

NEBRASKA WORKFORCE DEVELOPMENT
DEPARTMENT OF LABOR

PRECEDENT MANUAL



A Syllabus Of Unemployment Insurance Appeal Decisions



**Compiled By
NEBRASKA APPEAL TRIBUNAL**

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Precedent Manual

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I. VOLUNTARY LEAVE

VL 5 GENERAL

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

To “leave work voluntarily,” as that term is used in the Employment Security Law, means to intentionally sever the employment relationship with intent not to return to, or to intentionally terminate, the employment. *Powers v. Chizek*, 204 Neb. 759, 285 N.W.2d 501 (1979). See also: *Gastineau v. Tomahawk Oil Company*, 211 Neb. 537, 319 N.W.2d 107 (1982), *Nuss v. Sorensen*, 218 Neb. 703, 358 N.W.2d 752 (1984), *McClemens v United Parcel Service*, 218 Neb 689, 358 N.W.2d 748 (1984), *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

One is disqualified for unemployment benefits if, by leaving work voluntarily without good cause, one thereby makes himself or herself “unemployed.” *Gilbert v. Hanlon*, 214 Neb 676, 335 N.W.2d 548 (1983).

As a general rule, an employee who leaves employment for the sole purpose of obtaining a better job has left work voluntarily within the meaning of the Nebraska Employment Security Law. *Id.*, *Gilbert v. Hanlon*, which declined to apply disqualification in the case of concurrent full-time and part-time employment because claimant had not become “unemployed,” is distinguished. *Nuss v. Sorensen*, 218 Neb. 703, 358 N.W.2d 752 (1984).

VL 40 ATTENDANCE AT SCHOOL OR TRAINING COURSE

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

VL 50 ATTRIBUTABLE TO, OR CONNECTED WITH, EMPLOYMENT

INCLUDES CASES IN WHICH THE ISSUE OF DISQUALIFICATION IS DEPENDENT UPON THE QUESTION OF WHETHER OR NOT CLAIMANT’S CAUSE FOR LEAVING WAS “CONNECTED WITH THE WORK” OR “ATTRIBUTABLE TO THE EMPLOYER.”

A compensable claim for benefits under the state unemployment compensation law must have some relation to, or connection with, the employment which employee has lost. *Woodmen of the World Insurance Society v. Olsen*, 141 Neb. 776, 4 N.W.2d 923 (1942).

Leaving employment, although it may appear voluntary, is with good cause if the reason for leaving has some justifiably reasonable connection with or relation to conditions of employment. *McClemens v United Parcel Service*, 218 Neb 689, 358 N.W.2d 748 (1984).

VL 70 CITIZENSHIP OR RESIDENCE REQUIREMENTS

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

VL 90 CONSCIENTIOUS OBJECTION / RELIGIOUS BELIEFS

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

Where claimant was discharged after refusing to work on her Sabbath, even though the conflict between work and religious belief was not caused by employer's alteration of conditions of work but was caused by claimant's religious conversion during the course of her employment, the Supreme Court held that refusal to award unemployment benefits to claimant violated the free exercise clause of the First Amendment. *Hobbie v. Unemployment Appeals Commission of Florida*, 480 U.S. 136, 107 S.Ct. 1046 (1987).

Where claimant refused temporary job placement which would have required him to work on Sunday, disqualification for refusal of suitable work was reversed upon a finding that the requirement violated the free exercise clause of the First Amendment and consequently claimant had good cause to refuse the placement. The Supreme Court found that claimant's sincere religious belief need not be a tenet of a particular religious sect in order to be afforded protection under the First Amendment. *Frazer v. Illinois Dept. of Employment Security*, 489 U.S. 829, 109 S.Ct. 1514 (1989).

Where claimant was assigned the night shift when he was hired, and worked this shift for one month before informing his employer that he would like to transfer to the day shift because his religion (claimant was a Jehovah's Witness) does not permit him to work at night, it was found that no evidence of religious discrimination existed and that the claimant left his work voluntarily and without good cause after being denied a shift transfer. Because the claimant accepted the employment under the condition that he would be working nights, and willingly did so for a period of time, the Appeal Tribunal determined that the claimant left his job for personal, disqualifying reasons. *In re Davila*, 90 Neb. App. Trib. 0252 (February 22, 1990).

Where claimant was hired as a part-time temporary employee and assigned to the 4:30 p.m. – 12:30 a.m. M-F shift, but was removed from the company employment rolls after he refused to work past 7:00 p.m. on Fridays because of his religious beliefs (claimant was a Seventh Day Adventist and observed the Sabbath from sundown on Friday to sundown on Saturday), it was held that because claimant did not notify his employer of his limited availability before accepting the position, which was intended to fill gaps in the employer's regular work force and thus required variable hours, he was separated from his employment under disqualifying conditions. The claimant completed the employment application and interview, underwent the company physical examination, attended the orientation process, and accepted the offer of employment for the 4:30 p.m. – 12:30 a.m. M-F shift before he notified the employer of his limited availability on Friday evenings, which he communicated by bringing a letter from his pastor with him on his first day of work. By agreeing to the contract of hire without informing his employer of his scheduling limitations, the claimant misrepresented his availability and his discharge was therefore not the result of religious discrimination. *In re Kohl*, 90 Neb. App. Trib. 2667 (December 20, 1990).

VL 100 EMPLOYMENT WITH TEMPORARY AGENCY

An employee who accepts a job which he or she knows in advance to be temporary does not voluntarily leave when the job ceases to exist, and thus is not disqualified from unemployment benefits on grounds of voluntarily leaving work without good cause. *Walker Manufacturing Company v. Pogreba*, 210 Neb. 619, 316 N.W.2d 315 (1982).

In a case where claimant was employed as a temporary worker through a temp to hire arrangement but believed that he was an employee of the company where his job assignment was located because that is where he interviewed and was hired and supervised, it was determined that documents signed by the claimant acknowledging that he was an employee of the temporary agency and that he had a responsibility to report back to the temporary agency at the end of his assignment were sufficient to prove that he was adequately notified of the arrangement. When the claimant failed to contact the temporary agency after he was told at the job site that his assignment had ended, he left his employment voluntarily without good cause and was therefore subject to a period of benefits disqualification. *Lecuona v. Southard, et al.*, District Court of Keith County, Nebraska, Case No. CI 01036 (August 8, 2001).

Where claimant was hired by her permanent employer and channeled into a hybrid employment arrangement where she would be employed by a temporary agency during a thirty-day probationary period, and where claimant was retained by the permanent employer and removed from the temporary agency payroll at the completion of her probation period, it was held that the claimant's separation from the temporary agency and transfer to her permanent employer's payroll was non-disqualifying. *In re Witt*, 89 Neb. App. Trib. 1680 (July 18, 1989).

Where claimant was employed by a temporary employment service and left her last assigned placement for personal reasons even though work continued to be available to her with the company, the claimant argued: 1) that temporary employment is provisional by nature and that temporary employees have no obligation to continue in a temporary employment relationship when other factors intervene; and 2) the fact that she was later contacted by the temporary agency for additional assignments indicated that there had been no separation of employment from the temporary agency when she left her last placement. The Appeal Tribunal found that the claimant did voluntarily leave her employment by turning down additional available work and initiating the separation of her open-ended placement, and that because she left work for personal reasons unrelated to her employment, she was subject to a benefits disqualification. *In re Adams*, 91 Neb. App. Trib. 0722 (April 2, 1991).

Where claimant was employed by a temporary employment service and was replaced on her last assignment because she did not possess the required skills, and then failed to contact her employer for reassignment, the Tribunal found that she left work voluntarily without good cause. *In re Heitman*, 89 Neb. App. Trib. 2217 (August 29, 1989).

Where an employee of a temporary help firm declined to accept offers of new work assignments for over two months after completion of the last work assignment, the claimant voluntarily severed the employment relationship. *In re Brown*, 03 Neb. App. Trib. 3519 (September 29, 2003.)

Where evidence does not show the employer gave notice to the claimant of his obligation to report back after his assignment ended and the impact failure to do so might have on his ability to receive unemployment insurance benefits as required in Neb. Rev. Stat. §48-628(1), the statutory presumption of voluntary leave did not apply. Further, claimant contacted employer immediately upon ending of his assignment but was not offered another assignment until later that day, which assignment the claimant declined because he had no transportation to the site of the work in another town. Separation found to be based upon lack of work and non-disqualifying. *In re Williams*, 05 Neb. App. Trib. 0591 (March 10, 2005.)

VL 110 EMPLOYEE LEASING

VL 135.05 DISCHARGE OR LEAVING – GENERAL

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

Separation due to a claimant's resignation which occurs after a claimant has been given the choice of resigning or facing imminent discharge as the result of misconduct constitutes a discharge within the meaning of the Nebraska Employment Security Law. *Reinke v. Lincoln-Lancaster Drug Projects Inc.*, Lancaster County, District Court, Doc. 451 Page 299 (September 4, 1990).

Where claimant left the workplace before the end of her shift after being counseled about absenteeism and did not report to work on the next scheduled work day because of transportation problems and after hearing from a co-worker that she was going to be fired, the court found that the claimant had not voluntarily left her employment within the meaning of the law since she had not intended to sever the employment relationship. *Powers v. Chizek*, 204 Neb. 759, 258 N.W.2d 501 (1979).

Where claimant was removed from her employment as a substitute teacher at the end of the school year after she obtained other full-time work for the fall, and where prior to accepting other employment she had reasonable assurance that her substitute teaching assignments would continue, it was held that she voluntarily left her employment without good cause by obtaining another job. *Cuming County School District #30 v. Department of Labor, et al.*, District Court of Cuming County, Nebraska, Case No. CI 07-7 (August 8, 2001).

The claimant was suspended and told she would be discharged in three days unless she successfully appealed the employer's action to a peer review panel. The claimant did not opt to pursue that potential remedy. The Tribunal found the claimant was discharged. Her failure to pursue a possible avenue to have the employer's decision reversed did not constitute a voluntary quit. *In re Foster*, 04 Neb. App. Trib. 4355 (January 4, 2005).

VL 135.1 DISCHARGE OR LEAVING – ABSENCE FROM WORK

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

Where claimant left the workplace before the end of her shift after being counseled about absenteeism and did not report to work on the next scheduled work day because of transportation problems and after hearing from a co-worker that she was going to be fired, the court found that the claimant had not voluntarily left her employment within the meaning of the law since she had not intended to sever the employment relationship. *Powers v. Chizek*, 204 Neb. 759, 258 N.W.2d 501 (1979).

VL 135.15 DISCHARGE OR LEAVING – CONSTRUCTIVE QUIT

When an employee contracts to fill a particular position, any material change in duties or significant reduction in rank will constitute a constructive discharge which, if unjustified, is a breach of contract. The doctrine of constructive discharge is applied when an employer deliberately renders an employee's working conditions intolerable, thus forcing employee to quit his or her job. *Sanders v. May*, 214 Neb 755, 336 N.W.2d 755 (1983).

Where claimant complained about treatment by her supervisor and a meeting was held in an attempt to address the claimant's concerns, and claimant nevertheless resigned the following day claiming that her working conditions were intolerable, the Court found that the claimant had not been constructively discharged because the employer had taken steps to address the problem before the claimant resigned. Claimant left voluntarily without good cause and was disqualified from receiving benefits. *Baronio v. Metromail Corp., et al*, District Court of Lancaster County, Nebraska, Doc. 444 Page 7 (November 29, 1990).

Where claimant walked off the job after refusing to accept a disciplinary action that he felt was unfair, it was held that he voluntarily left his employment without good cause. Claimant had been previously warned for carelessness and disobedience, and he was sufficiently aware of the employer's expectations; in attempting to discipline the claimant, the employer did not create an environment which forced the claimant to resign. *Interstate Printing Company v. McCoy*, District Court of Douglas County, Nebraska, Doc. 979 No. 732 (August 30, 1999).

VL 135.2 DISCHARGE OR LEAVING – INTERPRETATION OF REMARK OR ACTION OF EMPLOYER OR EMPLOYEE

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

Claimant was sent home for being unfit to work and was told by the employer that he would receive further information in a few days; claimant filed for unemployment benefits later that day and did not contact the employer for two weeks. It was held that claimant voluntarily left his job without good cause, and he was disqualified from benefits. Dissent: Employer not at liberty to make the employee "stand in the corner" until employer decided further punishment. *Gastineau v. Tomahawk Oil Company*, 211 Neb. 537, 319 N.W.2d 107 (1982).

Where truck driver claimant was offered a leave of absence due to medical reasons, told his employer he would think about it, and then later "turned in his truck" to his employer with the intention of resigning his employment, it was held that the claimant voluntarily left his employment when he turned in the truck and should be considered unemployed from that date, despite the fact that the employer misunderstood the claimant's actions to be initiating a leave of absence and considered the claimant to still be an employee. *In re Rowe*, 02 Neb. App. Trib. 3943 (November 25, 2002).

Where claimant told a co-worker one evening that she was going to quit her job, but changed her mind before she communicated that to the employer, claimant did not voluntarily leave employment when the co-worker told the employer who dismissed the claimant the following morning because they felt it was risky to permit an employee

who was looking for another job to continue to have access to its premises and client records. *In re Kline*, 05 Neb. App. Trib. 0012 (January 26, 2005.)

VL 135.25 DISCHARGE OR LEAVING – LEAVING PRIOR TO EFFECTIVE DATE OF DISCHARGE

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

Employee who engaged in no misconduct and who desires to keep employment, but nonetheless resigns because employer has clearly manifested that employment will be terminated, has not left employment voluntarily, and thus is not precluded from receiving unemployment compensation benefits. *Perkins v. Equal Opportunity Commission*, 234 Neb. 359, 451 N.W.2d 91 (1990).

Superintendent of public school district, who resigned only because school board members who had the power to reelect him intended not to do so and where there was no question of misconduct on his part, did not terminate his employment voluntarily and was therefore not disqualified from receiving unemployment benefits. *School District No. 20 v. Commissioner of Labor*, 208 Neb. 663, 305 N.W.2d 367 (1981).

Where claimant left work two days prior to the scheduled completion date of his summer job through the employer's college temporary work program in order to make preparations for his return to school, it was held that the claimant left his employment voluntarily for personal reasons while work was still available to him and was therefore subject to a benefits disqualification period. *In re Salinas*, 90 Neb. App. Trib. 0245 (February 26, 1990).

Where claimant was informed by her employer on December 21st that she would be laid off effective December 29th because of a business slow-down, and subsequently decided to sever her employment relationship immediately, the Appeal Tribunal held that this case of a layoff due to lack of work, leaving work voluntarily prior to the effective date of discharge while work is still available constitutes a separation under disqualifying conditions. The claimant was assessed a benefits disqualification period. *In re Conn*, 91 Neb. App. Trib. 0334 (March 1, 1991).

VL 135.35 DISCHARGE OR LEAVING – LEAVING IN ANTICIPATION OF DISCHARGE

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

A claimant who had been accused of converting property of the employer for her own use could not avoid the finding of gross misconduct and the accompanying cancellation of all wage credits by quitting in anticipation of discharge. The Court found that the claimant was constructively discharged when she quit rather than meet with her supervisor regarding missing drugs. *Lutheran Medical Center v. Filkins, et al*, District Court of Douglas County, Nebraska, Doc. 673 Page 338 (January 7, 1975).

Upon being hired by her employer, the claimant underwent a physical examination during which a medical condition was discovered that required further testing and ultimately surgery. The claimant only worked one week with the employer before her medical absences were required, and the company's absenteeism policy dictated that employees were only eligible for medical leave which did not exceed the length of their employment, and that an employee who exceeded the maximum allowed leave without returning to work would be discharged. Upon learning that she would only be eligible for one week of leave, an insufficient amount of time to cover her required surgery and recuperation period, the claimant resigned from her employment to avoid a discharge. The Appeal Tribunal ruled that the claimant's separation from employment was not voluntary and not the result of misconduct, and that she was therefore eligible for benefits. *In re Warneking*, 90 Neb. App. Trib. 2611 (December 10, 1990).

Where claimant submitted her resignation when she believed her discharge was imminent after a warning that she would be terminated if her job performance did not improve, and where the employer informed claimant at the time she submitted her resignation that her work had improved satisfactorily and continuing employment was available

but the claimant resigned anyway, it was held that the claimant left work voluntarily and without good cause and she was assessed a benefits disqualification period. *In re Acton*, 90 Neb. App. Trib. 1992 (September 19, 1990).

The claimant received an unsatisfactory performance review after his first three months of work and was told that he would be discharged, but then convinced his employer to let him stay in the job and receive weekly reviews in an attempt to improve his performance. When the claimant decided to resign from his position after the first week of the new arrangement because of personality conflicts with his co-workers and the length of his commute, even though he had been told by his supervisor that his performance was satisfactorily improved and ongoing work was available on a week-to-week basis, the Appeal Tribunal held that he left work voluntarily and under disqualifying conditions. *In re DeGroot*, 90 Neb. App. Trib. 2444 (November 21, 1990).

Where claimant appeared to be responsible for theft of money from cash register and abandoned his job, he could not avoid a finding of gross misconduct and the subsequent total disqualification by quitting instead of being discharged. *In re Wulff*, 03 Neb. App. Trib. 4861 (January 22, 2004) relying on *Lutheran Medical Center v. Filkins*, Docket 673, No. 338, District Court of Douglas County, Neb. (January 7, 1975.)

The claimant received a written warning, the second step in the employer's progressive disciplinary plan, after making earnest efforts to improve his performance after receiving a verbal warning. The claimant resigned because he believed his discharge at the end of the 120 day period outlined in the written warning was inevitable and he was suffering considerable stress. The Tribunal found the claimant's resignation was voluntary rather than involuntary, in that he did not resign in lieu of certain discharge at a definite time in the future. The claimant did not establish good cause for leaving. The conditions of supervisory meetings imposed by the employer were not a substantial change in the conditions of employment, nor were the claimant's physical symptoms of stress proven to be endangering to his health. *In re Kautto*, 04 Neb. App. Trib. 0718 (March 15, 2004.)

Where employer began proceedings to discharge the claimant then the claimant resigned as part of a settlement reached with the employer which also included payment of a substantial sum to the claimant, the claimant voluntarily resigned without good cause. The ultimate outcome of the discharge proceeding was far from certain. The claimant bargained for several benefits in the settlement, weighed the alternative courses of action available and made a knowing and rational decision to resign. *In re Quillen*, 05 Neb. App. Trib. 0087, (February 8, 2005.)

