1983

Silas B. Martinez v. Board Of Review of the Industrial Commission Of Utah, Department of Employment Security : Brief of Respondent

IN THE SUPREME
OF THE STATE

SILAS B. MARTINEZ,

Plaintiff-Appellant,

vs.

BOARD OF REVIEW OF THE INDUSTRIAL
COMMISSION OF UTAH, DEPARTMENT
OF EMPLOYMENT SECURITY,

Defendant-Respondent.

RESPON

Appeal from a decision
State of Utah
and the Board

MICHAEL E. BULSON
UTAH LEGAL SERVICES, INC.
385 - 24th Street, Suite 522
Ogden, Utah 84401-1477
Telephone: (801) 394-9431

Attorney for Appellant
Silas B. Martinez

TABLE OF CONTENTS

CASES CITED

TABLE OF CONTENTS (Continued)

CASES CITED (Continued)

OTHER AUTHORITIES

TABLE OF CONTENTS (Continued)

OTHER AUTHORITIES (Continued)

PAGE

STATUTES CITED

IN THE SUPREME COURT
OF THE STATE OF UTAH

SILAS B MARTINEZ,

Plaintiff-Appellant,

vs.

Case No. 19031

BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION OF UTAH, DEPARTMENT OF EMPLOYMENT SECURITY,

Defendant-Respondent.

RESPONDENT'S BRIEF

NATURE OF THE CASE

This is an appeal pursuant to Section 35-4-10(i), Utah Code Annotated 1953, from a decision by the Board of Review of the Industrial Commission of Utah, affirming the decision of an Appeal Referee, holding that Appellant had failed to make a systematic and sustained effort to seek work as required for eligibility under the Federal Supplemental Compensation Program. Pursuant to Rule 3.e.(1)(b) of the Rules and Regulations of the Department of Employment Security, Appellant was denied further benefits effective October 3, 1982, and continuing until the Appellant had returned to bona fide covered employment for four calendar weeks and had earned at least six times his weekly benefit amount.

DISPOSITION BELOW

The Department decision dated October 15, 1982, denied benefits effective October 3, 1982, on the grounds that Appellant failed to make a systematic and sustained effort to seek work. This decision was affirmed by decision of an Appeal Referee dated November 17, 1982. The decision of the Appeal Referee was affirmed by the Board of Review in a decision issued January 18, 1983, in case No. 82-A-4711 FSC and 82-BR-552 FSC.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the decision of the Board of Review, the Appeal Referee and the Department Representative. Respondent seeks affirmation of such decision.

STATEMENT OF FACTS

Respondent agrees with the Preliminary Statement and Statement of facts set forth in Appellant's Brief and notes:

The benefits for which Appellant was denied were made available under the Federal Supplemental Compensation Act of 1982, 26 U.S.C. Section 3304 et. seq. (hereinafter "FSC Act"). Appellant includes as Appendix A of his Brief a copy of General Administration Letter (GAL) 2-83, which contains implementative instructions for the FSC Act. Part C of GAL 2-83 sets forth the eligibility instruction pertinent to this case and provides:

> 1. Basic Eligibility Requirements. To be eligible for a week of Federal Supplemental Compensation, an individual must:

> . . . have been actively seeking work during the week he/she is claiming FSC and provide to the State agency tangible evidence of a systematic and sustained effort to obtain work (UIPL 14-81, GAL 21-81 and 22-81).

Unemployment Insurance Program Letter (UIPL) 14-81, and GAL 22-81 are directives that were issued to all state Employment Security Agencies (SESA's) by the U. S. Department of Labor, Employment and Training Administration, to clarify the eligibility requirements for Federal Extended Benefits as interpreted by the Department of Labor. As these federal directives are relevant to this case, and as they are referred to on numerous occasions throughout Appellant's Appendix A, copies of UIPL 14-81, and GAL 22-81 are included herewith as Appendices to Respondent's Brief. It should be noted that these particular program and administration letters are guidelines, and are not relied upon by Respondent as dispositive rules.

ARGUMENT

POINT I

THAT IN REVIEWING DETERMINATIONS OF THE INDUSTRIAL COMMISSION UNDER THE UTAH EMPLOYMENT SECURITY ACT THE COURT WILL AFFIRM THE FINDINGS OF THE BOARD OF REVIEW IF SUCH ARE SUSTAINED BY SUBSTANTIAL COMPETENT EVIDENCE.

