Anitha Williams
Employer: Cass County Medical Care Facility
Docket No. B1999-00201-151653W

CIRCUIT COURT HOLDING: The employer must establish that it made a specific offer of work to the claimant. Where the employer is engaged in a reorganization, the mere posting of open positions without specifically advising employees of the consequences of failing to apply, is not an offer of suitable work.

FACTS: Claimant worked for employer in its dietary department as a full-time aide. Employer reorganized the dietary department, cutting full-time positions. Employer posted a notice to the employees that there was a reorganization of the jobs and the employees were to sign up. Under the reorganization, claimant's job was converted to part-time status. Claimant did not sign up for any openings. Another employee, who signed up, got the part-time aide job. Claimant did not sign up for any of the full-time openings because the employees who signed up had more seniority. She did not sign up for a part-time opening because she could not afford to work part-time. Employer told claimant she could apply for a position in another department but she would have to start as a new hire.

DECISION: Claimant is not disqualified under 29(1)(c).

RATIONALE: Employer must demonstrate that an offer of work was communicated to claimant. While employer had several positions open, none were offered to claimant. The postings did not inform claimant that if she failed to sign up for an opening that she would not have a job in the department. Claimant was not told she could combine part-time jobs to work full-time or that her full-time job was in jeopardy. The employer did not establish it made a specific offer of suitable work to claimant.

11/04