VL 135.4 DISCHARGE OR LEAVING – RESIGNATION INTENDED

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

The claimant, a child services specialist at a hospital, submitted her resignation after a poor performance review and ongoing conflicts with her supervisor, and then left in the middle of her shift two days before her last scheduled day of employment. The claimant had arrived to work ill that morning and had requested to be relieved of her duties for the remainder of the day, but was told by her supervisor to visit the employer's health room before leaving. When she was told that she could not be examined in the health room until early afternoon, she left work and put a note on her supervisor's desk stating that she would not be returning for the remainder of her employment. She did not personally notify anyone that she was leaving, and her absence caused a group of two-year-olds under her care to be unsupervised for an hour and a half before the claimant's supervisor found the note and discovered the unattended children. Because of the serious and flagrant nature of the claimant's actions, the employer argued that her separation should be ruled as an effective discharge for gross misconduct. However, the Tribunal found that the claimant's separation from her employment occurred at the time she left the note on her supervisors desk and that she left work voluntarily and without good cause; the claimant's manner of separation and negligent behavior immediately subsequent to her resignation cannot result in a total disqualification from benefits under the authority of the law. In this case, the Tribunal modified the adjudicator's ruling to give the claimant the maximum disqualification penalty of ten weeks, but could not arrive at a determination of gross misconduct because the claimant left voluntarily and was not discharged. *In re Thelen*, 90 Neb. App. Trib. 1000 (May 22, 1990).

VL 138 DISCIPLINARY ACTION

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

The claimant received a written warning, the second step in the employer's progressive disciplinary plan, after making earnest efforts to improve his performance after receiving a verbal warning. The claimant resigned because he believed his discharge at the end of the 120 day period outlined in the written warning was inevitable and he was suffering considerable stress. The Tribunal found the claimant's resignation was voluntary rather than involuntary, in that he did not resign in lieu of certain discharge at a definite time in the future. The claimant did not establish good cause for leaving. The conditions of supervisory meetings imposed by the employer were not a substantial change in the conditions of employment, nor were the claimant's physical symptoms of stress proven to be endangering to his health. *In re Kautto*, 04 Neb. App. Trib. 0718 (March 15, 2004.)

The claimant did not have good cause to leave employment because she disagreed with the employer's evaluation of her in her performance review. *In re Buck*, 04 Neb. App. Trib. 3181 (September 20, 2004.)

A substantial reduction in work hours as a result of misconduct did not give the claimant good cause to leave his job. *In re Totman*, 04 Neb. App. Trib. 0189 (February 11, 2004.)

Where the claimant left her job instead of accepting a demotion given as a result of her misconduct, the claimant did not leave with good cause. *In re Moore*, 04 Neb. App. Trib. 3161 (September 21, 2004.) See also *In re Salazar*, 03 Neb. App. Trib. 3901 (November 5, 2003.)

VL 139 DISCRIMINATION

WHERE ALLEGED DISCRIMINATION – FOR EXAMPLE, ON THE BASIS OF SEX, RACE, OR AGE – OR VIOLATION OF CIVIL RIGHTS LAW, AFFECTED CLAIMANT'S LEAVING WORK.

Where claimant voluntarily left his job after experiencing racial harassment at work for over seven years, it was held that he had good cause to terminate his employment and was eligible for benefits without disqualification. The claimant reported the harassment to a number of supervisors on numerous occasions, and although the employer claimed it would have been able to address the problem if claimant were willing to "name names," it was determined that the employer knew or should have known that the hostile work environment existed and had a duty to eliminate the harassment. *Dunson v. ConAgra*, District Court of Dakota County, Nebraska, Case No. 61-248 (February 13, 1998).

The claimant resigned from his employment on the advice of his physician after racial harassment from a co-worker began affecting his health, even though the claimant had reported the harassment some years earlier and the employer had disciplined the co-worker at the time. After switching to the night shift, the claimant still had some contact with the co-worker while at work and continued to experience harassment to such a degree that he believed his health was in danger and consulted with his physician. The Appeal Tribunal determined that the claimant had good cause to voluntarily sever his employment relationship due to workplace harassment and the resulting threat to his health. *In re Lovato*, 89 Neb. App. Trib. 1283 (June 9, 1989).

Where claimant resigned from her employment after complaining to middle management about allegedly inappropriate behavior and comments from her supervisor and her concerns were dismissed, the Appeal Tribunal ruled that when management closes the door to discussion of conditions in the workplace to the extent that an employee is barred from the right to discuss such issues, the employee has good cause to leave work and will not be assessed a benefits disqualification penalty for voluntarily severing the employment relationship. *In re Sivertson*, 89 Neb. App. Trib. 1294 (June 1, 1989).

Where claimant left her employment after ongoing sexual harassment from her supervisor but did not report the conduct to her employer for an extended period of time, it was held that the claimant, having been informed during the course of her employment and having contacted a personal attorney about the harassment, knew or should have know that her supervisor's behavior was a violation of her rights and would not be condoned by the employer. By

not informing her employer of the nature and depth of the problem until just before she resigned her employment, and not reporting subsequent conduct from her supervisor she felt to be retaliatory or intimidating, she did not give them an adequate chance to address the harassment and her separation from employment took place under disqualifying conditions. *In re Johnson*, 90 Neb. App. Trib. 2914 (January 17, 1991).

Where the claimant was sexually harassed by her supervisor, who was the president of the company, and the harassing conduct continued despite the claimant's repeated protests and efforts to avoid being alone with her employer, the claimant had legally sufficient good cause to leave her employment. *In re Vanscoy*, 04 Neb. App. Trib. 3204 (September 27, 2004.)

VL 150.05 DISTANCE TO WORK – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF DISTANCE TO WORK, (2) POINTS ON DISCHARGE OR LEAVING NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 150, OR (3) POINTS COVERED BY ALL THE SUBLINES.

VL 150.15 DISTANCE TO WORK – REMOVAL FROM LOCALITY

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

Where claimant resigned after receiving a lateral transfer from Norfolk, NE to Sioux City, IA, the Tribunal held that the claimant had good cause to leave his employment, despite the fact that he was offered a salary increase and time to move. The Tribunal stated that a claimant who is transferred from one geographic location to another is always given good cause to separate from employment, regardless of the conditions of the new job. *In re Linscott*, 89 Neb. App. Trib. 2477 (September 26, 1989).

VL 150.2 DISTANCE TO WORK – TRANSPORTATION AND TRAVEL

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

VL 155.05 DOMESTIC CIRCUMSTANCES – GENERAL

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

VL 155.1 DOMESTIC CIRCUMSTANCES – CHILDREN, CARE OF

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

Where claimant resigned from her employment after a temporary shift in her hours, requiring her to work an additional evening each week over the course of the summer but did not increasing her overall hours, the Tribunal held that good cause was not established for the claimant's voluntary leave and she was assessed a benefits disqualification period. Although the scheduling arrangement would have required the claimant, a single mother, to make additional evening childcare arrangements the decision to shift the claimant's hours was based on the employer's economic needs and was to be only a temporary change. *In re Manago*, 86 Neb. App. Trib. 2266 (July 30, 1986).

VL 155.2 DOMESTIC CIRCUMSTANCES – HOME OR SPOUSE IN ANOTHER LOCALITY

WHERE CLAIMANT LEFT WORK TO JOIN OR ACCOMPANY SPOUSE ELSEWHERE.

Where claimant voluntarily left her employment for the sole and only reason of being with her husband in another city to which he had been transferred by his employer, she left her employment without good cause as connected to the employment, and thus disqualified herself from unemployment benefits. *Woodmen of the World Insurance Society v. Olsen*, 141 Neb. 776, 4 N.W.2d 923 (1942).

VL 155.25 DOMESTIC CIRCUMSTANCES – HOUSEHOLD DUTIES

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

VL 155.3 DOMESTIC CIRCUMSTANCES – HOUSING

WHERE CLAIMANT LEFT WORK BECAUSE OF INABILITY TO SECURE ADEQUATE HOUSING FACILITIES.

VL 155.35 DOMESTIC CIRCUMSTANCES – ILLNESS OR DEATH OF OTHERS

WHERE CLAIMANT LEFT WORK TO CARE FOR AN ILL FAMILY MEMBER OR TO ATTEND A FUNERAL, ETC.

VL 155.4 DOMESTIC CIRCUMSTANCES – MARRIAGE

WHERE CLAIMANT LEFT WORK TO MARRY, OR BECAUSE OF AN EMPLOYER’S RULE AGAINST EMPLOYING PERSONS AFTER MARRIAGE.

VL 160 EFFORT TO RETAIN EMPLOYMENT

WHERE CLAIMANT’S EFFORTS TO RETAIN EMPLOYMENT, WHETHER OR NOT HE OR SHE HAD GOOD CAUSE TO LEAVE, ARE CONSIDERED. SUCH EFFORTS INCLUDE: APPLICATION FOR LEAVE OF ABSENCE, ATTEMPTS TO RESOLVE DIFFERENCES WITH EMPLOYER, PURSUIT OF FORMAL GRIEVANCE PROCEDURE, AND REQUEST FOR TRANSFER.

Where claimant complained about treatment by her supervisor and a meeting was held in an attempt to address the claimant’s concerns, and claimant nevertheless resigned the following day claiming that her working conditions were intolerable, the Court found that the claimant had not been constructively discharged because the employer had taken steps to address the problem before the claimant resigned. Claimant left voluntarily without good cause and was disqualified from receiving benefits. *Baronio v. Metromail Corp., et al*, District Court of Lancaster County, Nebraska, Doc. 444 Page 7 (November 29, 1990).

Claimant was sent home for being unfit to work and was told by the employer that he would receive further information in a few days; claimant filed for unemployment benefits later that day and did not contact the employer for two weeks. It was held that claimant voluntarily left his job without good cause, and he was disqualified from benefits. Dissent: Employer not at liberty to make the employee “stand in the corner” until employer decided further punishment. *Gastineau v. Tomahawk Oil Company*, 211 Neb. 537, 319 N.W.2d 107 (1982).

VL 170 EFFORT TO ACCOMMODATE EMPLOYEE

INCLUDES CASES WHERE EMPLOYER ATTEMPTED TO ACCOMMODATE CLAIMANT’S CONCERNS PRIOR TO THE CLAIMANT’S LEAVING.

Where claimant left employment after a lateral transfer from a clerical position to a warehouse position, she was disqualified from unemployment benefits on basis of leaving work voluntarily and without good cause. At the time of claimant’s resignation, the lifting requirement had been eliminated from her position based upon medical evidence that she could not do heavy lifting, and the employer was attempting to transfer claimant back to a clerical position. *Norman v. Sorensen*, 220 Neb. 408, 370 N.W.2d 147 (1985).

VL 180 EQUIPMENT

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

VL 190.05 EVIDENCE – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF EVIDENCE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 190, OR (3) POINTS COVERED BY ALL THREE SUBLINES.

In a Social Security Disability appeal, the U.S. 8th Circuit Court of Appeals held that an administrative law judge failed to consider the combined effect of claimant's impairments and erred in discounting claimant's subjective complaints of pain where the claimant's testimony was consistent with the record as a whole. *Brown v. Sullivan*, 902 F2d 1292 (1990).

VL 190.1 EVIDENCE – BURDEN OF PROOF AND PRESUMPTIONS

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

In voluntary termination cases the burden of proof is on the employee to prove that the leaving was for good cause. *McClemens v United Parcel Service*, 218 Neb 689, 358 N.W.2d 748 (1984). See also: *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985), *Stackley v. State*, 222 Neb 767, 386 N.W.2d 884 (1986), *Ponderosa Villa v. Hughes*, 224 Neb 627, 399 N.W.2d 166 (1987).

Under the Nebraska Employment Security Law, where a claimant appeals from a disqualification, the burden of proof is on the claimant to show that he or she involuntarily left his or her employment or did so voluntarily with good cause. *Taylor v. Collateral Control Corporation*, 218 Neb. 432, 355 N.W.2d 788 (1984).

The District Court found that the Nebraska Supreme Court decision in *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 NW2d 121 (1985), does not require that a claimant provide competent medical evidence substantiating a health problem prior to resigning. A doctor's statement obtained after the resignation was sufficient to establish that continued employment was a threat to the claimant's health. *Barth v. IBP*, District Court of Dawson County, Nebraska, Doc. No. 93-1973

VL 190.15 EVIDENCE – WEIGHT AND SUFFICIENCY / STANDARD OF PROOF

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

Unemployment compensation claimant failed to sustain her claim, by a preponderance of the evidence, of good cause for terminating her employment as a telephone company order clerk typist, namely, because the treatment accorded her by her superiors made her tense, uncomfortable and frustrated. *Neaman v. Northwestern Bell Telephone Company*, 202 Neb. 255, 275 N.W.2d 57 (1979).

Where there is no competent medical evidence offered to substantiate claim that employee's health would be affected by change in hours, unemployment insurance claimant fails to satisfy his or her burden of proving that termination was for good cause due to health reasons. An unsubstantiated statement by the claimant, a licensed practical nurse, that working the night shift at a hospital would affect her liver did not render the proposed change in hours good cause to voluntarily terminate employment, and she was therefore disqualified from receiving unemployment insurance benefits. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

The District Court found that the Nebraska Supreme Court decision in *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 NW2d 121 (1985), does not require that a claimant provide competent medical evidence substantiating a

health problem prior to resigning. A doctor's statement obtained after the resignation was sufficient to establish that continued employment was a threat to the claimant's health. *Barth v. IBP*, District Court of Dawson County, Nebraska, Doc. No. 93-1973.

VL 195 EXPERIENCE OR TRAINING

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

VL 210 GOOD CAUSE

INCLUDES GENERAL DISCUSSIONS AS TO WHAT CONSTITUTES "GOOD CAUSE" FOR VOLUNTARY LEAVING.

The correct inquiry when an employed person refuses a demotion and leaves is whether good cause existed to voluntarily sever the employment. Where the terms of a demotion, which was mandated by a statutory change and was not the result of employee misconduct, substantially changed almost every aspect of an employee's job to her detriment, claimant had good cause to leave the employment. *Ponderosa Villa v. Hughes*, 224 Neb 627, 399 N.W.2d 166 (1987).

Where claimant left employment after a lateral transfer from a clerical position to a warehouse position, she was disqualified from unemployment benefits on basis of leaving work voluntarily and without good cause. At the time of claimant's resignation, the lifting requirement had been eliminated from her position based upon medical evidence that she could not do heavy lifting, and the employer was attempting to transfer claimant back to a clerical position. *Norman v. Sorensen*, 220 Neb. 408, 370 N.W.2d 147 (1985).

Licensed professional engineer did not have good cause for voluntarily leaving his employment because of a policy disagreement with his supervisor regarding the role of engineers in department's decision making process. *Stackley v. State*, 222 Neb 767, 386 N.W.2d 884 (1986).

A claimant who was limited by his physician to light duty and subsequently refused his employer's continuing good faith attempts to assign light duty did not demonstrate good cause for leaving his employment. *Taylor v. Collateral Control Corporation*, 218 Neb 432, 355 N.W.2d 788 (1984).

The employer's use of obscenities and verbal abuse directed at the claimant constituted good cause for the claimant to leave employment. *In re Borer*, 04 Neb. App. Trib. 4339 (January 3, 2004.)

Where the employer violated the claimant's FMLA right to reinstatement in his former position by assuming he was no longer capable of performing the functions of his previous supervisory welding position even though the claimant had been medically authorized to return to work without restrictions. When the claimant left employment instead of accepting the entry level position he was offered after he returned from medical leave, the claimant left with good cause. *In re Lorsch*, 0a4 Neb. App. Trib. 2402 (July 19, 2004.)

Where the claimant was demoted to the position of Assistant Activity Director when the employer's Board of Directors combined some of its departments, but the claimant's rate of pay and hours remained the same, the claimant did not establish good cause to voluntarily leave employment. *In re Aeby*, 05 Neb. App. Trib. 0482 (March 1, 2005.)

Where the employer staged a simulated robbery at gunpoint attempt where a shotgun was aimed at the claimant and she was forced to lie on the floor while her purse was stolen and the claimant was traumatized by the event necessitating medical treatment, which was only subsequently disclosed to be a training exercise, the claimant had good cause to leave employment. *In re Johnson*, 03 Neb. App. Trib. 4618 (December 24, 2003.)

VL 235.05 HEALTH OR PHYSICAL CONDITION – GENERAL

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

Where claimant left employment after a lateral transfer from a clerical position to a warehouse position, she was disqualified from unemployment benefits on basis of leaving work voluntarily and without good cause. At the time of claimant's resignation, the lifting requirement had been eliminated from her position based upon medical evidence that she could not do heavy lifting, and the employer was attempting to transfer claimant back to a clerical position. *Norman v. Sorensen*, 220 Neb. 408, 370 N.W.2d 147 (1985).

In a Social Security Disability appeal, the U.S. 8th Circuit Court of Appeals held that an administrative law judge failed to consider the combined effect of claimant's impairments and erred in discounting claimant's subjective complaints of pain where the claimant's testimony was consistent with the record as a whole. *Brown v. Sullivan*, 902 F2d 1292 (1990).

In a case where an employee agreed at the time of hire to work certain specified hours and the employer subsequently increased those hours, the Nebraska Supreme Court found as follows: If an employee accepts employment in good faith and through no fault or deficiency on his or her part the workload becomes an increasingly unreasonable burden so as to affect the health or sense of well-being of the employee, voluntarily termination does have some justifiably reasonable connection with or relation to conditions of employment and may be deemed for good cause. *Glionna v. Chizek*, 204 Neb. 37, 281 N.W.2d 220 (1979).

In a case where claimant left her employment because of a number of stress-related medical problems, but did not submit medical evidence to her employer before resigning and did not exhaust available work and medical leave alternatives, it was held that the claimant voluntarily quit without good cause and was subject to a benefits disqualification period. *Wilwerding v. Mutual of Omaha Insurance Co.*, District Court of Lincoln County, Nebraska, Doc. 949 No. 592 (August 8, 1997).

VL 235.1 HEALTH OR PHYSICAL CONDITION – AGE

INVOLVES A DISCUSSION OF CLAIMANT'S LEAVING WORK BECAUSE OF AGE.

VL 235.2 HEALTH OR PHYSICAL CONDITION – HEARING, SPEECH, OR VISION

INVOLVES A DISCUSSION OF CLAIMANT'S LEAVING WORK FOR REASONS RELATED TO HEARING, SPEECH, OR VISION.

VL 235.25 HEALTH OR PHYSICAL CONDITION – ILLNESS OR INJURY

WHERE CLAIMANT LEAVES WORK BECAUSE OF ILLNESS OR INJURY.

Where there is no competent medical evidence offered to substantiate claim that employee's health would be affected by change in hours, unemployment insurance claimant fails to satisfy his or her burden of proving that termination was for good cause due to health reasons. An unsubstantiated statement by the claimant, a licensed practical nurse, that working the night shift at a hospital would affect her liver did not render the proposed change in hours good cause to voluntarily terminate employment, and she was therefore disqualified from receiving unemployment insurance benefits. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

District Court found that the Nebraska Supreme Court decision in *Montclair Nursing Center v. Wills*, 220 Neb, 547, 371 NW 2d 121 (1985) does not require that a claimant provide competent medical evidence substantiating a health problem prior to resigning. A doctor's statement obtained after the resignation was sufficient to establish that continued employment was a threat to the claimant's health. *Barth v. IBP.*, District Court of Dawson County, Nebraska, Doc. No. 93-1973.