The standard of review in unemployment insurance cases is well established. Section 35-4-10(i), Utah Code Annotated 1953, provides in part:

> . . . In any judicial proceedings under this section the findings of the Commission and the Board of Review as to the facts if supported by evidence shall be conclusive and the jurisdiction of said Court shall be confined to questions of law.

This Court has consistently held that where the findings of the Commission and the Board of Review are supported by evidence, they will not be disturbed. Martinez v. Board of Review, 25 U. 2d 131, 477 P. 2d [illegible]. In analyzing the above-referenced review provision, this Court has stated:

> Under Section 35-4-10(i) the role of this Court is to sustain the determination of the Board of Review unless the record clearly and persuasively proves the action of the Board of Review was arbitrary, capricious, and unreasonable. Specifically, as a matter of law, the determination was wrong; because only the opposite conclusion could be drawn from the facts. Continental Oil Company v. Board of Review of the Industrial Commission of Utah, 568 P. 2d 727, 729, (Utah, 1977).

POINT II

THE WORK SEARCH STANDARDS APPLIED BY THE COMMISSION FOR RECEIPT OF FEDERAL SUPPLEMENTAL COMPENSATION ARE CONSISTENT WITH THE PURPOSES AND INTENT OF THE UTAH EMPLOYMENT SECURITY ACT AND THE FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970, AS AMENDED BY THE OMNIBUS BUDGET RECONCILIATION ACT OF 1980, PUBLIC LAW 96-499.

Section 35-4-4(c), Utah Code Annotated 1953, as amended, requires that each claimant make an active, good faith effort to find work. Prior to [illegible] this particular section of law did not include the phrase "active, good faith effort to find work." Instead, the statute required only that a claimant be available for work. The Commission interpreted this requirement to mean that a claimant must make a reasonable, active effort to find work. This interpretation was confirmed by this Court in the cases of Gocke v. Wiesley, 18 U. 2d 245, 420 P. 2d 44 (Utah, 1966); and Denby v. Board of Review, 567 P. 2d [illegible] (Utah, 1977). In 1980 the Utah Legislature added the requirement that a claimant make an active, good faith effort to find work in order to be considered available for work within the meaning and intent of the statute

There is very little legislative history pertaining to this addition to the ... ability requirement; therefore, it is difficult to determine whether the Legislature intended to merely codify the case law requiring an active search for work or if the Legislature intended to impose a stricter standard than had previously been required of claimants. Nevertheless it is without question that in order for a claimant to be eligible for regular unemployment benefits he/she must make an active effort to find work that is reasonable and in good faith.

Under state law a claimant may be eligible for up to 26 weeks of regular unemployment benefits. Thereafter additional unemployment benefits may be available under certain economic conditions through the Federal-State Extended Benefit Act of 1970, which includes recent provisions for the Federal Supplemental Compensation Program, which is an extension of the Federal Extended Benefit Program. The Federal Government pays 50 percent of the benefit costs of the Extended Benefit and Federal Supplemental Compensation Programs.

A review of the Legislative history of the amendments to the Federal-State Extended Unemployment Compensation Act of 1970, adopted by the Omnibus Budget Reconciliation Act of 1980, shows that Congress intended to require stricter standards for receipt of Extended Benefits (EB), and Federal Supplemental Compensation (FSC). During the Senate Debates on the amendments for the Extended Benefit Program, Senator Dole introduced the amendments with the following comment:

> I just say, very quickly, that the purpose of this proposal [1980 amendments to EB Program] is to limit access

to the Extended Benefit Program - we are talking about the extended benefits - to individuals who have demonstrated a reasonable attachment to the work force, lost their jobs involuntarily, and have made every effort to return to work.

This Finance Committee proposal really does three things:

It prohibits payment of unemployment benefits under the Extended Benefit Program to someone who has less than 20 weeks of qualifying employment in the base period, to those who have voluntarily left their jobs without good cause, have been discharged for misconduct, or refused a suitable job offer. The third category are those who refuse to accept any job which meets minimum standards of acceptability, such as basic health and safety standards and compliance with the Federal minimum wage. (Emphasis added. Congressional Record-Senate, S8935, June 30, 1980.)