In a case where claimant left her employment a number of stress-related medical problems, but did not submit medical evidence to her employer before resigning and did not exhaust available work and medical leave alternatives, it was held that the claimant voluntarily quit without good cause and was subject to a benefits disqualification period. *Wilwerding v. Mutual of Omaha Insurance Co.*, District Court of Lincoln County, Nebraska, Doc. 949 No. 592 (August 8, 1997).

Claimant voluntarily left his employment as a truck driver after radiation treatments for larynx cancer caused him to experience unpredictable yet reoccurring fatigue and a diminished ability to speak. Although the claimant offered medical documentation of his condition that was not particularly current, it was held that the claimant presented credible evidence that he was unable to continue, on a regular basis, to safely drive a truck the distances required by the employer and therefore the claimant left his employment with good cause and was not subject to a benefits disqualification period. Because the claimant's medical condition was not connected to his work, it was further held that the employer's expense account would not be charged as a result of benefits claimed or received by the claimant. *In re Rowe*, 02 Neb. App. Trib. 3943 (November 25, 2002).

Upon being hired by her employer, the claimant underwent a physical examination during which a medical condition was discovered that required further testing and ultimately surgery. The claimant only worked one week with the employer before her medical absences were required, and the company's absenteeism policy dictated that employees were only eligible for medical leave which did not exceed the length of their employment, and that an employee who exceeded the maximum allowed leave without returning to work would be discharged. Upon learning that she would only be eligible for one week of leave, an insufficient amount of time to cover her required surgery and recuperation period, the claimant resigned from her employment to avoid a discharge. The Appeal Tribunal ruled that the claimant's separation from employment was not voluntary and not the result of misconduct, and that she was therefore eligible for benefits. *In re Warneking*, 90 Neb. App. Trib. 2611 (December 10, 1990).

The claimant resigned from his employment on the advice of his physician after racial harassment from a co-worker began affecting his health, even though the claimant had reported the harassment some years earlier and the employer had disciplined the co-worker at the time. After switching to the night shift, the claimant still had some contact with the co-worker while at work and continued to experience harassment to such a degree that he believed his health was in danger and consulted with his physician. The Appeal Tribunal determined that the claimant had good cause to voluntarily sever his employment relationship due to workplace harassment and the resulting threat to his health. *In re Lovato*, 89 Neb. App. Trib. 1283 (June 9, 1989).

The claimant's failure to produce competent and persuasive medical evidence to show that his continued employment after an injury would endanger his health, or rendered him incapable of performing the tasks of his job, resulted in a finding that he failed to prove good cause for his voluntary separation from employment. The letter from the claimant's physician was ambiguous and the claimant's argument that his symptoms precluded his return to work was not supported by objective medical evidence to support his subjective complaints. *McClemens II vs. United Parcel Ser.*, 358 N.W.2d 748, 218 Neb. 689 (1984.) See also *Drivers Management v. Comm. Of Labor and Defonso*, CI 03-3246, District Court of Lancaster County, Nebraska, (January 16, 2004.)

VL 235.35 HEALTH OR PHYSICAL CONDITION – PHYSICAL EXAMINATION REQUIREMENT

WHERE CLAIMANT'S LEAVING WORK IS BECAUSE A PHYSICAL EXAMINATION IS REQUIRED.

VL 235.4 HEALTH OR PHYSICAL CONDITION – PREGNANCY

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

Where claimant went from full-time to part-time and then later resigned from her position entirely following a directive from her physician, who believed the claimant's employment was aggravating complications with the her pregnancy and endangering her health, the Tribunal found that although the claimant's health problems were beyond

the control of her employer, medical evidence supported the conclusion that continued employment posed a serious threat to her health. The claimant separated from her employment under non-disqualifying conditions. *In re Kurtenbach*, 90 Neb. App. Trib. 2818 (January 7, 1991).

VL 235.45 HEALTH OR PHYSICAL CONDITION – RISK OF ILLNESS OR INJURY

WHERE CLAIMANT LEAVES WORK BECAUSE OF FEAR OF ILLNESS OR INJURY.

A claimant who was limited by his physician to light duty and subsequently refused his employer's continuing good faith attempts to assign light duty did not demonstrate good cause for leaving his employment. *Taylor v. Collateral Control Corporation*, 218 Neb 432, 355 N.W.2d 788 (1984).

Where the claimant terminated his employment because he was disgruntled at not being assigned office duties after a medical leave for back surgery, he left work voluntarily and without good cause and was subject to a benefit disqualification period. While claimant may honestly have anticipated a health problem would arise from his continuing to do manual labor, his medical release was without restriction and there was no evidence that performing his regular duties in the shipping department would have any adverse effect on his physical health. *Heimsoth v. Kellwood*, 211 Neb. 167, 318 N.W.2d 1 (1982).

Where claimant left his employment because he believed the requirement that he work outside in cold weather conditions was detrimental to his health, and stated that his physician instructed him to remain away from work for four weeks but submitted no medical evidence to the Tribunal and did not notify his employer that he was leaving due to a health condition, it was held that there was insufficient evidence to support a finding of good cause and the claimant was assessed a benefits disqualification period. *In re Hoffman*, 89 Neb. App. Trib. 0204 (February 9, 1989).

VL 290 LEAVING WITHOUT NOTICE

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

Where claimant left the workplace before the end of her shift after being counseled about absenteeism and did not report to work on the next scheduled work day because of transportation problems and after hearing from a co-worker that she was going to be fired, the court found that the claimant had not voluntarily left her employment within the meaning of the law since she had not intended to sever the employment relationship. *Powers v. Chizek*, 204 Neb. 759, 258 NW 2d 501 (1979).

VL 305 MILITARY SERVICE

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

VL 315 NEW WORK

THIS CATEGORY INCLUDES ONLY CASES WITH REFERENCE TO DETERMINATION OF "NEW WORK" WITHIN THE MEANING OF SECTION 3304 (A) (5) OF THE INTERNAL REVENUE CODE OR OF STATE LABOR STANDARD PROVISIONS PATTERNED AFTER IT. INCLUDES CASES INVOLVING A NEW CONTRACT OF HIRE OR A TRANSFER TO A DIFFERENT TYPE OF WORK, A DIFFERENT DEPARTMENT, OR A DIFFERENT PLANT, OF THE SAME EMPLOYER.

Where claimant left her part-time employment to begin another part-time job where she would work more hours and which she believed would develop into a full-time position, she was found to have left her employment voluntarily without good cause and was assessed a seven-week benefits disqualification period. Although Nebraska Employment Security Law – sub-section (a) (2) of §48-628 – reduces disqualification to one week if an individual leaves employment in order to accept a better job, the statute requires that the new position be full-time. In this case the claimant's subsequent employment, while consisting of increased hours, was not full-time. *In re DeVinney*, 88 Neb. App. Trib. 0101 (February 2, 1988).

Where claimant left her employment to accept another position that paid \$0.90 per hour less than her previous job, and where claimant continued her health insurance coverage with her former employer after taking the new position, it was held that the claimant left her previous position voluntarily without good cause and was given a seven-week disqualification from benefits. Based on the evidence, the Tribunal found that the claimant's subsequent work did not meet the statutory qualifications for better employment, and she was therefore not eligible for a disqualification of only one week. *In re Strong*, 89 Neb. App. Trib. 1214 (May 26, 1989).

Where claimant left her employment to accept a new position that offered a greater rate of pay, improved benefits, and full-time hours for at least the seven-year duration of the new employer's immediate project, the Tribunal found that the claimant's subsequent employment qualified as permanent and the claimant was assessed only a one-week benefits disqualification for voluntarily leaving her other job. Further, the tribunal held that the periodic lay-offs the claimant would experience with her new employment, due to the nature of construction work and its dependency on weather conditions, were based on industry standards and did not constitute disruptions in the employment relationship, and therefore did not affect the determination of the new work as permanent and full-time. *In re Hopkins*, 90 Neb. App. Trib. 0097 (February 1, 1990).

Where claimant left her part-time employment as a waitress/bartender to accept a previously secured, full-time, and higher-paying position as a teacher, the Tribunal found that the claimant's subsequent work met the statutory requirements for better employment and the claimant was given only a one-week benefits disqualification for leaving her prior job voluntarily and without good cause. *In re Kohlhof*, 89 Neb. App. Trib. 0549 (March 20, 1989).

VL 325.05 NON-DISQUALIFYING AND NON-CHARGED – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF NON-DISQUALIFYING AND NON-CHARGED CASES, (2) POINTS ON DISCHARGE OR LEAVING NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 325, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

According to Nebraska Unemployment Security Law regulation 219 NAC 14, an individual may voluntarily leave his or her employment with good cause if continued employment in designated occupational field represents a danger to the individual's health, providing there is credible evidence supporting such a conclusion. Neb. Rev. Stat. §48-652(3)(a)(1)(B) states that no benefits will be charged to the employer's experience account in instances where the claimant has left work voluntarily and with good cause due to a non work-related illness or injury, as addressed in regulation 219 NAC 14, or where claimant has left work voluntarily to escape abuse.

VL 325.1 NON-DISQUALIFYING AND NON-CHARGED – HEALTH

INCLUDES CASES WHERE CLAIMANT VOLUNTARILY LEAVES EMPLOYMENT FOR NON-DISQUALIFYING HEALTH-RELATED REASONS AND THE EMPLOYER'S EXPERIENCE ACCOUNT IS NOT CHARGED.

The claimant, a long-distance truck driver, sustained a back injury while climbing out of his truck and after five subsequent months of receiving workman's compensation benefits and performing no labor, left his employment voluntarily on the advice of his personal physician when he still felt unable to safely and comfortably perform his required job duties. The claimant also received two additional medical evaluations at the request of his employer, and both concluded that the claimant's obesity – claimant was 6'3" and weighed over 400 pounds - was precluding his full recovery but that he should attempt to return to work. It was held that the claimant presented credible medical evidence, in the form of a written recommendation from his primary care physician, that the resumption of his former duties would aggravate his physical condition and cause him significant pain, and that the claimant left his employment with good cause and was entitled to benefits. It was also held that the claimant's continued inability to resume his employment was primarily based upon his obesity and poor physical condition, not the work-related injury itself, and that the employer's experience account should not be charged for any benefits paid the claimant. *In re Robertson*, 02 Neb. App. Trib. 3453 (October 16, 2002).

Claimant voluntarily left his employment as a truck driver after radiation treatments for larynx cancer caused him to experience unpredictable yet reoccurring fatigue and a diminished ability to speak. Although the claimant offered

medical documentation of his condition that was not particularly current, it was held that the claimant presented credible evidence that he was unable to continue, on a regular basis, to safely drive a truck the distances required by the employer and therefore the claimant left his employment with good cause and was not subject to a benefits disqualification period. Because the claimant's medical condition was not connected to his work, it was further held that the employer's expense account would not be charged as a result of benefits claimed or received by the claimant. *In re Rowe*, 02 Neb. App. Trib. 3943 (November 25, 2002).

VL 325.15 NON-DISQUALIFYING AND NON-CHARGED – ESCAPE ABUSE

INCLUDES CASES WHERE CLAIMANT VOLUNTARILY LEAVES EMPLOYMENT TO ESCAPE ABUSE AND IS NOT DISQUALIFIED FROM RECEIVING BENEFITS BUT WHERE THE EMPLOYER'S EXPERIENCE ACCOUNT IS NOT CHARGED.

Neb. Rev. Stat. §42-903 provides that a claimant who has made all reasonable efforts to preserve the employment relationship must leave work for the purpose of escaping domestic abuse, the voluntary separation is non-disqualifying. However, the employer's account is not charged for benefits received by a claimant who has left work under these circumstances. Neb. Rev. Stat.48-652(3)(a)(C). *In re Torin*, 03 Neb. App. Trib. 2820 (August 14, 2003.)

VL 345 PENSION – RETIREMENT

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

VL 350.05 PERIOD OF DISQUALIFICATION – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF PERIOD OF DISQUALIFICATION FOR VOLUNTARY LEAVING, (2) POINTS ON DISCHARGE OR LEAVING NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 350, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

VL 350.1 PERIOD OF DISQUALIFICATION – AGGRAVATING CIRCUMSTANCES

WHERE THE DISQUALIFICATION PERIOD IS AFFECTED BY AGGRAVATING CIRCUMSTANCES.

The claimant, a child services specialist at a hospital, submitted her resignation after a poor performance review and ongoing conflicts with her supervisor, and then left in the middle of her shift two days before her last scheduled day of employment. The claimant had arrived to work ill that morning and had requested to be relieved of her duties for the remainder of the day, but was told by her supervisor to visit the employer's health room before leaving. When she was told that she could not be examined in the health room until early afternoon, she left work and put a note on her supervisor's desk stating that she would not be returning for the remainder of her employment. She did not personally notify anyone that she was leaving, and her absence caused a group of two-year-olds under her care to be unsupervised for an hour and a half before the claimant's supervisor found the note and discovered the unattended children. Because of the serious and flagrant nature of the claimant's actions, the employer argued that her separation should be ruled as an effective discharge for gross misconduct. However, the Tribunal found that the claimant's separation from her employment occurred at the time she left the note on her supervisors desk and that she left work voluntarily and without good cause; the claimant's manner of separation and negligent behavior immediately subsequent to her resignation cannot result in a total disqualification from benefits under the authority of the law. In this case, the Tribunal modified the adjudicator's ruling to give the claimant the maximum disqualification penalty of ten weeks, but could not arrive at a determination of gross misconduct because the claimant left voluntarily and was not discharged. *In re Thelen*, 90 Neb. App. Trib. 1000 (May 22, 1990).

VL 350.3 PERIOD OF DISQUALIFICATION – MITIGATING CIRCUMSTANCES

WHERE THE DISQUALIFICATION PERIOD IS AFFECTED BY MITIGATING CIRCUMSTANCES.

VL 350.5 PERIOD OF DISQUALIFICATION – SUBSEQUENT EMPLOYMENT

DISCUSSION AS TO WHAT TYPES OF SUBSEQUENT EMPLOYMENT WILL LESSEN, REMOVE, OR PREVENT A DISQUALIFICATION FOR VOLUNTARY LEAVING.

Where claimant left her part-time employment to begin another part-time job where she would work more hours and which she believed would develop into a full-time position, she was found to have left her employment voluntarily without good cause and was assessed a seven-week benefits disqualification period. Although Nebraska Employment Security Law – sub-section (a) (2) of §48-628 – reduces disqualification to one week if an individual leaves employment in order to accept a better job, the statute requires that the new position be full-time. In this case the claimant’s subsequent employment, while consisting of increased hours, was not full-time. *In re DeVinney*, 88 Neb. App. Trib. 0101 (February 2, 1988).

Where claimant left her employment to accept another position that paid \$0.90 per hour less than her previous job, and where claimant continued her health insurance coverage with her former employer after taking the new position, it was held that the claimant left her previous position voluntarily without good cause and was given a seven-week disqualification from benefits. Based on the evidence, the Tribunal found that the claimant’s subsequent work did not meet the statutory qualifications for better employment, and she was therefore not eligible for a disqualification of only one week. *In re Strong*, 89 Neb. App. Trib. 1214 (May 26, 1989).

Where claimant left her employment to accept a new position that offered a greater rate of pay, improved benefits, and full-time hours for at least the seven-year duration of the new employer’s immediate project, the Tribunal found that the claimant’s subsequent employment qualified as permanent and the claimant was assessed only a one-week benefits disqualification for voluntarily leaving her other job. Further, the tribunal held that the periodic lay-offs the claimant would experience with her new employment, due to the nature of construction work and its dependency on weather conditions, were based on industry standards and did not constitute disruptions in the employment relationship, and therefore did not affect the determination of the new work as permanent and full-time. *In re Hopkins*, 90 Neb. App. Trib. 0097 (February 1, 1990).

Where claimant left her part-time employment as a waitress/bartender to accept a previously secured, full-time, and higher-paying position as a teacher, the Tribunal found that the claimant’s subsequent work met the statutory requirements for better employment and the claimant was given only a one-week benefits disqualification for leaving her prior job voluntarily and without good cause. *In re Kohlhof*, 89 Neb. App. Trib. 0549 (March 20, 1989).

VL 355 CONCURRENT EMPLOYMENT / DISQUALIFICATION

Where an employee holds a full-time job and a part-time job concurrently, then leaves the part-time job voluntarily without good cause and is later terminated from full-time employment under non-disqualifying circumstances, he or she is not automatically disqualified from benefits based upon the voluntary leaving of part-time work. *Gilbert v. Hanlon*, 214 Neb. 676, 335 N.W.2d 548 (1983).

Claimant, who had been employed in full-time and part-time positions at the same time, was found to be eligible for unemployment compensation benefits when laid off from her full-time job after she had left her part-time job voluntarily and without good cause to accept another part-time position. *Fountain v. Hanlon*, 214 Neb. 700, 335 N.W.2d 319 (1983).

VL 360 PERSONAL AFFAIRS

INCLUDES CASES WHICH INVOLVE PERSONAL REASONS FOR LEAVING NOT ADDRESSED BY ANY OF THE OTHER LINES IN THE VOLUNTARY LEAVING SECTION.

Where claimant was employed by a temporary employment service and left her last assigned placement for personal reasons even though work continued to be available to her with the company, the claimant argued: 1) that temporary employment is provisional by nature and that temporary employees have no obligation to continue in a temporary employment relationship when other factors intervene; and 2) the fact that she was later contacted by the temporary

agency for additional assignments indicated that there had been no separation of employment from the temporary agency when she left her last placement. The Appeal Tribunal found that the claimant did voluntarily leave her employment by turning down additional available work and initiating the separation of her open-ended placement, and that because she left work for personal reasons unrelated to her employment, she was subject to a benefits disqualification. *In re Adams*, 91 Neb. App. Trib. 0722 (April 2, 1991).

VL 365.05 PROSPECT OF OTHER WORK – GENERAL

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

As a general rule, an employee who leaves employment for the sole purpose of obtaining a better job has left work voluntarily within the meaning of the Nebraska Employment Security Law. *Gilbert v. Hanlon*, which declined to apply disqualification in the case of concurrent full-time and part-time employment because claimant had not become “unemployed,” is distinguished. *Nuss v. Sorensen*, 218 Neb. 703, 358 N.W.2d 752 (1984).

The statutory requirements of Neb. Rev. Stat. §48-652(3)(a)(C), which lessens the disqualification for voluntarily leaving employment to one week under certain circumstances, include the necessity that the claimant have actually earned wages from the new job for which the claimant voluntarily left the previous employment. *In re Roebuck*, 03 Neb. App. Trib. 3941 (September 18, 2004.)

VL 365.1 PROSPECT OF OTHER WORK – CHARACTERISTICS OF OTHER WORK

INVOLVES A DISCUSSION OF THE CHARACTERISTICS OF THE OTHER WORK SOUGHT BY THE CLAIMANT.

Where the claimant quit her job because she enlisted in the military, new job with the new position was sufficiently permanent to meet the statutory qualifications set forth in Neb. Rev. Stat. §48-628(1)(b) and entitle the claimant to receive only a one-week benefit disqualification because of the voluntary leave. *In re Seng*, 05 Neb. App. Trib. 0464 (March 4, 2005.)

The claimant quit a part-time job for personal reasons because it paid inadequately and financial circumstances required her to return home to live with her parent. The conditions of the job did not change substantially from the time the claimant accepted the work. *In re Perkins*, 05 Neb. App. Trib. 0458 (March 2, 2005.)

VL 365.15 PROSPECT OF OTHER WORK – DEFINITE

WHERE CLAIMANT’S JUSTIFICATION FOR LEAVING ONE JOB IS PREDICATED UPON HAVING REASONABLY DEFINITE OR CERTAIN PROSPECTS OF OTHER EMPLOYMENT.

VL 365.2 PROSPECT OF OTHER WORK – MANPOWER REGULATION AFFECTING

USED ONLY DURING THE WAR EMERGENCY.

VL 365.25 PROSPECT OF OTHER WORK – UNCERTAIN

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

VL 385 RELATION OF ALLEGED CAUSE TO LEAVING

INCLUDES CASES THAT DISCUSS WHETHER OR NOT THE CLAIMANT’S REASON FOR LEAVING WORK WAS TOO REMOTE FROM THE TIME OF LEAVING TO CONSTITUTE A CAUSAL EFFECT; ALSO, WHETHER THE ALLEGED REASON FOR LEAVING WAS THE PRIMARY CAUSE OF THE SEPARATION.

VL 425 SUITABILITY OF WORK

INCLUDES CASES WHICH CONSIDER WHETHER OR NOT WORK LEFT WAS “SUITABLE” FOR THE INDIVIDUAL.

Neb. Rev. Stat. §48-628(c) (Cum.Supp.1986) applies when an unemployed person refuses an offer of suitable work and chooses to remain unemployed, and is not applicable when an employed person voluntarily leaves over a change in working conditions. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).

VL 440 TERMINATION OF EMPLOYMENT

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

An employee who accepts a job which he or she knows in advance to be temporary does not voluntarily leave when the job ceases to exist, and thus is not disqualified from unemployment benefits on grounds of voluntarily leaving work without good cause. *Walker Manufacturing Company v. Pogreba*, 210 Neb. 619, 316 N.W.2d 315 (1982).

In the absence of a promise on the part of the employer that the employment should continue for a period of time that is definite or capable of determination, such employment relationship is terminable at the will of the employer as it constitutes an indefinite hiring. When the employment is not for a definite term and there are no contractual or statutory restrictions upon the right of discharge, an employer may lawfully discharge an employee whenever and for whatever cause he chooses, without incurring liability. *Feola v. Valmont Industries Inc.*, 208 Neb. 527, 304 N.W.2d 377 (1981).

VL 450.05 TIME – GENERAL

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

VL 450.1 TIME – DAYS OF WEEK

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

After four years of not working on weekends because of family considerations, the employer advised the claimant he would be required to work alternating weekends. This was found to be a substantial change in the conditions of employment giving the claimant good cause to voluntarily leave his job. *In re Konicek*, 04 Neb. App. Trib. 0584 (March 10, 2004.)

VL 450.151 TIME – HOURS: GENERAL

INCLUDES A GENERAL DISCUSSION OF HOURS, POINTS NOT COVERED BY ANY OTHER SUBHEADING UNDER THIS SUBLINE, AND POINTS COVERED BY THREE OR MORE SUBHEADINGS

The correct inquiry when an employed person refuses a demotion and leaves is whether good cause existed to voluntarily sever the employment. Where the terms of a demotion, which was mandated by a statutory change and was not the result of employee misconduct, substantially changed almost every aspect of an employee’s job to her detriment, claimant had good cause to leave the employment. *Ponderosa Villa v. Hughes*, 224 Neb 627, 399 N.W.2d 166 (1987).

Where there is no competent medical evidence offered to substantiate claim that employee's health would be affected by change in hours, unemployment insurance claimant fails to satisfy his or her burden of proving that termination was for good cause due to health reasons. An unsubstantiated statement by the claimant, a licensed practical nurse, that working the night shift at a hospital would affect her liver did not render the proposed change in hours good cause to voluntarily terminate employment, and she was therefore disqualified from receiving unemployment insurance benefits. *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

VL 450.152 TIME – HOURS: IRREGULAR

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

VL 450.153 TIME – HOURS: LONG OR SHORT

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

In a case where an employee agreed at the time of hire to work certain specified hours and the employer subsequently increased those hours, the Nebraska Supreme Court found as follows: If an employee accepts employment in good faith and through no fault or deficiency on his or her part the workload becomes an increasingly unreasonable burden so as to affect the health or sense of well-being of the employee, voluntarily termination does have some justifiably reasonable connection with or relation to conditions of employment and may be deemed for good cause. *Glionna v. Chizek*, 204 Neb. 37, 281 N.W.2d 220 (1979).

Where claimant had been working three days per week and was reduced to one day per week by employer, the District Court affirmed an Appeal Tribunal decision that the he had good cause to resign due to a substantial reduction in his hours. *Aquila Flower Shop v. Commissioner of Labor, et al.*, District Court of Douglas County, Nebraska, Case No. 3035 Page 059 (August 5, 1992). *In re Kronen*, 92 Neb. App. Trib. 0157 (February 13, 1992).

Where claimant was hired to work part-time for her employer and told at the time of hire that she may have the opportunity to work additional hours but would not be required to do so, and was then asked on a number of occasions to work more than part-time, the Tribunal found that the claimant had good cause to separate from her employment and was assessed no disqualification period. *In re Kallhoff*, 89 Neb. App. Trib. 0380 (February 28, 1989).

Where claimant left her employment as a home health care provider when the employer's condition deteriorated to the point that she required active care nearly 24 hours a day and the claimant believed that she could no longer continue with the work on her own, the Tribunal held that the claimant experienced a significant change in working conditions with this employer and the requirement that she single-handedly perform such services day and night for extended periods of time was unreasonable. The claimant was found to have left her employment voluntarily under non-disqualifying conditions. *In re Lee*, 89 Neb. App. Trib. 1551 (July 7, 1989).

Where claimant left her part-time employment when her schedule was reduced from 3.5 hours per day to 2.75 and then 2.5 hours per day, the Tribunal found that reduction in hours was significant enough to constitute good cause for voluntarily leaving employment and she was assessed no benefits disqualification. *In re Atkins*, 84 Neb. App. Trib. 3661 (January 7, 1985).

Where claimant left his employment because he feared for his personal safety and the safety of his vehicle due to perceived threats of picket line violence, the Tribunal found that the employer followed a reasonable course of action in addressing the threats, including informing law enforcement agencies and implementing security precautions. In this case, the claimant's reasons for leaving were neither necessitous nor compelling enough to constitute good cause for voluntarily leaving work, and the claimant was assessed a benefits disqualification period. *In re Baker*, 89 Neb. App. Trib. 0489 (March 16, 1989).

VL 450.154 TIME – HOURS: NIGHT

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

VL 450.155 TIME – HOURS: PREVAILING STANDARD, COMPARISON WITH

WHERE THE HOURS OF EMPLOYMENT WHICH CAUSED THE CLAIMANT TO LEAVE WORK ARE COMPARED TO THE HOURS OF EMPLOYMENT WHICH COMMONLY EXIST FOR SIMILAR WORK IN THE COMMUNITY, AS A BASIS FOR DETERMINING THE JUSTIFICATION FOR THE SEPARATION.

VL 450.156 TIME – HOURS: STATUTORY OR REGULATORY STANDARD, COMPARISON WITH

WHERE CONSIDERATION IS GIVEN TO THE QUESTION OF WHETHER OR NOT THE FEDERAL LABOR STANDARDS PROVISIONS (SEC 1603 (A) (5) OF INTERNAL REVENUE CODE), OR THOSE STATE PROVISIONS ENACTED IN CONFORMITY THEREWITH, ARE APPLICABLE.

VL 450.2 TIME – IRREGULAR EMPLOYMENT

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

VL 450.25 TIME – LAYOFF IMMINENT

WHERE THE CLAIMANT LEFT WORK BECAUSE HE OR SHE BELIEVED HIS OR HER JOB WOULD TERMINATE, THROUGH ACTION OF THE EMPLOYER, AT SOME DEFINITE OR INDEFINITE TIME IN THE NEAR FUTURE.

The claimant left work in advance of being laid off while some further work was still available. The claimant saw no further job tasks to be performed and the employer agreed that she could depart one day earlier than originally planned. The Tribunal found the claimant reasonably believed the employer was accelerating her lay-off one day and found she did not voluntarily quit her job under disqualifying conditions. *In re Kirby*, 04 Neb. App. Trib. 0527 (March 8, 2004.)

VL 450.3 TIME – LEAVE OF ABSENCE OR HOLIDAY

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

VL 450.35 TIME – OVERTIME

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

In a case where an employee agreed at the time of hire to work certain specified hours and the employer subsequently increased those hours, the Nebraska Supreme Court found as follows: If an employee accepts employment in good faith and through no fault or deficiency on his or her part the workload becomes an increasingly unreasonable burden so as to affect the health or sense of well-being of the employee, voluntarily termination does have some justifiably reasonable connection with or relation to conditions of employment and may be deemed for good cause. *Glionna v. Chizek*, 204 Neb. 37, 281 N.W.2d 220 (1979).

The claimant quit because of the long work hours required by the employer. The claimant was a well compensated professional who accepted an exempt status job with the understanding that she would be expected to work more than forty hours a week when necessary. The employer offered the claimant several solutions when she expressed concern about her workload. The Tribunal found the claimant voluntarily left employment without good cause. *In re Blair*, 04 Neb. App. Trib. 3164 (September 27, 2004.)

VL 450.4 TIME – PART TIME OR FULL TIME

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

Where the claimant quit after the employer reneged on the part-time work agreement she negotiated with it, demanding instead that she work full-time, the claimant quit with good cause. *In re Pino*, 05 Neb. App. Trib. 0141 (February 10, 2005.)

VL 450.45 TIME – SEASONAL

LEAVING EMPLOYMENT BECAUSE OF THE CLAIMANT’S INSISTENCE UPON, OR OBJECTION TO, SEASONAL WORK.

Where claimant left her part-time, seasonal employment at the pre-designated end of the season, and then notified her seasonal employer several months later that she would not be returning to work at the start of the new season because she had accepted other part-time employment, the tribunal found that the separation from employment was due to lack of work and occurred at the end of the season, not when the claimant called the employer later as a courtesy. An employee who accepts seasonal employment does not leave under disqualifying conditions when the seasonal work ends, and the claimant was not disqualified from benefits. *In re Atkins*, 84 Neb. App. Trib. 3661 (January 7, 1985).

VL 450.5 TIME – SHIFT

LEAVING WORK BECAUSE OF THE EMPLOYER’S OBJECTION TO, OR INSISTENCE UPON, WORKING A PARTICULAR SHIFT.

Where claimant resigned from her employment a temporary shift in her hours, requiring her to work an additional one more evening week over the course of the summer but did not increasing her overall hours, the Tribunal held that good cause was not established for the claimant’s voluntary leave and she was assessed a benefits disqualification period. Although the scheduling arrangement would have required the claimant, a single mother, to make additional evening childcare arrangements the decision to shift the claimant’s hours was based on the employer’s economic needs and was to be only a temporary change. *In re Manago*, 86 Neb. App. Trib. 2266 (July 30, 1986).

VL 450.55 TIME – TEMPORARY

LEAVING WORK BECAUSE OF THE EMPLOYER’S OBJECTION TO, OR INSISTENCE UPON, TEMPORARY EMPLOYMENT.

VL 475.05 UNION RELATIONS – GENERAL

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

VL 475.1 UNION RELATIONS – AGREEMENT WITH EMPLOYER

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

Where claimant, an apprentice, left work at the instruction of his Union Representative because the employer/union contract only allowed for one apprentice per three journeymen and the scheduled journeymen refused to work, the Tribunal found that the claimant separated from his employment under non-disqualifying conditions. Although the claimant's employer wished for the claimant to remain at work, the employer was bound to a union agreement that left no available work for the claimant under the given circumstances, and the claimant was assessed no benefits disqualification period for leaving his employment. *In re May*, 86 Neb. App. Trib. 1272 (July 3, 1986).

VL 475.2 UNION RELATIONS – DISCRIMINATION BECAUSE OF UNION MEMBERSHIP OR ACTIVITY

INVOLVES LEAVING BECAUSE THE CLAIMANT, AS A RESULT OF HIS OR HER MEMBERSHIP OR ACTIVITY IN A UNION, WAS SINGLED OUT FOR SPECIAL TREATMENT, USUALLY WHERE THE CLAIMANT IS CHARGED WITH HAVING ATTEMPTED TO DO UNION BUSINESS ON THE EMPLOYER'S TIME.

VL 475.25 UNION RELATIONS – HOURS

APPLIES TO LEAVING WORK BECAUSE CLAIMANT FEELS HIS OR HER HOURS ARE IN VIOLATION OF UNION RESTRICTIONS OR REQUIREMENTS.

VL 475.3 UNION RELATIONS – INTIMIDATION

WHERE CLAIMANT LEFT BECAUSE THE EMPLOYER HAD ACTED TO DISCOURAGE HIS OR HER JOINING OR CONTINUING MEMBERSHIP IN A UNION, OR BECAUSE OF INTIMIDATING ACTS OF A UNION.

VL 475.35 UNION RELATIONS – LABOR DISPUTE, PARTICIPATION IN

INVOLVES A DISCUSSION AS TO WHETHER THERE IS A "VOLUNTARY LEAVING" WHEN A CLAIMANT IS OUT BECAUSE OF PARTICIPATION IN A LABOR DISPUTE. WHEN THE DECISION DETERMINES THAT CLAIMANT WAS UNEMPLOYED BECAUSE OF A LABOR DISPUTE, IT IS NECESSARY TO CODE TO THE BROAD SUBJECT OF LABOR DISPUTE.

VL 475.55 UNION RELATIONS – NON-UNION SHOP OR SUPERVISOR

LEAVING BECAUSE OF OBJECTION TO WORKING IN A SHOP OR PLANT WHICH IS NOT UNIONIZED, OR UNDER A NONUNION SUPERVISOR.

VL 475.65 UNION RELATIONS – REMUNERATION

APPLIES TO CLAIMANT'S LEAVING WORK BECAUSE HIS PAY WAS NOT THAT SPECIFIED BY THE UNION, OR BECAUSE THE UNION INSISTED THAT HE NOT WORK FOR A CERTAIN RATE OF PAY; ALSO INCLUDED OTHER CASES OF WAGES, BONUSES, OR OTHER FORMS OF REMUNERATION, WHICH ARE SUBJECT TO UNION AGREEMENTS OR REGULATIONS.

VL 475.7 UNION RELATIONS – REQUIREMENT TO JOIN COMPANY UNION

LEAVING WORK BECAUSE OF REQUIREMENT TO JOIN OR RETAIN MEMBERSHIP IN A COMPANY UNION.

VL 475.75 UNION RELATIONS – REQUIREMENT TO JOIN OR RETAIN MEMBERSHIP IN BONA FIDE LABOR ORGANIZATION

LEAVING WORK BECAUSE OF REQUIREMENT TO JOIN OR RETAIN MEMBERSHIP IN A BONA FIDE LABOR ORGANIZATION.

VL 475.8 UNION RELATIONS – REQUIREMENT TO RESIGN FROM OR REFRAIN FROM JOINING BONA FIDE LABOR ORGANIZATION

LEAVING WORK BECAUSE OF REQUIREMENT TO RESIGN FROM OR REFRAIN FROM JOINING A BONA FIDE LABOR ORGANIZATION.

VL 475.85 UNION RELATIONS – RESTRICTION AS TO TYPE OF WORK

LEAVING WORK BECAUSE OF UNION RULES OR REGULATIONS CONCERNING TYPE OF WORK.

VL 475.9 UNION RELATIONS – REFUSAL TO CROSS PICKET LINE

Under the National Labor Relations Act, 29 U.S.C. §§ 151 et. seq. (1982), the refusal to cross a picket line has been determined to be a protected activity and is not a voluntary leave without good cause. *George C. Hormel and Company v. Hair*, 229 Neb. 284, 426 NW 2d 281 (1988).

VL 495 VOLUNTARY / INVOLUNTARY LEAVING

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

As a general rule, an employee who leaves employment for the sole purpose of obtaining a better job has left work voluntarily within the meaning of the Nebraska Employment Security Law. *Gilbert v. Hanlon*, which declined to apply disqualification in the case of concurrent full-time and part-time employment because claimant had not become “unemployed,” is distinguished. *Nuss v. Sorensen*, 218 Neb. 703, 358 N.W.2d 752 (1984).

To “leave work voluntarily,” as that term is used in the Employment Security Law, means to intentionally sever employment relationship with intent not to return to, or to intentionally terminate, the employment. *Powers v. Chizek*, 204 Neb. 759, 285 N.W.2d 501 (1979). See also: *Gastineau v. Tomahawk Oil Company*, 211 Neb. 537, 319 N.W.2d 107 (1982), *Nuss v. Sorensen*, 218 Neb. 703, 358 N.W.2d 752 (1984), *McClemens v United Parcel Service*, 218 Neb 689, 358 N.W.2d 748 (1984), *Montclair Nursing Center v. Wills*, 220 Neb. 547, 371 N.W.2d 121 (1985).

Employee who is engaged in no misconduct and who desires to keep employment, but nonetheless resigns because employer has clearly manifested that employment will be terminated, has not left employment voluntarily, and thus is not precluded from receiving unemployment compensation benefits. *Perkins v. Equal Opportunity Commission*, 234 Neb. 359, 451 N.W.2d 91 (1990).

Superintendent of public school district, who resigned only because school board members who had the power to reelect him intended not to do so and where there was no question of misconduct on his part, did not terminate his employment voluntarily and was therefore not disqualified from receiving unemployment benefits. *School District No. 20 v. Commissioner of Labor*, 208 Neb. 663, 305 N.W.2d 367 (1981).

Under the Nebraska Employment Security Law, where a claimant appeals from a disqualification, the burden of proof is on the claimant to show that he or she involuntarily left his or her employment or did so voluntarily with good cause. *Taylor v. Collateral Control Corporation*, 218 Neb. 432, 355 N.W.2d 788 (1984).

VL 500.05 WAGES – GENERAL

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

VL 500.1 WAGES – AGREEMENT CONCERNING

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

VL 500.2 WAGES – BENEFIT AMOUNT, COMPARISON WITH

DISCUSSION OF THE SUFFICIENCY OF CLAIMANT’S WAGES AS COMPARED WITH THE AMOUNT HE WOULD HAVE RECEIVED IN BENEFITS, IF ELIGIBLE.