Extensive debate occurred concerning the requirement that claimants receiving Extended Benefits must be willing to accept any job offer meeting minimum standards. The extent of this debate and the impact of the Federal requirements on states are illustrated by an exchange between Senators Levin and Boren regarding the suitable job test:

Mr. Levin. My question is this: Under existing law, as I understand it, states have the right to require that unemployed people take what you call a suitable job. It does not have to be a comparable job; is that right under existing law?

Mr. Boren. That is right. Under existing law a state could decide under its first six months of benefits, which are state funds -

Mr. Levin. Or extended.

Mr. Boren. That is right. They could impose this requirement.

Mr. Levin. Is it not true the proposal you are espousing now, and which the Senator from New York objects to, would take away the rights from that state and require the states to follow the Federal-mandated standard of suitable job, instead of comparable job?

Mr. Boren. I would have to say to my friend from Michigan I think he is trying to lead me peacefully along the primrose path.

Mr. Levin: I would not do that.

Mr. Borin: I am sure he would not intentionally lead me along that path.

Mr. Levin: Never peacefully.

Mr. Borin: It is a path along which I do not want to travel.

I would have to say that the first six months of benefits, which are benefits that the state pays out of the state funds, would remain totally a matter of state discretion. They would not be required to impose this requirement.

Now, of the Extended Benefits after we have already given unemployment for six months, 26 weeks, then on the extended portion of the benefits that part that the Federal Government pays for with Federal money, yes, we would say to the states, "if you want to get the Federal money for which we are responsible and accountable, if you want to get the Federal money- you do not have to take it, but if you want it- yes, you should meet those requirements." Congressional Record-Senate, S8937, June 30, 1980.

It is clear from the debates in the Senate that Congressional intent in enacting the FSC Program was to impose more stringent requirements for eligibility for Federal Extended Benefits and Supplemental Compensation and to insure that these benefits are directed only to those who are clearly making all reasonable efforts to return to work. Congressional thinking in this matter was further explained by the official Congressional explanation of the amendments to the Federal-State Extended Unemployment Compensation Act. In the explanation of the "suitable work" requirement, Congress stated:

> These changes in the unemployment compensation work test seek to challenge workers to adjust to new economic and

> industrial realities. Economic events of the past decade have produced significant structural shifts in the American economy, with employment in a number of major industries declining while newer industries grow. By allowing unemployed workers to draw up to six months compensation unless jobs in their occupations are available, the present unemployment compensation system discourages workers from seeking employment in new industries which, while they may initially pay lower wages, hold the prospect of growing employment and increasingly higher pay. Congressional Record-House, 1191, March 26, 1981, as reported in CCH Unemployment Insurance Reports, Transfer Binder, Unemployment Insurance Matters, Nov. 1980-March 1982, paragraph 21, 630, at 3837.

Although Congress continued to define the work search requirement terms of "a systematic and sustained effort to find work," just as it ha stated in the old Federal Supplemental Benefits Program of the mid-1970' it is clear from the Congressional debates and explanation, as set for above, that Congress intends much more of claimants in order to be eligib for benefits under the EB and FSC Programs than under the State Bene Programs. The Department of Labor has interpreted the work search requi ments of the EB and FSC Programs in a number of statements. UIPL 14-8 Section 7, subsection Actively Engage In Seeking Work, noted:

> Regular benefit claimants may be required to seek work on their own initiative either by a specific "actively seeking work" provision or as a condition of being "available for work." However, the actively seeking work requirement needs to be applied in a different context with regard to extended benefit claimants than it is applied to regular benefit claimants. It is intended by this requirement that the individual claiming extended benefits be required to make a more diligent effort to seek work than would normally be required of an individual receiving regular benefits. Accordingly, SESA's must monitor each EB claimant's weekly eligibility in light of the special requirement covering search for work.

As further clarification of the "actively seeking work" requirements [illegible] on federal extended benefit claimants, GAL 22-81, question 9, states:

> The EB actively seeking work provisions do not state any specific number of job contacts to be made each week. The EB provisions describe actively seeking work as a sustained and systematic effort. A sustained effort is an effort maintained throughout each week without weakening. A sustained effort is not unremitting, but is not a state of inactivity. A sustained search is a search for work conducted in a systematic manner every work day of each week. A systematic effort to seek work is a search conducted with thoroughness and with a method or a plan. A systematic search is conducted with consideration of labor market conditions and local hiring practices. What constitutes actively seeking work is a question which must be resolved on a case by case basis, for no one set of rules can be compiled to cover every individual claim in every situation. Yet, there must be guidelines which are applicable even handedly to all similarly situated claimants subject to this requirement.

As noted, the State Agency is given some discretion as to the number of job contacts required for a systematic and sustained job search because "no one set of rules can be compiled to cover every individual claim" and yet "there must be guidelines which are applicable even handedly to all similarly situated claimants subject to this requirment." However, this discretion is severely curtailed by the stringent requirements and strict Congressional intent behind the FSC Program.

As required by the amendments to the Federal-State Extended Unemployment Benefit Act, and pursuant to authority granted in Section 35-4-3.5(a), U.C.A. 1953, as amended, the Commission properly promulgated an amendment to Rule 3.e.(1)(b) of the Rules and Regulations of the Department of Employment Security. This amended rule requires a "sustained and systematic effort to find work" as one of the requirements for eligibility under

the EB and FSC Programs. Appellant does not challenge the validity of the regulation, but only its interpretation. See Appellant's Brief, page 9.

In the present case Appellant was instructed by the Department to make five employer contacts per week. (R.0027) Appellant would have this Court believe that such a requirement was unreasonable in light of Skirin v. Bowing, 408 N.E. 2d 355 (Ill., 1980) wherein he notes that an Illinois claimant for Federal Supplemental Benefits was found to have made a sustained and systematic job search when "claimant's work report forms showed only one employer contact per week." Appellant's Brief, page 10. In fact, the Illinois Supreme Court found the claimant eligible for benefits because the Referee had failed to consider evidence which included uncontradicted testimony of the claimant and another witness that "claimant would make four to six contacts per week for the time period in question." Skirin, supra at 357. It is important to note that in the instant case the claimant made only two employer contacts during the week in question, the week ended October 9, 1982. His reason for making no other contacts that week was "the personal obligation" to install kitchen cabinets in his home. Clearly, such a limited work search effort as contacting only two employers in a week because of a "personal obligation" of such a nature does not meet the good faith work search requirement of the Utah Employment Security Act, and certainly does not meet the even more restrictive standard of the EB and FSC Programs as mandated by Congress.

Appellent claims that he was misled by the phrase "may be considered." Appellant's Brief, page 14. However, Appellant was routinely confronted

with this phrase (R.0036,0039) and his alleged misunderstanding does not take him from inquiry. He certified to the following statement on a job prospects questionnaire when he filed for federal extended benefits: "I understand my job prospects classification and the suitable work requirements for EB eligibility. I have received a copy of my job prospects classification. I have been advised to make five employer contacts each week." (R.0035) Rule A71-07-2:2.c(7), General Rules of Adjudication, provide in this regard:

> Inasmuch as each claimant is advised of his rights and responsibilities at the beginning of his claim series and since he certifies to eligibility requirements when continuing his claims, he should have sufficient knowledge to put him on notice that certain subjects might be important factors relative to a claim for benefits. The claimant is then under obligation to make proper inquiry and failure to do so constitutes fault. In summary, when a claimant has knowledge of the importance of certain information but makes his own determination that the information is not material or if he just simply ignores it, he does so at his own risk. He cannot be relieved of his obligation to speak and his failure to do so places the fault on him.

Appellant claims the Department decision, as affirmed by the Appeal Referee and Board of Review, to disqualify him for four weeks is severe and contra to the social purposes of the Utah Employment Security Act. Appellant's Brief, page 17. However, the consequences of noncompliance with the federal job search requirements are clear and unambiguous.

Section 1024 of the Omnibus Budget Reconciliation Act of 1980 amended Section 202(a) of the Federal-State Extended Unemployment Compensation Act of 1970 by adding subparagraph (3)(B), as follows:

> If any individual is ineligible for extended compensation for any week by reason of a failure described in

> clause (i) or (ii) of subparagraph (A) [pertaining to acceptance of suitable work and failure to actively engage in seeking work] the individual shall be ineligible to receive extended compensation for any week which begins during a period which-
>
> (i) begins with the week following the week in which such failure occurs, and
>
> (ii) does not end until such individual has been employed during at least four weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of four multiplied by the individual's average weekly benefit amount . . .