Where claimant voluntarily left his employment because of a proposed 25% reduction in pay, and where with an increased benefits package the claimant’s effective wage was still substantially lower than his former pay rate, it was held that the claimant demonstrated good cause and left his employment under non-disqualifying conditions. *Lee Enterprises, Inc. d/b/a KMTV v. Depew*, District Court of Douglas County, Nebraska, Doc. 952 No. 404 (January 17, 1997).

VL 500.25 WAGES – EXPENSES INCIDENT TO JOB

LEAVING WORK BECAUSE THE EXPENSES INCIDENT THERETO HAD A MATERIAL EFFECT UPON A CLAIMANT’S NET INCOME.

VL 500.3 WAGES – FAILURE OR REFUSAL TO PAY

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

Where there is no agreement to the contrary, an employer’s failure to pay wages when due is good cause for quitting the employment, and previous acquiescence by employees in delay of payment does not ordinarily constitute a “waiver” of prompt payment. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 2 N.W.2d 332 (1942).

Where the claimant was the sole employee at a particular location who was responsible for generating the revenues out of which he would be paid his salary, and the claimant failed to generate the necessary revenues and refused to accept work, the claimant did not quit with good cause when his pay was periodically late because there were not enough funds in the business account for the claimant to issue himself a paycheck. *In re Wagner*, 05 Neb. App. Trib. 0171 (February 2, 2005.)

Where the employer made a substantial change in the claimant’s duties and compensation structure, reducing his base salary by half, the claimant quit with good cause rather than accept the newly structured position. *In re Mills*, 04 Neb. App. Trib. 3918 (November 19, 2004.)

The claimant quit her job because she believed the employer should have paid her for an additional funeral leave day she took off after her Grandmother’s death. The employer also issued the claimant a warning and placed her on probation in connection with the time off she took surrounding her grandmother’s death. The Tribunal found the claimant lacked good cause to leave her job because of her disagreement with the discipline imposed by the employer or because of the pay dispute over one day of wages. *In re Rohde*, 03 Neb. App. Trib. 4866 (January 23, 2004.)

VL 500.35 WAGES – FORMER RATE, COMPARISON WITH

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

VL 500.4 WAGES – INCREASE REFUSED

LEAVING BECAUSE A REQUESTED INCREASE IN WAGES WAS REFUSED.

VL 500.45 WAGES – LIVING WAGE

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

VL 500.5 WAGES – LOW

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

VL 500.55 WAGES – METHOD OR TIME OF PAYMENT

WHERE CLAIMANT OBJECTED TO BEING PAID MONTHLY, FOR EXAMPLE, WHEN HE WANTED TO BE PAID ON A WEEKLY BASIS; DISCUSSIONS AS TO ADVANCE OF SALARY, ETC.

Court found that claimant accepted a change from monthly to hourly payment, followed by a reduction in hours, by acquiescing to the arrangement for a three-month period. When claimant later resigned, it was voluntary and under disqualifying conditions. *Criffield v. Sandhills Lounge, et al.*, Sherman County District Court, Case No. 5241 Page 162, (October 13, 1989).

VL 500.6 WAGES – MINIMUM

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

VL 500.65 WAGES – PIECE RATE, COMMISSION BASIS, OR OTHER METHOD OF COMPUTATION

LEAVING BECAUSE OF SOME OBJECTION AS TO THE MANNER OF COMPUTATION OF WAGES, RATHER THAN TO THE AMOUNT PAID. AMONG THE METHODS OF COMPUTATION TO WHICH OBJECTION MAY NE MADE ARE COMMISSION, SALARY, OR PIECE RATE. INCLUDES CASES INVOLVING INCORRECT DEDUCTIONS OF TAXES FROM SALARY CHECKS, ETC.

VL 500.7 WAGES – PREVAILING RATE

DISCUSSION OF THE SUFFICIENCY OF CLAIMANT’S WAGES AS COMPARED TO THE RATE MOST COMMONLY PAID FOR SIMILAR WORK IN THE COMMUNITY.

VL 500.751 WAGES – REDUCTION: GENERAL

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

Where claimant voluntarily left his employment because of a proposed 25% reduction in pay, and where with an increased benefits package the claimant’s effective wage was still substantially lower than his former pay rate, it was held that the claimant demonstrated good cause and left his employment under non-disqualifying conditions. *Lee Enterprises, Inc. d/b/a KMTV v. Depew*, District Court of Douglas County, Nebraska, Doc. 952 No. 404 (January 17, 1997).

VL 500.752 WAGES – REDUCTION: HOURS, CHANGE IN

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

The correct inquiry when an employed person refuses a demotion and leaves is whether good cause existed to voluntarily sever the employment. Where the terms of a demotion, which was mandated by a statutory change and was not the result of employee misconduct, substantially changed almost every aspect of an employee's job to her detriment, claimant had good cause to leave the employment. *Ponderosa Villa v. Hughes*, 224 Neb 627, 399 N.W.2d 166 (1987).

VL 500.753 WAGES – REDUCTION: OVERTIME WITHOUT COMPENSATION

WHERE CLAIMANT LEFT WORK BECAUSE HE OR SHE IS REQUIRED TO WORK BEYOND HIS OR HER USUAL WORKING HOURS (OVERTIME) WITHOUT ANY, OR WITHOUT ADEQUATE, INCREASE IN PAY.

VL 500.754 WAGES – REDUCTION: TERRITORY, CHANGE IN

WHERE CLAIMANT LEFT WORK BECAUSE A CHANGE IN HIS OR HER WORKING TERRITORY RESULTED IN A WAGE REDUCTION. THESE CASES GENERALLY ARE THOSE OF COMMISSION SALESMEN AND ROUTEMEN.

VL 500.755 WAGES – REDUCTION: TYPE OF WORK OR MATERIALS, CHANGE IN

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

VL 505 WORK, DEFINITION OF

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

VL 510.05 WORK, NATURE OF – GENERAL

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

The correct inquiry when an employed person refuses a demotion and leaves is whether good cause existed to voluntarily sever the employment. Where the terms of a demotion, which was mandated by a statutory change and was not the result of employee misconduct, substantially changed almost every aspect of an employee's job to her detriment, claimant had good cause to leave the employment. *Ponderosa Villa v. Hughes*, 224 Neb 627, 399 N.W.2d 166 (1987).

VL 510.3 WORK, NATURE OF – INSIDE OR OUTSIDE

WHERE CLAIMANT LEFT WORK BECAUSE OF INSISTENCE UPON, OR OBJECTION TO, INSIDE OR OUTSIDE WORK.

Where claimant left his employment because he believed the requirement that he work outside in cold weather conditions was detrimental to his health, and stated that his physician instructed him to remain away from work for four weeks but submitted no medical evidence to the Tribunal and did not notify his employer that he was leaving due to a health condition, it was held that there was insufficient evidence to support a finding of good cause and the

claimant was assessed a benefits disqualification period. *In re Hoffman*, 89 Neb. App. Trib. 0204 (February 9, 1989).

VL 510.35 WORK, NATURE OF – LIGHT OR HEAVY

WHERE CLAIMANT LEFT WORK BECAUSE OF INSISTENCE UPON LIGHT WORK, OR OBJECTION TO HEAVY WORK.

VL 510.4 WORK, NATURE OF – PREFERRED EMPLOYER OR EMPLOYMENT

WHERE CLAIMANT LEFT WORK BECAUSE OF THE CLAIMANT’S PREFERENCE FOR OTHER WORK OR ANOTHER EMPLOYER.

VL 515.05 WORKING CONDITIONS - GENERAL

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

Licensed professional engineer did not have good cause for voluntarily leaving his employment because of a policy disagreement with his supervisor regarding the role of engineers in department’s decision making process. *Stackley v. State*, 222 Neb 767, 386 N.W.2d 884 (1986).

Where claimant left employment voluntarily because of the excessive pressure and interference from various board members about matters of day-to-day management, even though she was only obligated to report to the Chairman of the Board and such management duties and decision-making authority were clearly included in her job description, it was found that she left her job with good cause and was entitled to unemployment benefits without disqualification. *United Veteran’s Club v. Zwiebel*, District Court of Hall County, Nebraska, Case No. 129-028 (September 12, 1997).

VL 515.1 WORKING CONDITIONS – ADVANCEMENT, OPPORTUNITY FOR

WHERE CLAIMANT LEFT WORK BECAUSE OF HIS OR HER BELIEF THAT OPPORTUNITY FOR ADVANCEMENT WAS LIMITED.

VL 515.15 WORKING CONDITIONS – AGREEMENT, VIOLATION OF

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

In a case where an employee agreed at the time of hire to work certain specified hours and the employer subsequently increased those hours, the Nebraska Supreme Court found as follows: If an employee accepts employment in good faith and through no fault or deficiency on his or her part the workload becomes an increasingly unreasonable burden so as to affect the health or sense of well-being of the employee, voluntarily termination does have some justifiably reasonable connection with or relation to conditions of employment and may be deemed for good cause. *Glionna v. Chizek*, 204 Neb. 37, 281 N.W.2d 220 (1979).

In order for an employee handbook to modify an employment contract, it must be an offer (1) definite in form, (2) communicated to the employee, (3) accepted by the employee, and (4) supported by adequate consideration. However, continued employment with knowledge of the handbook provisions is an acceptance of both the offer and its consideration. *Bargstadt v. Immanuel Medical Center*, 1 Neb.C.A. 2163 (1993), 1992 WL 321721. (*Note: This opinion has not been approved by the Nebraska Supreme Court for publication in the permanent law reports.*)

Where claimant left her part-time employment when her schedule was reduced from 3.5 hours per day to 2.75 and then 2.5 hours per day, the Tribunal found that reduction in hours was significant enough to constitute good cause for voluntarily leaving employment and she was assessed no benefits disqualification. *In re Atkins*, 84 Neb. App. Trib. 3661 (January 7, 1985).

VL 515.2 WORKING CONDITIONS – APPORTIONMENT OF WORK

WHERE CLAIMANT LEFT WORK BECAUSE OF OBJECTION TO THE DISTRIBUTION OF WORK. THE USE OF THIS LINE IS RESTRICTED TO GRIEVANCES WHICH ARE NOT CONNECTED WITH UNION REQUIREMENTS.

Where claimant left her employment as a home health care provider when the employer's condition deteriorated to the point that she required active care nearly 24 hours a day and the claimant believed that she could no longer continue with the work on her own, the Tribunal held that the claimant experienced a significant change in working conditions with this employer and the requirement that she single-handedly perform such services day and night for extended periods of time was unreasonable. The claimant was found to have left her employment voluntarily under non-disqualifying conditions. *In re Lee*, 89 Neb. App. Trib. 1551 (July 7, 1989).

VL 515.25 WORKING CONDITIONS – COMPANY RULE

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

VL 515.3 WORKING CONDITIONS – DUTIES OR REQUIREMENTS OUTSIDE SCOPE OF EMPLOYMENT

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

VL 515.35 WORKING CONDITIONS – ENVIRONMENT

WHERE CLAIMANT LEFT WORK BECAUSE OF OBJECTIONS TO THE LOCATION OR PHYSICAL CONDITIONS SURROUNDING THE WORK.

VL 515.4 WORKING CONDITIONS – FELLOW EMPLOYEE

WHERE CLAIMANT LEFT WORK BECAUSE OF A SPECIFIC ANNOYANCE FROM A FELLOW EMPLOYEE WHILE ON THE JOB, OR BECAUSE OF A GENERAL DISLIKE OF A FELLOW EMPLOYEE.

Where claimant had previously reported a coworker for sexual harassment, and where the employer responded thoroughly and took reasonable steps to protect the claimant while at work, the District Court affirmed an Appeal Tribunal decision that the claimant left her employment voluntarily without good cause when she resigned after an incident occurred outside of work which caused her to call the police and obtain a protection order against the coworker. Claimant was assessed a period of benefits disqualification. *Katskee v. Department of Labor, et al.*, District Court of Douglas County, Nebraska, Doc 980 No. 935 (March 30, 2000). *In re Katskee*, 99 Neb. App. Trib. 0071 (February 10, 1999).

VL 515.45 WORKING CONDITIONS – METHOD OR QUALITY OF WORKMANSHIP

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

VL 515.5 WORKING CONDITIONS – MORALS

WHERE CLAIMANT LEFT WORK BECAUSE OF HIS OR HER BELIEF THAT CONTINUANCE IN THE EMPLOYMENT WOULD VIOLATE SOME PRINCIPLE OF GOOD MORAL CONDUCT.

VL 515.55 WORKING CONDITIONS – PREVAILING; OR CONSISTENT WITH LABOR STANDARDS

COMPARISON OF THE WORKING CONDITIONS WITH THOSE EXISTING FOR SIMILAR WORK IN OTHER ESTABLISHMENTS IN LOCALITY. INCLUDES CASES IN WHICH CONSIDERATION IS GIVEN TO THE QUESTION OF WHETHER OR NOT THE “LABOR STANDARDS” PROVISIONS ARE APPLICABLE IN SOME SITUATIONS IN WHICH A CLAIMANT HAS “LEFT” WORK.

VL 515.6 WORKING CONDITIONS – PRODUCTION REQUIREMENT OR QUANTITY OF DUTIES

WHERE CLAIMANT LEFT WORK BECAUSE THE WORK REQUIRED WAS EXCESSIVE OR INSUFFICIENT, OR BECAUSE OF SPEED REQUIREMENTS.

If an employee accepts employment in good faith and through no fault or deficiency on his or her part the workload becomes an increasingly unreasonable burden so as to affect the health or sense of well-being of the employee, voluntarily termination does have some justifiably reasonable connection with or relation to conditions of employment and may be deemed for good cause. *Glionna v. Chizek*, 204 Neb. 37, 281 N.W.2d 220 (1979).

VL 515.65 WORKING CONDITIONS – SAFETY

WHERE CLAIMANT LEFT WORK BECAUSE WORKING CONDITIONS WERE UNSAFE.

The District Court affirmed an Appeal Tribunal decision that claimant had good cause to resign in a case where working conditions were so fundamentally unsafe that no person could reasonably be expected to continue employment in such a facility, and the claimant could not be held to acquiesce to those unsafe conditions by working there for an extended period of time. *Glebe v. Williamson et. al.*, District Court of Douglas County, Nebraska, Doc. 905 No. 582 (September 1, 1992). *In re Williamson*, 92 Neb. App. Trib. 0609 (March 12, 1992).

VL 515.7 WORKING CONDITIONS – SANITATION

WHERE CLAIMANT LEFT WORK BECAUSE OF UNSANITARY CONDITIONS.

VL 515.75 WORKING CONDITIONS – SENIORITY

WHERE CLAIMANT LEFT WORK BECAUSE OF SENIORITY; INCLUDES CASES IN WHICH THE LEAVING ARISES IN CONNECTION WITH REQUIREMENTS UNDER THE EMPLOYER-UNION SENIORITY AGREEMENT.

VL 515.8 WORKING CONDITIONS – SUPERVISOR

WHERE CLAIMANT LEFT WORK BECAUSE OF SOME ANNOYANCE OF CLAIMANT BY THE SUPERVISOR, OR BECAUSE OF GENERAL DISLIKE OF SUPERVISOR.

Where claimant complained about treatment by her supervisor and a meeting was held in an attempt to address the claimant’s concerns, and claimant nevertheless resigned the following day claiming that her working conditions were intolerable, the Court found that the claimant had not been constructively discharged because the employer had taken steps to address the problem before the claimant resigned. Claimant left voluntarily without good cause and was disqualified from receiving benefits. *Baronio v. Metromail Corp., et al*, District Court of Lancaster County, Nebraska, Doc. 444 Page 7 (November 29, 1990).

Claimant resigned from her position as a surgical nurse after her employer, a surgeon, became frustrated during a surgical procedure and struck her on the arm, an incident which caused the claimant to file an assault complaint with the local police department. The District Court affirmed an Appeal Tribunal decision that the claimant, who was rebuffed when she attempted to discuss the incident with her immediate supervisor and with the surgeon, left her employment under non-disqualifying conditions. *Orthopedic & Arthritis Surgery Center v. Rojas*, District Court of

Hall County, Nebraska, Case No. CI 01-514 (September 19, 2001). *In re Rojas*, 01 Neb. App. Trib. 0859 (May 2, 2001).

Where claimant left her position at a nursing facility because she believed she was receiving unfair treatment from her employers following an investigation of allegations that she was illegally dispensing prescription drugs, it was found that she voluntarily quit her employment under non-disqualifying conditions. The claimant was reasonably upset by what was determined to be a false accusation of illegal behavior, and felt that the accusatory nature of the investigation had led to widespread belief among her colleagues that she was guilty of inappropriate behavior and ongoing retaliation from her immediate supervisors. *Huntington Park Care Center, Inc. v. Wilch*, District Court of Sarpy County, Nebraska, Doc. 9874 Page 1992 (June 18, 1999).

In a case where claimant left her paralegal position at a law firm because of what she believed to be the demanding demeanor and unethical practices of a supervisor she worked for less than 50% of the time, but where claimant never raised her concerns with the supervisor or with the managing partner at the firm, the District Court affirmed an Appeal Tribunal decision that claimant left her employment voluntarily without good cause and was subject to a benefits disqualification period. *Mason v. Lauritsen, Brownell, Brostrom, Stehlik & Thayer*, District Court of Hall County, Nebraska, Doc. 9874 Page 1992 (October 29, 1999). *In re Mason*, 97 Neb. App. Trib. 0275 (February 21, 1997).

Where claimant resigned from her employment after complaining to middle management about allegedly inappropriate behavior and comments from her supervisor and her concerns were dismissed, the Appeal Tribunal ruled that when management closes the door to discussion of conditions in the workplace to the extent that an employee is barred the right to discuss such issues, the employee has good cause to leave work and will not be assessed a benefits disqualification penalty for voluntarily severing the employment relationship. *In re Sivertson*, 89 Neb. App. Trib. 1294 (June 1, 1989).

Where claimant left her employment after ongoing sexual harassment from her supervisor but did not report the conduct to her employer for an extended period of time, it was held that the claimant, having been informed during the course of her employment and having contacted a personal attorney about the harassment, knew or should have know that her supervisor's behavior was a violation of her rights and would not be condoned by the employer. By not informing her employer of the nature and depth of the problem until just before she resigned her employment, and not reporting subsequent conduct from her supervisor she felt to be retaliatory or intimidating, she did not give them an adequate chance to address the harassment and her separation from employment took place under disqualifying conditions. *In re Johnson*, 90 Neb. App. Trib. 2914 (January 17, 1991).

VL 515.85 WORKING CONDITIONS – TEMPERATURE OR VENTILATION

WHERE CLAIMANT LEFT WORK BECAUSE OF TEMPERATURE OR VENTILATION.

VL 515.9 WORKING CONDITIONS – TRANSFER TO OTHER WORK

WHERE CLAIMANT LEFT WORK BECAUSE HE OR SHE OBJECTED TO BEING TRANSFERRED TO OTHER WORK, OR BECAUSE A DESIRED TRANSFER TO OTHER WORK WAS NOT EFFECTED.

VL 515.95 WORKING CONDITIONS – WEATHER OR CLIMATE

WHERE CLAIMANT LEFT WORK BECAUSE OF WEATHER OR CLIMATE.

II. MISCONDUCT

MC 5 GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL EXPLANATION OF MISCONDUCT, IF THE POINT CANNOT BE HANDLED BY A SPECIFIC LINE, (2) POINTS NOT COVERED BY ANY OTHER LINE IN THE MISCONDUCT DIVISION, OR (3) DECISIONS UNDER A STATUTORY PROVISION OTHER THAN A MISCONDUCT PROVISION, WHICH DO, NEVERTHELESS, DECIDE THE FACTOR OF “MISCONDUCT” OR “DISCHARGE.”

The term “misconduct” as used in Neb. Rev. Stat. §48-628(b) (Reissue 1988), has generally been defined to include behavior which evidences (1) wanton and willful disregard of the employer’s interests; (2) deliberate violation of rules; (3) disregard of standards of behavior which the employer can rightfully expect from the employee; or (4) negligence which manifests culpability, wrongful intent, evil design, or intentional and substantial disregard of the employer’s interests or of the employees duties and obligations. *Tuma v. Omaha Public Power District*, 226 Neb. 19, 409 N.W.2d 306 (1979). See also: *McCorison v. City of Lincoln*, 215 Neb. 479, 339 N.W.2d 294 (1983), *Stuart v. Omaha Packers*, 213 Neb. 838, 331 NW 2d 544 (1983), *Smith v. Sorenson*, 222 Neb. 599, 386 N.W.2d 5 (1986).

“Misconduct” within the meaning of Neb. Rev. Stat. §48-628 (b) (Reissue 1984) is a deliberate, willful, or wanton disregard of an employer’s interest or the standards of behavior which the employer has a right to expect of his employees, or carelessness or negligence of such a degree or recurrence as to manifest culpability, wrongful intent, or evil design. *Bristol v. Hanlon*, 210 Neb. 37, 312 N.W.2d 694 (1981). See also: *Snyder Industries Inc. v. Otto*, 212 Neb. 40, 321 N.W.2d 77 (1982), *Barada v. Sorenson*, 222 Neb. 391, 383 N.W.2d 799 (1986).

What conduct constitutes misconduct in a given case is a question of facts. Generally, a single act is not sufficient to fall within the definition of “misconduct;” nor is a series of acts, for example, if the employer tolerated those actions without warning the employee of possible consequences. *Smith v. Sorenson*, 222 Neb. 599, 386 N.W.2d 5 (1986).

While an employer has the right to expect an employee to follow the reasonable orders of the employer, a single act of misbehavior which is not gross or flagrant, would not normally be sufficient to disqualify an employee under the Employment Security law. *Herrera v. Cornhusker Packing Inc., et al.*, District Court of Douglas County, Nebraska, Doc. 902 Page 539 (May 7, 1992).

Evidence insufficient to establish misconduct where claimant left training seminar early and did not return to the office. The court concluded these acts were better characterized as “poor performance” rather than misconduct because the claimant did not attempt to hide her behavior from the employer. Misrepresenting her time on her time card was misconduct but the employer did not opt to discharge the claimant at that time. Since the evidence did not show that any further misconduct occurred between the date of the time card event and the claimant’s discharge approximately six weeks later, the Court found the employer failed to prove the claimant was discharged as the result of misconduct, stating “this court is puzzled as to why Martin was discharged on June 3, 2004.” *Southeast Nebraska Appliances, Inc. v. Martin*, District Court of Otoe County, Nebraska, Doc. No. CI 04-236.

MC 15.05 ABSENCE – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF ABSENCE AS RELATED TO MISCONDUCT, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 15, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

While absences due to illness may not constitute an employee’s misconduct, an employee’s chronic and excessive absenteeism demonstrates a wanton and willful disregard of the employer’s interests for the purpose of Neb. Rev. Stat. §48-628(b) (Reissue 1984). *O’Keefe v. Tabitha, Inc.*, 224 Neb. 574, 399 N.W.2d 798 (1987).

No aspect of a contract of employment is more basic than the right of the employer to expect employees will appear for work on the day and at the hour agreed upon. Persistent failure to honor that obligation evinces a substantial

disregard for the employer's interests, and may justify a finding of misconduct connected with the employment. *McCorison v. City of Lincoln*, 215 Neb. 474, 339 N.W.2d 294 (1983).

In a case where the claimant had been absent nearly twelve percent of the time over nearly a two-year period, the Court found that persistent or chronic absenteeism, at least where the absences are without notice or excuse, and are continued in the face of warnings by the employer, constitutes willful misconduct within the statute. *McCorison v. City of Lincoln*, 215 Neb. 474, 339 N.W.2d 294 (1983).

Where claimant called her employer and said she was having car trouble but would report to work as soon as possible, and then not show up at work or call her employer again for the remainder of that day and the following day, it was held that the employer acted reasonably when he hired a replacement worker after the second day of claimant's absence and that the claimant's behavior constituted misconduct sufficient to disqualify her from employment benefits. *Coy v. Ray Tucker and Sons, Inc.*, District Court of Lancaster County, Nebraska, Case No. CI 99-1322 (March 17, 2000).

Where claimant had been allowed an extended medical leave under the condition that she regularly keep her employer apprised of her physical condition and status, and where claimant initially complied with the requirement but then failed to contact her employer during a two-month period, the Tribunal found that her actions were in deliberate disregard of the employer's interests and that she was discharged for misconduct. *In re Vytlas*, 89 Neb. App. Trib. 0902 (April 18, 1989).

Where claimant was discharged after she accumulated more than 10 points on her employer's absenteeism point scale, despite the fact that she gave timely notice of all the absences and they were primarily due to her illness and the illness of her child, the Appeal Tribunal held that the claimant did not act in such a way as to evince a willful disregard of the employer's best interests and the claimant was determined to be eligible for benefits. Although the claimant's absences were great enough in number to allow a discharge under the employer's absenteeism policy, they were caused by circumstances beyond the claimant's control and do not constitute misconduct under Nebraska Employment Security Law. *In re Durand*, 86 Neb. App. Trib. 2016 (July 14, 1986).

MC 15.1 ABSENCE – NOTICE

WHERE THE QUESTION OF NOTICE RATHER THAN THE ABSENCE ITSELF IS THE CHIEF CONSIDERATION.

In a case where an employee notified his employer of three consecutive health related absences, but on the fourth day relied on the company's worker compensation insurance carrier to notify his employer and failed to give any further notice for the following two work days, the Court found misconduct, finding that the presence of or at least the pre-shift notice of absence of a workman is essential to the efficient operation of an assembly line production system. *Steven Stuart v. Omaha Porkers Inc.*, 213 Neb. 838, 331 N.W.2d 544 (1983).

Claimant, who was discharged after she did not report for light-duty work and did not seek a leave of absence by returning to her doctor and obtaining a more definite statement of her injuries, was discharged for misconduct and thus disqualified from receiving benefits for a nine-week period. *Strauss v. Square D Company*, 201 Neb. 571, 270 N.W.2d 917 (1978).

The District Court found misconduct where the claimant, who had previously given notice of resignation because she believed that she was on the verge of being fired for tardiness and absenteeism, was terminated for failing to give timely notice of absence due to illness (claimant called in sick well after the start of her shift on two consecutive days). The separation was treated as a discharge rather than a voluntary quit. *Commercial Optical Inc. v. Commissioner of Labor, et al.*, District Court of Douglas County, Nebraska, Doc. 895 Page 655 (October 8, 1991).

MC 15.15 ABSENCE – PERMISSION

WHERE THE QUESTION OF PERMISSION RATHER THAN THE ABSENCE ITSELF IS THE CHIEF CONSIDERATION.

The claimant's absenteeism did not constitute misconduct where she was given permission to leave work early several times without being warned that the employer would subsequently use those incidents as part of the reason for her discharge. The claimant's absences because of illness were beyond her control and did not constitute misconduct. When the claimant was tardy because of her child's medical condition she followed the employer's procedures in documenting her tardy arrivals and making up the time. The claimant's productivity was well above average and she was commended for her job performance the day prior to her discharge. *In re Kohls*, 03 Neb. App. Trib. 4600 (January 2, 2004).

MC 15.2 ABSENCE – REASONS

CONSIDERATION OF THE REASONS FOR ABSENCES.

Claimant was discharged for accruing too many attendance infraction points under an employer policy that generally assessed one point per day of work missed, but wherein the claimant had been given three points for an earlier absence that the claimant said was due to personal reasons but that the employer deemed inappropriate because it felt that the claimant was using the time to look for other employment. The claimant's final absence was due to an injury, and the claimant submitted proper notification of the absence to the employer and offered to supply a doctor's notification that he needed to miss work. In light of the employer's inconsistent enforcement of the attendance policy, which resulted in varying point accumulations for absences on different days with the same notice and reasons given, and because the claimant's final absence was for medical reasons beyond his control, it was held that the claimant was discharged for reasons other than intentional misconduct and was entitled to unemployment benefits. *In re Mohamed*, 03 Neb. App. Trib. 1336 (April 30, 2003).

MC 15.25 ABSENCE – HEALTH

WHERE THE ABSENCE WAS RELATED TO HEALTH REASONS.

Employee's failure to furnish medical justification for prolonged absences from employment, when an employee has stated that such justification will be furnished, constitutes misconduct in connection with the employee's work sufficient to disqualify the employee from receiving unemployment insurance benefits. *Tuma v. Omaha Public Power District*, 226 Neb. 19, 409 N.W.2d 306 (1987).

Where claimant suffered from a severe disability and was terminated for failure to maintain a regular work schedule after missing approximately 60% of his work days in a five month period for excused health-related absences, the Appeal Tribunal held that the claimant was separated from his employment for reasons other than disqualifying misconduct. While the claimant's attendance record was clearly unacceptable, the circumstances surrounding his absences from work were beyond his control and not due to a deliberate and willful disregard of the employer's interests. *In re Stoxstell*, 89 Neb. App. Trib. 1392 (June 13, 1989).

The claimant, who suffered from carpal tunnel syndrome but indicated on her job application that she did not have any physical limitations, was discharged from her employment after she incurred a number of absences related to her injury and requested two further weeks off upon the advice of her physician. The employer argued that the claimant was discharged for falsifying her employment application, but stated that she would have been retained if she had been physically able to perform her job duties. As a result, the Appeal Tribunal held that the claimant's discharge was due to her health condition rather than the false statement she made on her application, and she was found to have been separated from her employment under non-disqualifying conditions. *In re Moravec*, 91 Neb. App. Trib. 0212 (February 19, 1991).

MC 15.3 ABSENCE – INCARCERATION

WHERE THE ABSENCE WAS DUE TO INCARCERATION.

The claimant was discharged from his employment after he accumulated more than the maximum allowable points on his employer's attendance point scale; the latter half of the claimant's absenteeism points, however, came from three days of work he missed while in jail for charges that were later dismissed, and the claimant informed his employer of the reasons for his absences prior to missing work and immediately reported to the job site after being released from jail. The Tribunal found that the claimant's failure to go to work was not deliberate and did not constitute a willful disregard of his employer's interests. It was held that the claimant was discharged under non-disqualifying conditions. *In re Alcorn*, 89 Neb. App. Trib. 2488 (September 27, 1989).

Where claimant was discharged from his employment after missing work while serving time in jail for a DWI charge, and where claimant did notify his employer of his impending absences and did try unsuccessfully to obtain a work release, it was held that the claimant's absenteeism was due to a violation of public law that the claimant could have avoided committing and should have known might result in incarceration. The claimant's actions were therefore considered misconduct and he was assessed a benefits disqualification period. *In re Kehm*, 90 Neb. App. Trib. 1068 (May 24, 1990).

The claimant was discharged for failing to appear for work and failing to call and report his absence. He was incarcerated and could only make collect telephone calls or calls with a calling card. The claimant had \$30.00 at the time of his arrest and could have purchased a calling card from the commissary for as little as \$5.00 but opted to spend the money on food items instead. The claimant asked a friend of his to notify the employer of his situation. The employer was aware of the claimant's incarceration and left several messages with the jail asking the claimant to call to which the claimant did not respond. The claimant missed thirteen days of work and was discharged before his release. The claimant denied culpability in the events leading to his incarceration and had not been convicted of a crime at the time of the hearing. The Tribunal determined the claimant's failure to contact the employer was within his control and constituted a deliberate disregard of the employer's interests. The claimant was found to have been discharged for misconduct (as opposed to having voluntarily quit his job). *In re Shelton*, 04 Neb. App. Trib. 2666 (August 18, 2004).

The claimant did not engage in misconduct where she missed work for over a month due to her incarceration, immediately advised the employer of her status, maintained contact, denied culpability and was never convicted of a crime in connection with her incarceration. The employer's policy provides that absences due to incarceration are considered unexcused absences if the employee pleads guilty or is found guilty of an offense in connection with the incarceration. The claimant provided the employer with documentation that the charges against her had been dismissed. The Tribunal found the claimant did not engage in any willful wrongful act constituting misconduct and her absence from work was due to circumstances beyond her control. *In re Campbell*, 03 Neb. App. Trib. 1927 (June 9, 2003).

The claimant was found to have engaged in misconduct when he missed work for an extended period of time because he was incarcerated for a criminal offense to which he pled guilty. *In re Delacruz*, 03 Neb. App. Trib. 1687 (May 25, 2003).

MC 45.05 ATTITUDE TOWARD EMPLOYER – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF CLAIMANT'S ATTITUDE TOWARD EMPLOYER'S INTEREST, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 45, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Claimant's failure to cooperate with an employer who was attempting to furnish a smoke-free environment by a good faith trial and error method constitutes misconduct in connection with the employee's work sufficient to disqualify the employee from receiving unemployment insurance benefits. *Tuma v. Omaha Public Power District*, 226 Neb. 19, 409 N.W.2d 306 (1987).

In a case where claimant was discharged after thirteen years for her “rough” personality, the District Court affirmed an Appeal Tribunal decision that the claimant’s noisy, bossy, and occasionally rude demeanor did not constitute a willful disregard of the employer’s interests or standards of behavior. It was held that claimant was not discharged for misconduct, and therefore entitled to full unemployment benefits. *North Platte, Nebraska Hospital Corporation v. Gottula*, District Court of Lincoln County, Nebraska, Case No. CI 00-242 (September 27, 2000). *In re Gottula*, 00 Neb. App. Trib. 0328 (March 7, 2000).

MC 45.1 ATTITUDE TOWARD EMPLOYER – AGITATION OR CRITICISM

MC 45.15 ATTITUDE TOWARD EMPLOYER – COMPETING WITH EMPLOYER OR AIDING COMPETITOR

WHERE A CLAIMANT ENGAGES IN BUSINESS IN COMPETITION WITH HIS OR HER EMPLOYER OR AIDS A COMPETITOR OF THE EMPLOYER.

Claimant, an assistant in a medical clinic, was discharged for providing a patient list to a doctor who was also a clinic employee, but whose employment contract was to expire without renewal. It was held that the claimant was discharged for misconduct related to aiding a potential competitor and exercising poor judgment against the interests of the employer. *Polivka v. Dolan*, District Court of Lancaster County, Nebraska, Doc. 462 Page 236 (October 9, 1991).

Claimant’s insurance agency was sold to the employer who then hired claimant. The terms of the contract precluded the claimant from competing with the employer. The claimant was discharged after the employer discovered that the claimant was selling and applying for insurance policies for customers in his individual capacity as an agent rather than on behalf of the employer. The claimant also diverted some existing customers from the employers to sell them policies. The Tribunal found the claimant engaged in misconduct which was gross, flagrant and willful or unlawful resulting in the cancellation of all wage credits earned prior to the discharge. The claimant’s conduct was blatantly adverse to the employer’s interests, harmed the employer economically, violated the contractual agreement between the employer and the claimant, and was so lacking in integrity as to constitute gross misconduct. *In re Mroczek*, 03 Neb. App. Trib. 3912 (November 12, 2003).

MC 45.2 ATTITUDE TOWARD EMPLOYER – COMPLAINT OR DISCONTENT

INVOLVES A WORKER’S COMPLAINTS ABOUT, OR HIS OR HER DISSATISFACTION WITH, THEIR EQUIPMENT, THEIR FELLOW EMPLOYEES, OR OTHER WORKING CONDITIONS.

Where the employer responded to the claimant’s inquiry about commission sharing by e-mail stating that the employer did not think it was in either the claimant or employer’s best interests to continue to work together and the employer needed a more completely committed assistant, and wishing the claimant well in her career. The claimant responded by saying she was glad they agreed the working relationship should not be continued. The Tribunal found the employer initiated the job separation and its statement to the claimant constituted a discharge. The claimant’s consent or agreement after the fact does not convert a discharge into a voluntary leave. *In re Wacker*, 03 Neb. App. Trib. 4700 (December 31, 2003).

MC 45.25 ATTITUDE TOWARD EMPLOYER – DAMAGE TO EQUIPMENT OR MATERIALS

INVOLVES THE CLAIMANT’S WILLFUL OR CARELESS DESTRUCTION OF PROPERTY, AS REFLECTING A DISREGARD OF THE EMPLOYER’S INTERESTS.

In a case where a packing house employee made improper cuts on hides, a finding of misconduct was affirmed where a claimant’s testimony of unintentional damage to the employer’s property was outweighed by the fact that he had clear understanding of his job and how to perform it and was aware of the damage and made no effort to correct his behavior, seek help, or show remorse for his actions. *Bristol v. Hanlon*, 210 Neb. 37, 312 N.W.2d 694 (1981).

MC 45.3 ATTITUDE TOWARD EMPLOYER – DISLOYALTY

DISCUSSION AS TO WHETHER A CLAIMANT’S ACTIONS REFLECT A DISLOYAL ATTITUDE TOWARD THE EMPLOYER. INCLUDES CASES INVOLVING CLAIMANT’S DISLOYALTY TO THE UNITED STATES.

Claimant found to have engaged in misconduct where she asked leasing agent, whom she formerly supervised, for a very favorable deal for her boyfriend on an apartment lease, obtaining a rental rate substantially under market value. The claimant arranged to have her boyfriend rent the apartment in which she had been living because the employer had advised her she needed to move out or start paying market rental rates since she was no longer managing the property where she lived. The Tribunal found the claimant deliberately acted in a manner contrary to the employer’s interests when she took advantage of a relationship with a co-worker to enter into a contract with the employer which was to the claimant’s advantage and the employer’s disadvantage. The claimant owed a duty of loyalty to the employer particularly in a situation involving a financial conflict of interest. *In re Dibbern*, 04 Neb. App. Trib. 0517 (March 9, 2004).

MC 45.35 ATTITUDE TOWARD EMPLOYER – INDIFFERENCE

LACK OF INTEREST OR REGARD FOR EMPLOYER’S INTERESTS.