This strict disqualification requirement was included in the Sen amendments to the Omnibus Budget Reconciliation Act of 1980 and was adop by the Conference Agreement between the House and Senate. See House Rep No. 96-1479, Conference Report, at 164. The disqualification imposed failure to actively seek work as required under the EB and FSC Programs admittedly severe. However, it is mandated by law and the Commission no alternative but to comply with the Congressional mandate. It should noted that Rule 3.e.(1)(b) actually disqualifies a claimant until he worked at least four weeks and has earned six times his weekly bene amount. The requirement of earning six times his weekly benefit amount to maintain consistency with the disqualification requirements of Secti 35-4-5(a) and (b)(1) and (c) of the Utah Employment Security Act. severity of the penalty for failure to actively seek work is a matter wh can only be addressed by Congress, and neither the Commission nor this Co has authority to change the penalty. Decker v. Industrial Commission Utah, Department of Employment Security, 533 P. 2d 898 (Utah, 1975).

CONCLUSION

The Utah Employment Security Act requires a good faith, active effort to seek work from those claiming eligibility for unemployment benefits. Congress has imposed more stringent requirements for eligibility under the EB and FSC Programs. Appellant was clearly advised as to what was expected of him. The issue before the Court in this case is not whether the five employer contact requirement given to the Appellant was unreasonable, but rather, whether the claimant's contacting of only two employers during the week ended October 9, 1982 was a good faith reasonable effort under Utah law and a systematic and sustained effort to seek work under the Federal-State Extended Unemployment Compensation Act of 1970. After a 15 month period of substantial unemployment the contacting of only two employers in a week is neither a good faith effort nor a systematic and sustained effort to find work. The decision of the Board of Review denying benefits to the Appellant should be affirmed.

Respectfully submitted this 5th day of July, 1983.

DAVID L. WILKINSON
Attorney General of Utah

FLOYD G. ASTIN
K. ALLAN ZABEL
Special Assistants
Attorney General

By_____
K. Allan Zabel
Special Assistant Attorney General

CERTIFICATE OF MAILING

I do hereby certify that I mailed two copies of the foregoing Respondent's Brief to MICHAEL E. BULSON, UTAH LEGAL SERVICES, INC., Attorney for the Appellant, 385 - 24th Street, Suite 522, Ogden, Utah 84401-1477 on the 5th day of July, 1983.

U.S. DEPARTMENT OF LABOR Employment and Training Administration Washington, D.C. 20213	CLASSIFICATION UI CORRESPONDENCE SYMBOL TUOT February 2, 1981

SUBJECT: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 14-81

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: OFFICE OF THE DEPUTY ASSISTANT SECRETARY
ROBERTS T. JONES
Administrator
Office of Management Assistance

SUBJECT: Amendments Made by P.L. 96-499 (Omnibus Reconciliation Act of 1980) which affect the Unemployment Compensation Program

1. Purpose. To advise States of the amendments made of the Emergency Jobs and Unemployment Assistance Act of 1974; the Federal-State Extended Unemployment Compensation Act of 1970; Title IX of the Social Security Act; Chapter 85, Title 5 United States Code, and Section 3306(b) of the Internal Revenue Code of 1954.

2. References. Sections 1021 through 1026, and 1141(b) of P.L. 96-499.

3. Background. The amendments made by P.L. 96-499 have made several significant changes affecting the unemployment compensation program, some of which will require changes in State laws. Sections 1021-1026 and 1141 of P.L. 96-499 respectively, provide for (a) the termination of special Federal funding of unemployment benefits paid to CETA/PSE workers; (b) elimination of the Federal share for the first week of extended benefits in any State which does not have a noncompensable waiting week for regular benefits; (c) establishment of a special account within the Unemployment Trust Fund from which States would be paid for the costs of unemployment benefits based on Federal employment (each Federal agency would be required to reimburse that account from its appropriations for costs attributable to its employees); (d) the denial of extended benefits to individuals who fail to meet certain specified requirements relating to acceptance of or application for suitable work, or who fail to actively engage in seeking work (denial under these provisions is required under the EB program as a condition for certification of the State law), and prescribes requirements for purging certain disqualifications in order to

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establish eligibility for EB, and (e) change in the definition of "wages" for purposes of the Federal unemployment taxes so as to include as wages any payment by an employer of an employee's liability for State unemployment compensation taxes (without deduction from the remuneration of the employee) with the exception of payments for domestic service in the private home of the employer or for agricultural labor which will continue to be excluded from taxable wages. Each of these amendments, including commentary on their application, are discussed below on a section by section basis corresponding to the section numbers of P.L. 96-499.