Where claimant responded to his supervisor in an indifferent manner when questioned regarding his production level, the Court found no misconduct. As a long-time employee, the claimant had an extended and significant working relationship with his supervisor and the president of the company. While an employer has the right to expect an employee to follow the reasonable orders of the employer, a single act of misbehavior which is not gross or flagrant, would not normally be sufficient to disqualify an employee under the Employment Security law. *Herrera v. Cornhusker Packing Inc., et al.*, District Court of Douglas County, Nebraska, Doc. 902 Page 539 (May 7, 1992).

As a general rule, poor work performance in and of itself does not rise to the level of misconduct under the Unemployment Security Law. However, where the claimant was clearly able to meet the expectations of the job concerning both quality and quantity of work, and had done so in the past, but later chose not to do so and chose not to obtain any help with regard to the problem, he certainly was not meeting the standards of behavior which the employer can rightfully expect from the employee, and was intentionally and substantially disregarding the employer’s interests and his own duties and obligations. Claimant was discharged for misconduct and disqualified from benefits accordingly. *Sindelar v. Omaha Public Power District et al.*, District Court of Douglas County, Nebraska, Doc. 889 Page 772 (March 18, 1991).

Where claimant was discharged from his employment because of excessive tardiness and an expressed indifference toward performing and improving his work, even though he had on occasion demonstrated that he was capable of an acceptable performance level, it was held that the claimant’s behavior constituted misconduct within Nebraska Employment Security Law and he was assessed a benefits disqualification period. *In re Kosmicki*, 90 Neb. App. Trib. 2429 (November 21, 1990).

MC 45.4 ATTITUDE TOWARD EMPLOYER – INJURY TO EMPLOYER THROUGH RELATIONS WITH PATRON

INCLUDES DISCOURTESY TO OR NEGLECT OF A PATRON, OR CRITICISM OF THE EMPLOYER’S SERVICE OR PRODUCT TO A CUSTOMER.

If an employment position requires close personal contact with persons served by the employer, it is not unreasonable for the employer to require that employee report for work without the odor of alcohol on his or her breath. Violation of such a requirement, after warnings to the employee, is misconduct. *Melody A. Jensen v. Mary Lanning Memorial Hospital*, 233 Neb. 66, 443 N.W.2d 891 (1989).

Employer failed to meet its burden of proving misconduct where the evidence consisted of conclusions and subjective opinions offered in the form of hearsay. The employer discharged the claimant because it felt she was abrupt and lacked empathy in dealing with customers. The underlying facts were not credibly or sufficiently established to support a finding of deliberate misconduct. *In re Nissen* 03 Neb. App. Trib. 4689 (January 7, 2004).

MC 85 CONNECTION WITH WORK

APPLIES TO CASES THAT DETERMINE WHETHER THE ACT FOR WHICH THE CLAIMANT WAS DISCHARGED WAS CONNECTED WITH HIS OR HER WORK OR IN THE COURSE OF THEIR EMPLOYMENT.

Neb. Rev. Stat. §48-628(b) (Reissue 1984) requires that misconduct for which a disqualifying from receiving unemployment insurance benefits may result must be committed in connection with the employee's work.

In a case where a city sanitation service employee knowingly received unmetered electrical and water service from the city over a period of ten years the Court found gross misconduct. The Court ruled that conduct of a governmental employee which evinces a conscious and intentional disregard of standards of behavior which his or her governmental employer would have a right to expect from such employee constitutes misconduct in connection with the employee's employment, where continued employment would create a genuine threat to the integrity of the governmental employer and reflect unfavorably upon the governmental employer in the eyes of the general public. *Poore v. City of Minden*, 237 Neb. 78, 464 N.W.2d 791 (1991).

Neb. Rev. Stat. §48-628(b) (Reissue 1984) requires that misconduct for which a disqualification from receiving unemployment insurance benefits may result must be committed in connection with the employee's work. *Tuma v. Omaha Public Power District*, 226 Neb. 19, 409 N.W.2d 306 (1987).

Where a substitute teacher was placed on administrative block and then discharged during a criminal investigation into his conduct while employed full-time at a school in another district, and discharged following his conviction and the loss of his teaching certification, it was held that he was discharged for gross misconduct in connection with his work and totally disqualified from receiving unemployment benefits. The Court found that the claimant's position as a substitute teacher did not constitute temporary employment because the employment agreement spans the entire school year and there exists reasonable assurance that teaching assignments will be available throughout the duration of the agreement. *Lancaster County School District v. Department of Labor*, District Court of Lancaster County, Nebraska, Doc. 540 Page 194 (January 14, 1997).

The claimant, a stocker and sales clerk at Wal Mart, was suspended after being arrested for child molestation. When he pled guilty to a lesser charge he was discharged. The criminal activity did not occur on the employer's property or while the claimant was working, nor did it involve any other employee. The claimant was discharged because the employer felt its customers might be concerned to see the claimant on its premises. The Tribunal found the claimant's off duty behavior was not sufficiently connected to the claimant's work as to justify a benefit disqualification. *In re Montes*, 03 Neb. App. Trib. 4812 (January 13, 2004).

MC 135.05 DISCHARGE OR LEAVING – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF LEAVING OR DISCHARGE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 135, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Separation due to a claimant's resignation which occurs after a claimant has been given the choice of resigning or facing imminent discharge as the result of misconduct constitutes a discharge within the meaning of the Nebraska Employment Security Law. *Reinke v. Lincoln-Lancaster Drug Projects Inc., et al.*, Lancaster County, District Court, Doc. 451 Page 299 (September 6, 1990).

Where the employer responded to the claimant's inquiry about commission sharing by e-mail stating that the employer did not think it was in either the claimant or employer's best interests to continue to work together and the employer needed a more completely committed assistant, and wishing the claimant well in her career. The claimant

responded by saying she was glad they agreed the working relationship should not be continued. The Tribunal found the employer initiated the job separation and its statement to the claimant constituted a discharge. The claimant's consent or agreement after the fact does not convert a discharge into a voluntary leave. *In re Wacker*, 03 Neb. App. Trib. 4700 (December 31, 2003).

MC 135.15 DISCHARGE OR LEAVING – CONSTRUCTIVE DISCHARGE

WHERE THE CLAIMANT ACTUALLY LEFT EMPLOYMENT, BUT UNDER CONDITIONS THAT RAISE A QUESTION AS TO WHETHER HE OR SHE WAS CONSTRUCTIVELY DISCHARGED, AS WHEN HIS OR HER JOB WAS ABOLISHED, OR WHEN THERE WAS NO JOB OF THE DESCRIPTION FOR WHICH CLAIMANT WAS HIRED, OR WHEN CLAIMANT WAS ORDERED TO WORK UNDER CONDITIONS THAT WERE NOT IN HIS OR HER CONTRACT OF HIRE.

When an employee contracts to fill a particular position, any material change in duties or significant reduction in rank will constitute a constructive discharge which, if unjustified, is a breach of contract. The doctrine of constructive discharge is applied when an employer deliberately renders an employee's working conditions intolerable, thus forcing employee to quit his or her job. *Sanders v. May*, 214 Neb 755, 336 NW2d 755 (1983).

Where claimant complained about treatment by her supervisor and a meeting was held in an attempt to address the claimant's concerns, and claimant nevertheless resigned the following day claiming that her working conditions were intolerable, the Court found that the claimant had not been constructively discharged because the employer had taken steps to address the problem before the claimant resigned. Claimant left voluntarily without good cause and was disqualified from receiving benefits. *Baronio v. Metromail Corp., et al*, District Court of Lancaster County, Nebraska, Doc. 444 Page 7 (November 29, 1990).

A claimant who had been accused of converting property of the employer for her own use could not avoid the finding of gross misconduct and the accompanying cancellation of all wage credits by quitting in anticipation of discharge. The Court found that the claimant was constructively discharged when she quit rather than meet with her supervisor regarding missing drugs. *Lutheran Medical Center v. Filkins, et al*, District Court of Douglas County, Nebraska, Doc. 673 Page 338 (January 7, 1975).

Where claimant had previously been warned that if she had any further "no call/no show" incidents she would be terminated, and where she tried but was unable to reach her employer by telephone on each of two consecutive days that she was ill and unable to work, she did not contact the employer after the absences because she understood that she had been fired. The District Court affirmed an Appeal Tribunal decision that the claimant did not voluntarily leave her employment but was discharged by the employer, and that because the employer had been experiencing telephone problems which may have caused the claimant's inability to reach the employer when she needed to call in sick, the discharge was not disqualifying and the claimant was entitled to benefits. *Oriental Trading Company v. Plummer*, District Court of Dodge County, Nebraska, Case No. CI 98-241 (August 21, 1998). *In re Plummer*, 98 Neb. App. Trib. 0613 (April 14, 1998).

MC 135.2 DISCHARGE OR LEAVING – INTERPRETATION OF REMARK OR ACTION OF EMPLOYER OR EMPLOYEE

A contingent statement by the employer, to wit: "unless you are prepared to follow instructions, you might as well leave," does not constitute a discharge. The statement lacked the immediacy and finality of a firing. Generally, contingent statements are not considered to possess the necessary immediacy. The claimant made no effort to clarify the employer's intention before construing the remark as a discharge. It was found the claimant voluntarily left employment when he did not return to work following the employer's statement. *In re Vonderlage*, 02 Neb. App. Trib. 4735 (January 23, 2003).

MC 135.25 DISCHARGE OR LEAVING – DISCHARGE BEFORE EFFECTIVE DATE OF RESIGNATION

WHERE CLAIMANT, UPON GIVING NOTICE THAT HE INTENDED TO RESIGN AS OF A CERTAIN DATE, WAS ADVISED BY THE EMPLOYER THAT HE OR SHE NEED NOT WORK UNTIL THAT DATE.

Claimant, who gave advance notice of the effective date of his resignation, but was then discharged during the notice period, was allowed benefits without disqualification upon a finding that his discharge was without misconduct. The employer, after learning that the separation would have been a disqualifying voluntary leave without good cause if the claimant had been paid to the end of his notice period, later tried to bring about a disqualification by paying the claimant through the notice period. The employer's post-determination attempt to pay the claimant through the end of the notice period did not change the nature of the claimant's non-disqualifying discharge. *In re Lefebvre*, 92 Neb. App. Trib. 3655 (December 16, 1992).

Where claimant informed employer of resignation and offered a minimum one-week notice period, but was told by the employer that he was discharged immediately, and where employer offered no evidence of claimant's misconduct, the District Court affirmed an Appeal Tribunal decision that claimant was discharged under non-disqualifying conditions. *Stan Ortmeier Const. Co. v. Commissioner of Labor et al.*, District Court of Cuming County, Nebraska, Doc. 20 Page 156, Case No. 8429 (July 20, 1992). *In re Wright*, 92 Neb. App. Trib. 0471 (March 4, 1992).

The District Court found misconduct where the claimant, who had previously given notice of resignation because she believed that she was on the verge of being fired for tardiness and absenteeism, was terminated for failing to give timely notice of absence due to illness (claimant called in sick well after the start of her shift on two consecutive days). The separation was treated as a discharge rather than a voluntary quit. *Commercial Optical Inc. v. Commissioner of Labor, et al.*, District Court of Douglas County, Nebraska, Doc. 895 Page 655 (October 8, 1991).

Employee who gave employer two weeks' notice of her intention to terminate employment, but whose employment was terminated by employer prior to end of notice period, was eligible for unemployment benefits without disqualification. An employee's discharge prior to the effective date of the intended resignation is a discharge at and for the convenience of the employer. In such a factual situation, the employee is relieved of the burden of establishing that the employee left the employment with good cause. *Speedway Motors, Inc. v. Commissioner of Labor*, 1 Neb. App. Trib. 606, 510 N.W.2d 341 (1993).

MC 135.3 DISCHARGE OR LEAVING – INVOLUNTARY SEPARATION

DISCUSSIONS AS TO WHETHER OR NOT THE SEPARATION WAS VOLUNTARY.

MC 135.35 DISCHARGE OR LEAVING – LEAVING IN ANTICIPATION OF DISCHARGE

WHERE THE CLAIMANT LEFT IN ANTICIPATION OF A DISCHARGE, OR RESIGNATION WHEN TOLD HE OR SHE WOULD HAVE THE CHOICE OF RESIGNING OR BEING DISCHARGED.

A claimant who had been accused of converting property of the employer for her own use could not avoid the finding of gross misconduct and the accompanying cancellation of all wage credits by quitting in anticipation of discharge. The Court found that the claimant was constructively discharged when she quit rather than meet with her supervisor regarding missing drugs. *Lutheran Medical Center v. Filkins, et al*, District Court of Douglas County, Nebraska, Doc. 673 Page 338 (January 7, 1975).

MC 135.45 DISCHARGE OR LEAVING – SUSPENSION FOR MISCONDUCT

INVOLVES THE QUESTION OF WHETHER CLAIMANT WAS SUSPENDED FOR MISCONDUCT IN STATES HAVING A PROVISION FOR DISQUALIFYING CLAIMANT WHO IS SUSPENDED FOR MISCONDUCT.

Although the claimant's discharge was not finalized until October 25, 2003, for purposes of the Nebraska Employment Security Law, the discharge is considered to have occurred on the date of the disciplinary suspension

which preceded the discharge. 219 NAC 8(§008) provides that “It shall be presumed that an indefinite or temporary disciplinary suspension by the employer is not a mutually and voluntarily agreed to absence from work. For the purpose of determining eligibility for unemployment benefits, such a claimant is presumed to have been discharged by the employer at the time of the suspension.”

Where employer simultaneously told claimant at the time of her suspension not to come on its property or make contact with her co-workers and directed her to return to her office and take her time gathering her things, the claimant’s brief conversation with co-workers who were present about business matters they had discussed earlier that day did not constitute misconduct. The employer’s conflicting directions resulted in a finding the claimant did not willfully or deliberately violate the employer’s instructions. *In re Claxton*, 03 Neb. App. Trib. 4356 (December 16, 2003).

MC 139 DISCRIMINATION

Store clerk who described individual who attempted to obtain a refund as a “wetback who comes in here all the time” on the refund slip she wrote documenting the transaction for the employer’s records constituted. “Even in the absence of a specific policy or prior warnings prohibiting the use of such language, it is common knowledge that the use of racial slurs is inappropriate” To use such a term in a business environment and to record the term on the employer’s records is contrary to the employer’s interest. *In re Larsen*, 03 Neb. App. Trib. 4423 (December 18, 2003).

MC 140.05 DISHONESTY – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF DISHONESTY, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 135, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

MC 140.1 DISHONESTY – AIDING AND ABETTING

WHERE A CLAIMANT ALLOWED HIS OR HER EMPLOYER TO BE DEFRAUDED BY OTHERS, BY HELPING OR PERMITTING ACTS OF DISHONESTY TO BE COMMITTED WITHOUT TRYING TO PREVENT THEM OR INFORMING EMPLOYER.

Claimant, an assistant in a medical clinic, was discharged for providing a patient list to a doctor who was also a clinic employee, but whose employment contract was to expire without renewal. It was held that the claimant was discharged for misconduct related to aiding a potential competitor and exercising poor judgment against the interests of the employer. *Polivka v. Dolan*, District Court of Lancaster County, Nebraska, Doc. 462 Page 236 (October 9, 1991).

MC 140.15 DISHONESTY – CASH SHORTAGE OR MISAPPROPRIATION

WHERE CASH WAS CONVERTED OR MISAPPROPRIATED.

MC 140.2 DISHONESTY – FALSEHOOD

WHERE CLAIMANT GAVE A FALSE REASON FOR AN ABSENCE, OR MADE FALSE STATEMENTS ABOUT EMPLOYER, FELLOW EMPLOYEES, OR AMOUNT OF WORK DONE.

Where the claimant was discharged for making a false statement on his employment application when he answered in the negative to the question “Have you had any 1st Class Misdemeanor or felony convictions in your lifetime?” The evidence showed the claimant had been convicted in the State of Iowa of disorderly conduct, and trespass, described on report as a “misdemeanor” and a “serious misdemeanor” respectively. The evidence did not show that his conviction for trespass in Iowa required him to answer affirmatively that he had been convicted of a 1st Class Misdemeanor. The State of Iowa does not classify its misdemeanor offenses in the same manner as does Nebraska, categorizing them as aggravated misdemeanors, serious misdemeanors and simple misdemeanors. The claimant’s

answer to the question on the application was factually correct. Nor was there evidence to show a serious misdemeanor in the State of Iowa was comparable to a Class I Misdemeanor in the State of Nebraska. *In re Owens*, 04 Neb. App. Trib. 0617 (March 10, 2004).

MC 140.25 DISHONESTY – FALSIFICATION OF RECORD

WHERE CLAIMANT GAVE FALSE INFORMATION ON APPLICATION FOR WORK OR ON RECORDS IN THE COURSE OF HIS OR HER EMPLOYMENT, OR DESTROYED SUCH RECORDS.

Discharged employee's conduct in falsifying expense reports was alone sufficient to constitute misconduct which would disqualify employee from receiving unemployment benefits, even if employer's real reason for termination was concern about amount of salary and commission which employer has agreed to pay employee. *Caudill v. Surgical Concepts Inc.*, 236 Neb. 266, 460 N.W.2d 662 (1990).

Claimant filled in a blank section of a signed physician's certificate before submitting it to his employer, indicating that he could not work for a period of time due to an injury, and was discharged for falsifying records. Although claimant argued that he did not know his actions would be considered falsification, it was held that his behavior was dishonest and constituted misconduct, and he was disqualified from benefits. *Goodyear Tire and Rubber Company v. Campbell, et al.*, District Court of Lancaster County, Nebraska, Case No. CI 00-494 (July 21, 2000).

The claimant, who suffered from carpal tunnel syndrome but indicated on her job application that she did not have any physical limitations, was discharged from her employment after she incurred a number of absences related to her injury and requested two further weeks off upon the advice of her physician. The employer argued that the claimant was discharged for falsifying her employment application, but stated that she would have been retained if she had been physically able to perform her job duties. As a result, the Appeal Tribunal held that the claimant's discharge was due to her health condition rather than the false statement she made on her application, and she was found to have been separated from her employment under non-disqualifying conditions. *In re Moravec*, 91 Neb. App. Trib. 0212 (February 19, 1991).

MC 140.3 DISHONESTY – PROPERTY OF EMPLOYER, CONVERSION OF

TAKING OF EMPLOYER'S PROPERTY AND PUTTING TO EMPLOYEE'S OWN USE.

A claimant who had been accused of converting property of the employer for her own use could not avoid the finding of gross misconduct and the accompanying cancellation of all wage credits by quitting in anticipation of discharge. The Court found that the claimant was constructively discharged when she quit rather than meet with her supervisor regarding missing drugs. *Lutheran Medical Center v. Filkins, et al.*, District Court of Douglas County, Nebraska, Doc. 673 Page 338 (January 7, 1975).