4. Section 1021 - Termination of Provisions Providing Reimbursement for Unemployment Benefits Paid on the Basis of Public Service Employment.

Section 1021 of the Omnibus Reconciliation Act of 1980 (P.L. 96-499) amended Part B of Title II of the Emergency Jobs and Unemployment Assistance Act of 1974, by adding at the end of Part B the following new section:

"Section 224. Notwithstanding any other provision of this part, the term 'public service wages' shall not include remuneration for services performed in weeks which begin after the date of the enactment of this section."

The date of enactment of P.L. 96-499 and section 1021 thereof was December 5, 1980.

Any unemployment compensation paid to a former CETA/PSE worker is paid out of the State's UI trust fund. Prior to this amendment, however, the State fund was reimbursed for the amount of the compensation that was based on CETA/PSE employment from general revenues contained in the Federal Unemployment Benefits and Allowances (FUBA) account, as authorized in Title II of Part B of the 1974 Act. Under this amendment, Federal reimbursement of these benefit costs from FUBA will be phased out as services performed prior to December 5, 1980 are no longer contained in base periods used by the States.

Although Federal reimbursement from FUBA funds of benefits paid to CETA/PSE workers will be terminated for benefits based on services performed after December 5, 1980, there will continue to be Federal reimbursement for benefits based on services performed prior to that date, in effect, providing a transition period for adjustment to the new funding requirement.

With elimination of reimbursement for the FUBA account for benefit costs for services performed by CETA/PSE workers in weeks after December 5, 1980, the question of coverage and hence liability for such costs must be determined under State law. If services performed by CETA/PSE workers are in

A. Section 1024 -- Denial of Extended Benefits to Individuals who Fail to Meet Certain Requirements Related to Work.

Section 1024 of P.L. 96-499 amended Section 202(a) of the Federal-State Extended Unemployment Compensation Act of 1970 to add new paragraphs (3), (4) and (5). These amendments establish new disqualfication requirements for extended benefit claimants, relating to failure to accept offers of or referrals to suitable work, actively seeking work and duration disqualifications applicable to extended benefits. The new requirements are only applicable to extended benefit claimants and not to claimants for regular benefits. The changes are effective with respect to weeks of unemployment beginning after March 31, 1981. The full text of the amendments are set out at the end of this section.

Disqualification for failure to apply for or to accept suitable work and for failure to actively engage in seeking work.

Section 202(a)(3)(A) and (B) provide that an extended benefit claimant who fails to apply for or to accept suitable work (as defined in the amendment) or who fails to actively engage in seeking work is not entitled to benefits for the week in which such failure occurred, and that the claimant is further ineligible for extended benefits beginning "with the week following the week in which such failure occurs" and until the individual "has been employed during at least 4 weeks" and has earned a total of 4 times the individual's extended weekly benefit amount.

This means that the individual must work in each of at least 4 weeks and must have earned at least 4 times the weekly benefit amount in order to purge the disqualification. This disqualification is not the same as requiring an individual to earn four times his weekly benefit amount. If the individual works in 3 weeks and earns four times his weekly benefit amount, the requirement is not met. It must be shown that he worked in each of at least 4 weeks during each of which he had some earnings and that the total of his earnings equalled or exceeded four times his extended weekly benefit amount. There is no requirement that the weeks be consecutive. The State has no option to require that the weeks be consecutive or to require that services be in covered employment under the State law or any other State or Federal law.

Under most, if not all, State laws, the disqualification for not actively seeking work is on a week to week basis. The claimant is denied benefits until such time as he is again actively seeking work. As soon as he meets the actively seeking work requirements, he is restored to benefits. The amendments change this concept for extended benefit claimants.

Unemployment Tax Act. These standards [illegible] protect a claimant from a denial of [illegible] for refusing to accept new work "if (A) the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the claimant than those prevailing for similar work in the localtiy; and (C) if as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization." These conditions are included in all State laws since they are necessary for certification of States by the Secretary of Labor. Thus, even though a job offer or referral is deemed suitable under subparagraph (C) of section 202(a)(3) and would be within the terms of the conditions specified in subparagraph (D) of that section, nevertheless, such work shall not be deemed suitable work for any individual if it does not accord with the labor standards provisions required by section 3304(a)(5), FUTA. Accordingly, States should take appropriate action to assure continued application of the labor standards before imposing any disqualification under section 202(a)(3). Any additional labor standards in a State law may be given effect to the extent that the result would be consistent with subparagraph (D)(iii).

Similarly, the requirements of section 3304(a)(8), FUTA, relating to individuals in training, override the new requirements in section 202(a)(3).

Actively engage in seeking work

Subparagraph (E) requires an extended benefits claimant to make a "systematic and sustained effort" to seek work each week and to provide "tangible evidence" to the State agency that he has done so. Subparagraph (E) gives meaning to the term "actively engaged in seeking work" as used in the disqualification provision of subparagraph (A)(ii).

Regular benefit claimants may be required to seek work on their own initiative either by a specific "actively seeking work" provision or as a condition of being "available for work." However, the actively seeking work requirement needs to be applied in a different context with respect to extend benefit claimants than it is applied to regular benefit claimants. It is intended by this requirement that the individual claiming extended benefits be required to make a more diligent effort to seek work than would normally be required of an individual receiving regular

benefits. Accordingly, SESAs must monitor each EB claimant's weekly eligibility in light of the special requirement concerning search for work. This monitoring should include an appraisal of the reasonableness of the claimant's effort to assure that such efforts are of a systematic and sustained nature, and that the claimant furnishes tangible evidence of his search efforts.

The "tangible evidence" which the claimant is to provide for each week should be a written record of his/her work seeking activities for each week which contains as a minimum: employer name and address, person contacted, date of contact, type of work applied for, and outcome of work inquiry. A requirement that the individual provide documentation from employers should not be imposed because, among other considerations, it would be a burden to employers.

The level of economic activity in the labor market area and the kinds of work available are important factors in determining whether a systematic and sustained work seeking effort is being made. Employment service information and any job counselling interviews as well as the results of aptitude testing would be pertinent. Similarly, when a review of the claimant's work seeking activities indicates a need for employment services, as in the Eligibility Review Program, the claimant should be referred for such services so that his work seeking activities may be more successful. All of these considerations are relevant in determining whether the claimant's "tangible evidence" is adequate to demonstrate a systematic and sustained effort to obtain work.

The requirement that individuals "actively engage in seeking work" is applicable to all claimants with respect to each week for which extended benefits are claimed, notwithstanding any State law provision to the contrary. In this respect several State laws provide that a claimant can establish eligibility for benefits even though he or she is not available for work in any week because of illness, disability, death in the family, jury duty, and various other reasons. Individuals who are deemed eligible for extended benefits by reason of such provisions cannot be excused from meeting the actively seeking work requirement of section 202(a)(3). Such individuals must be subject to this requirement to the same extent as all other claimants for extended benefits. If they cannot meet this requirement the disqualification must be imposed pursuant to section 202(a)(3).

Accordingly, the State law provisions on availability for work and the exceptions thereto which are applicable to claimants for regular benefits would not be applicable to the same extent to claimants for extended benefits.

Referrals by the employment service

Subparagraph (F) provides that extended benefit claimants shall be referred to jobs which meet the suitability requirements applicable to extended benefit claimants under new section 202(a)(3). Since most if not all referrals are made by the employment service, this means that employment service placement officers and job order takers, must be familiar with the requirements.

Subparagraph (F) does not mean that employment service personnel are directed, in effect, to make a determination that the job is suitable and that the individual will be disqualified if he fails to apply for or to accept the job. That determination is the responsibility of unemployment insurance adjudicators. The intent of the provision is to require that State agencies actively refer extended benefit claimants to any suitable work to which clauses (i), (ii), (iii) and (iv) of subparagraph (D) do not apply. Of course individuals should not be referred to jobs which are clearly unsuitable under the extended benefit suitability criteria.

Requirement for duration of unemployment disqualification

Section 202(a)(4) provides that no disqualification for regular benefits which has been imposed under a State law for "voluntarily leaving employment, being discharged for misconduct, or refusing suitable employment" will be deemed terminated for purposes of determining eligibility for extended benefits unless the termination of the disqualification occurs as the result of the application of a State law provision requiring employment subsequent to the date of such disqualification in order to terminate the disqualification. A postponent of benefits (for example, denial of benefits for the week in which the disqualifying act occurred and the 5 weeks immediately following) would not meet the Federal provision. Nor would the disqualification be considered terminated by the fact that an individual when not required to do so under the State law had engaged in employment during or after serving such a disqualification. If a State law itself does not require a duration of unemployment disqualification for [redacted] benefits in order to terminate a disqualification for the specified causes that individual would not be entitled to extended benefits.

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20213

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DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 22-81

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : T. JAMES WALKER
Administrator for
Administration and Management

SUBJECT : Clarification of the Requirements for Implementing P. L. 96-499 (Omnibus Reconciliation Act of 1980)

1. Purpose. To clarify questions regarding implementing P.L. 96-499 by providing a compilation of questions and answers generated at the implementation meetings held at Philadelphia, Pennsylvania, and Denver, Colorado.

2. References. P.L. 96-499; UIPL 14-81.

3. Background. Regional Offices, State Employment Security Agencies, and the National Office (USES and UIS) participated in implementation meetings regarding P.L. 96-499. The meetings were held in Philadelphia, Pennsylvania, on February 18-19, and in Denver, Colorado, on February 24-25, 1981. The State representatives were divided into three groups at each of the meetings. Each group raised different questions and the attached compilation reports the major issues raised at the various group meetings.

The questions and answers are arranged as follows:

. Actively Seeking Work
. Failure to Apply for or Accept Suitable Work
. Extended Benefits Disqualifications
. Federal Employees Compensation Account
. Public Service Employment and Waiting Week Provisions.

4. Action Required. State agencies are requested to inform the appropriate staff of the contents of the questions and answers attached to this GAL.

5. Inquiries. Questions regarding this directive should be directed to the respective regional offices.

6. Attachment. Questions and Answers for Clarification of P.L. 96-499.

RESCISSIONS	EXPIRATION DATE
	May 31, 1982

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8. Question

Is active membership and registration in a union hall [illegible] with most potential employers in an EB claimant's customary occupation and where the union representative not only assigns the claimant to available work but also actively seeks work on behalf of the claimant sufficient to meet the EB actively seeking work requirement?

Answer

No. Actively seeking work under the EB provisions requires more than that a claimant stands ready for work. To be eligible for EB, claimants efforts to obtain work must be sustained and systematic and this requirement makes it reasonable for claimant to seek other work in addition to their usual occupation until they can again find employment in their customary occupation. The active search for work requirement applies to all EB claimants and requires that a claimant on his own initiative make an active and independent effort to find work.

9. Question

The extended benefit provisions require that an individual shall be treated as actively seeking work during any week when he/she submits tangible evidence that his/her efforts to obtain work were sustained and systematic.

How many contacts with potential employers or other job search methods must EB claimants make during a week to demonstrate that they are actively seeking work?

Answer

The EB actively seeking work provisions do not state any specific number of job contacts to be made each week. The EB provisions describe actively seeking work as a sustained and systematic effort. A sustained effort is an effort maintained throughout each week without weakening. A sustained effort is not unremitting, but it is not a state of inactivity. A sustained search is a search for work conducted in a systematic manner every work day of each week. A systematic effort to seek work is a search conducted with thoroughness and with a method or a plan. A systematic search is conducted with consideration of labor market conditions and local hiring practices. What constitutes actively seeking work is a question which must be resolved on a case by case basis, for no one set of rules can be compiled to cover every individual claim in every situation. Yet, there must be guidelines which are applicable even handedly to all similarly situated claimants subject to this requirement.

10. Question

If an EB claimant has been reporting on a mail claim basis, should he/she be required to report in person to complete a report of work seeking activities and to submit tangible evidence of seeking work in person each week?

Answer

No, job seeking information may be obtained from a claimant either in person or by mail.