In a case where a city sanitation service employee knowingly received unmetered electrical and water service from the city over a period of ten years the Court found gross misconduct. The Court ruled that conduct of a governmental employee which evinces a conscious and intentional disregard of standards of behavior which his or her governmental employer would have a right to expect from such employee constitutes misconduct in connection with the employee's employment, where continued employment would create a genuine threat to the integrity of the governmental employer and reflect unfavorably upon the governmental employer in the eyes of the general public. *Poore v. City of Minden*, 237 Neb. 78, 464 N.W.2d 791 (1991).

Where claimant was fired from her position as a mechanic after her employer was charged for a part that the claimant used to fix her friend's car, it was held that absent any evidence that the incident was something more than a mistake, the claimant was discharged under non-disqualifying conditions and entitled to unemployment benefits. *Interstate Auto Group v. Galloway*, District Court of Lancaster County, Nebraska, Case No. CI 01-141 (July 25, 2001).

MC 140.35 DISHONESTY – PROPERTY OF OTHER THAN EMPLOYER, CONVERSION OF

TAKING OF PROPERTY OF OTHER THAN EMPLOYER AND PUTTING TO EMPLOYEE’S OWN USE.

MC 140.4 DISHONESTY – PURCHASE

PURCHASING FROM THE EMPLOYER IN A MANNER THAT VIOLATES EMPLOYER’S ESTABLISHED RULES REGARDING SUCH PURCHASES.

MC 165 EMPLOYER REQUIREMENTS

CASES IN WHICH A CLAIMANT WAS DISCHARGED BECAUSE OF INABILITY TO MEET SPECIFIC EMPLOYER REQUIREMENTS, SUCH AS AGE, EDUCATION, LICENSE, OR PHYSICAL STATUS, OR BECAUSE HE OR SHE COULD NO LONGER PERFORM DUTIES PREVIOUSLY PERFORMED.

Where an truck diver was terminated for failure to meet Department of Transportation licensing requirements after he did not pass a company physical, it was held that he did not engage in misconduct and was therefore entitled to unemployment benefits. Although the claimant was found to be physically incapable of performing his job at the time his license was up for renewal, such physical incapacity was not a willful, conscious act on the part of the claimant and subsequently did not meet the definition of misconduct. *Grand Island Express, Inc. v. Dolan*, 1994 WL 191698 (Neb. App.) (1994). (Note: This opinion has not been approved by the Nebraska Supreme Court for publication in the permanent law reports.)

In a case where claimant’s physician recommended that he not perform duties of any kind following a work-related injury, but where employer presented evidence that claimant was carrying out his day-to-day activities and engaging in physically demanding activities and subsequently discharged him for his ongoing refusal to seek and perform light-duty work, it was held that claimant was discharged for misconduct and assessed a benefit disqualification period. *Funk v. United States Postal Service*, District Court of Douglas County, Nebraska, Doc. 949 No.158 (October 26, 1996).

The claimant suffered seizures at work on two separate occasions, and obtained a medical release after each incident at the instruction of his employer. After the second incident, the employer refused to let the claimant return to work because his medical release, which was obtained at a free clinic, did not specifically reference the claimant’s risk of future seizures. The Tribunal found that the claimant, who had no health insurance, acted reasonably and did his best to respond to the needs and demands of his employer when he sought medical attention a free clinic, and while the employer may have been justified in discharging the claimant because of the possible safety hazard posed by the claimant’s seizures, the claimant was separated from his employment under non-disqualifying conditions. *In re Torek*, 89 Neb. App. Trib. 2447 (September 25, 1989).

The claimant was discharged from his employment as a truck driver after his pre-employment drug test results came back positive for marijuana several days after he was permitted to begin work. The Tribunal found that the claimant’s failure to obtain, as a result of his positive drug test, the federal license necessary to perform his duties pursuant to an agreement of hire constituted a breach of the conditions of employment and that the claimant was discharged for disqualifying misconduct. *In re Rodekahr*, 90 Neb. App. Trib. 0108 (February 5, 1990).

The claimant’s inability to pass a test in order to obtain certification as a nurse aide, after three apparently good faith attempts within the requisite 120 days of commencing employment in that capacity did not constitute misconduct. The claimant’s failure to obtain the license necessary for continued employment was the result of her inability or incapacity to obtain the license. *In re Santon-Johnson*, 03 Neb. App. Trib. 4447 (December 16, 2003).

MC 170 LICENSING REQUIREMENTS

Where the claimant's nursing license, which was essential to her job, was revoked because she violated the terms of her licensure probation by relapsing and abusing alcohol, misconduct found because failure to maintain current license was the result of the claimant's willful conduct. *In re Hamill*, 04 Neb. App. Trib. 4280 (December 27, 2004).

MC 175 EMPLOYMENT WITH TEMPORARY AGENCY

Where a substitute teacher was placed on administrative block and then discharged during a criminal investigation into his conduct while employed full-time at a school in another district, and discharged following his conviction and the loss of his teaching certification, it was held that he was discharged for gross misconduct in connection with his work and totally disqualified from receiving unemployment benefits. The Court found that the claimant's position as a substitute teacher did not constitute temporary employment because the employment agreement spans the entire school year and there exists reasonable assurance that teaching assignments will be available throughout the duration of the agreement. *Lancaster County School District v. Department of Labor*, District Court of Lancaster County, Nebraska, Doc. 540 Page 194 (January 14, 1997).

MC 176 EMPLOYEE LEASING

MC 190.05 EVIDENCE – GENERAL

INCLUDES CASES WHICH CONTAIN A DISCUSSION OF TECHNICAL POINTS OF EVIDENCE, OTHER THAN THOSE UNDER THE SPECIFIC SUBLINES OF LINE 190, RELATING TO APPLICATION OF THE MISCONDUCT PROVISION.

MC 190.1 EVIDENCE – BURDEN OF PROOF AND PRESUMPTIONS

APPLIES TO DISCUSSIONS AS TO WHICH PARTY HAS BURDEN OF PROOF, OR AS TO LEGAL ADEQUACY OF PARTICULAR EVIDENCE TO OVERCOME PRESUMPTIONS RELATING TO APPLICATION OF THE MISCONDUCT PROVISION.

It is generally considered to be the employer's burden to show by a preponderance of the evidence that an employee has been discharged for misconduct in an employment security law case. *Meintz v. Store Kraft Manufacturing Company*, 1994 WL 72130 (Neb. App.). (*Note: This opinion has not been approved by the Nebraska Supreme Court for publication in the permanent law reports.*)

MC 190.15 EVIDENCE – WEIGHT AND SUFFICIENCY / STANDARD OF PROOF

CONSIDERATION OF WEIGHT AND ADEQUACY OF PARTICULAR EVIDENCE RELATING TO APPLICATION OF THE MISCONDUCT PROVISION.

The claimant was discharged from his employment after an altercation with a coworker, in which the claimant shoved a fellow employee after he stood on the claimant's toes and directed insults at the claimant and the claimant's mother. Because the employer's case was based primarily on the testimony of a witness who was walking away from the claimant and then seated 20 to 30 feet away from the claimant during the course of the incident, and upon hearsay evidence as to what other witnesses said had occurred, the Appeal Tribunal found that the employer did not meet its burden of proving, by a preponderance of the evidence, that the claimant had engaged in willful misconduct. Specifically, the Tribunal noted that in a case where hearsay evidence is controverted by competent, credible sworn testimony by a witness available for cross-examination, greater weight is generally given to the sworn testimony than to the hearsay evidence. *In re Pethoud*, 91 Neb. App. Trib. 0282 (February 26, 1991).

The claimant, a groundskeeper at an apartment complex, was discharged after a sexually explicit and intimidating note was left on a tenants car and the claimant's employer believed the handwriting on the note matched the claimant's handwriting, even though the claimant denied writing and leaving the note. Given the employer's familiarity with the claimant's handwriting and the fact that the law generally recognizes the admissibility of lay witnesses with respect to handwriting authentication, the Appeal Tribunal held that sufficient evidence existed to

suggest the claimant more likely than not was responsible for writing and leaving the note, and he was found to have been discharged for disqualifying misconduct. *In re McKenzie*, 02 Neb. App. Trib. 3510, October 24, 2002.

Where claimant appeared to be responsible for theft of money from cash register and abandoned his job, he could not avoid a finding of gross misconduct and the subsequent total disqualification by quitting instead of being discharged. *In re Wulff*, 03 Neb. App. Trib. 4861 (January 22, 2004) relying on *Lutheran Medical Center v. Filkins*, Docket 673, No. 338, District Court of Douglas County, Neb. (January 7, 1975).

Claimant discharged after 17 year old restaurant worker reported instances of sexual harassment by the claimant, her supervisor. Sworn affidavit of the 17 year old employee was received in evidence by the Tribunal. Another supervisor was present and testified to statements the 17 year old made to her about the harassment and her distraught condition at the time she made the statements. The accused supervisor testified and denied all allegations. ALJ concluded employer's case was "substantial" but failed to meet its burden of proving misconduct because its case was based solely upon hearsay evidence. The District Court reversed, finding the hearsay evidence, the affidavit of the 17 year old, the observations of her demeanor by others, the opportunity the claimant had to engage in the harassing behavior, and the lack of any motive to fabricate on the part of the accuser led the District Court to conclude the employer had proven misconduct. The District Court further found the claimant engaged in gross misconduct because he sexually harassed a 17 year old minor girl who worked under his supervision, characterizing his behavior as outrageous. *Val Limited v. Lecuona et al*, District Court of Lancaster County, Nebraska, Case No. CI 03-4734 (May 26, 2004).

The claimant, a child support enforcement worker for the County Attorney's office was suspended then discharged when a report was made that she was involved in an illegal pyramid scheme and the matter was being investigated by the Attorney General. During the investigation, the claimant declined to speak with law enforcement officers and did not voluntarily repay money to the alleged victim. She was discharged for her failure to cooperate with law enforcement or repay monies. No criminal charge had been filed at the time of the hearing. While on suspension, the claimant was arrested for DUI. The claimant's denial of wrongdoing, exercise of her privilege against self-incrimination and refusal to pay money to the alleged victim did not constitute misconduct. The employer was not aware of the claimant's DUI arrest until after her discharge so it could not have been a factor in her discharge. *In re Stevens*, 03 Neb. App. Trib. 3333 (September 17, 2003).

Where employer's policy required claimant to ask for identification from any customer appearing to be younger than 27 years of age who seeks to buy alcohol, evidence that a 25 year old was not asked for identification was insufficient proof of misconduct. There was no evidence that the 25 year old appeared, or should have appeared, to the claimant to be less than 27 years of age. *In re Parke*, 05 Neb. App. Trib. 1206 (April 26, 2005).
MC 190.5

Where lay witnesses compared handwriting on an anonymous note left on apartment resident's car with known samples of the claimant's handwriting, witness's opinion that the claimant wrote the note, which contained sexual comments, was admissible. Both the note and known samples of the claimant's writing were submitted in evidence and contained unique characteristics. The employer met its burden of proving misconduct. *In re McKenzie*, 02 Neb. App. Trib. 3510 (October 24, 2002).

MC 190.2 EVIDENCE – HEARSAY

Hearsay evidence, as a general rule, is admissible in Administrative Law proceedings. Admissibility, however, is not coextensive with credibility and the credibility of hearsay statements must be assessed in order to determine what weight they are to be given. In cases where hearsay evidence is anonymous, it is extremely difficult for the Tribunal to find an indicia of reliability or to assess the credibility associated with the statement. *In re Barnes*, 03 Neb. App. Trib. 0800, March 20, 2003.

Where claimant was discharged for allegedly violating his employer's security regulations by giving his password to a data technician from a related employer, but where employer's witnesses refused to disclose who reported the infraction and would only state that they found the source to be reliable, the Appeal Tribunal held that the employer did not meet its burden of proving that the claimant engaged in misconduct. Although the employer certainly had a right to fire an employee they believed may have compromised access to confidential medical records, anonymous

hearsay evidence was not sufficient to prove that the claimant deliberately violated the employer's policies. *In re Barnes*, 03 Neb. App. Trib. 0800, March 20, 2003.

The claimant was discharged from his employment for making inappropriate racial and sexual remarks to and about his coworkers, behavior he had been warned about previously and which his employer believed was ongoing after continued reports from the claimant's fellow employees and an investigation conducted by the employer. Although the evidence submitted on behalf of the employer was hearsay in nature, based on multiple similar accounts from coworkers interviewed by the employer, the detail provided by the hearsay statements as well as their consistency allowed the Tribunal to accord a reasonable degree of credibility to the evidence. It was held that the claimant was discharged for misconduct and he was assessed a benefits disqualification period. *In re Ramirez*, 03 Neb. App. Trib. 2404 (July 22, 2003).

Employer failed to meet its burden of proving misconduct where the evidence consisted of conclusions and subjective opinions offered in the form of hearsay. The employer discharged the claimant because it felt she was abrupt and lacked empathy in dealing with customers. The underlying facts were not credibly or sufficiently established to support a finding of deliberate misconduct. *In re Nissen* 03 Neb. App. Trib. 4689 (January 7, 2004).

Claimant discharged after 17 year old restaurant worker reported instances of sexual harassment by the claimant, her supervisor. Sworn affidavit of the 17 year old employee was received in evidence by the Tribunal. Another supervisor was present and testified to statements the 17 year old made to her about the harassment and her distraught condition at the time she made the statements. The accused supervisor testified and denied all allegations. ALJ concluded employer's case was "substantial" but failed to meet its burden of proving misconduct because its case was based solely upon hearsay evidence. The District Court reversed, finding the hearsay evidence, the affidavit of the 17 year old, the observations of her demeanor by others, the opportunity the claimant had to engage in the harassing behavior, and the lack of any motive to fabricate on the part of the accuser led the District Court to conclude the employer had proven misconduct. The District Court further found the claimant engaged in gross misconduct because he sexually harassed a 17 year old minor girl who worked under his supervision, characterizing his behavior as outrageous. *Val Limited v. Lecuona et al*, District Court of Lancaster County, Nebraska, Case No. CI 03-4734 (May 26, 2004).

MC 190.5 OPINION EVIDENCE

MC 200 GROSS, AGGRAVATED OR OTHER SPECIAL MISCONDUCT DISQUALIFICATIONS

INCLUDES CASES INVOLVING DISCHARGE FOR THE COMMISSION OF A SERIOUS OFFENSE, USUALLY IN STATES HAVING A PROVISION FOR MORE SEVERE PENALTIES APPLIED TO GROSS OR AGGRAVATED MISCONDUCT.

A claimant who had been accused of converting property of the employer for her own use could not avoid the finding of gross misconduct and the accompanying cancellation of all wage credits by quitting in anticipation of discharge. The Court found that the claimant was constructively discharged when she quit rather than meet with her supervisor regarding missing drugs. *Lutheran Medical Center v. Filkins, et al*, District Court of Douglas County, Nebraska, Doc. 673 Page 338 (January 7, 1975).

In a case where a city sanitation service employee knowingly received unmetered electrical and water service from the city over a period of ten years the Court found gross misconduct. The Court ruled that conduct of a governmental employee which evinces a conscious and intentional disregard of standards of behavior which his or her governmental employer would have a right to expect from such employee constitutes misconduct in connection with the employee's employment, where continued employment would create a genuine threat to the integrity of the governmental employer and reflect unfavorably upon the governmental employer in the eyes of the general public. *Poore v. City of Minden*, 237 Neb. 78, 464 N.W.2d 791 (1991).

Under the Nebraska Employment Security Law, a discharged employee is totally disqualified from receiving unemployment insurance benefits if employee was guilty of misconduct connected with the working relationship which was gross, flagrant and willful. *Snyder Industries Inc. v. Otto*, 212 Neb. 40, 321 N.W.2d 77 (1982).

Where a substitute teacher was placed on administrative block and then discharged during a criminal investigation into his conduct while employed full-time at a school in another district, and discharged following his conviction and the loss of his teaching certification, it was held that he was discharged for gross misconduct in connection with his work and totally disqualified from receiving unemployment benefits. The Court found that the claimant's position as a substitute teacher did not constitute temporary employment because the employment agreement spans the entire school year and there exists reasonable assurance that teaching assignments will be available throughout the duration of the agreement. *Lancaster County School District v. Department of Labor*, District Court of Lancaster County, Nebraska, Doc. 540 Page 194 (January 14, 1997).

Where claimant, a school bus driver, was discharged when he failed to "walk the bus" after his route and a small child was left on the bus, the District Court affirmed an Appeal Tribunal decision that the claimant was discharged for misconduct but not gross misconduct. Although failure to walk the bus presents a very dangerous situation for children left behind, and the claimant had been warned on two previous occasions after children were left on his bus, it was held that such conduct was not gross, flagrant, willful, or unlawful. *Lancaster County School District v. O'Donnell*, District Court of Lancaster County, Nebraska, Doc. 541 Page 110 (November 14, 1996). *In re O'Donnell*, 96 Neb. App. Trib. 0632 (April 3, 1996).

Where claimant, a security specialist at a mental health facility, was discharged for patient abuse after pushing a patient to the ground after the patient punched him in the back, it was held that the claimant used excessive force and was discharged for misconduct but that his actions did not rise to the level of gross misconduct. The claimant, who had been previously warned about using excessive force with a patient, reacted reasonably when attacked from behind but exhibited a lack of concern for the patient's welfare and a deliberate disregard for the employer's interests when he subsequently walked away without assessing the patient's condition. It was determined that although the claimant's behavior was not gross, flagrant and willful, or unlawful sufficient to result in a total benefits disqualification, he engaged in ordinary misconduct and was discharged under disqualifying conditions. *Lechner v. Yueill*, District Court of Lancaster County, Nebraska, Doc. 453 Page 167 (January 28, 1991).

The claimant, a child services specialist at a hospital, submitted her resignation after a poor performance review and ongoing conflicts with her supervisor, and then left in the middle of her shift two days before her last scheduled day of employment. The claimant had arrived to work ill that morning and had requested to be relieved of her duties for the remainder of the day, but was told by her supervisor to visit the employer's health room before leaving. When she was told that she could not be examined in the health room until early afternoon, she left work and put a note on her supervisor's desk stating that she would not be returning for the remainder of her employment. She did not personally notify anyone that she was leaving, and her absence caused a group of two-year-olds under her care to be unsupervised for an hour and a half before the claimant's supervisor found the note and discovered the unattended children. Because of the serious and flagrant nature of the claimant's actions, the employer argued that her separation should be ruled as an effective discharge for gross misconduct. However, the Tribunal found that the claimant's separation from her employment occurred at the time she left the note on her supervisors desk and that she left work voluntarily and without good cause; the claimant's manner of separation and negligent behavior immediately subsequent to her resignation cannot result in a total disqualification from benefits under the authority of the law. In this case, the Tribunal modified the adjudicator's ruling to give the claimant the maximum disqualification penalty of ten weeks, but could not arrive at a determination of gross misconduct because the claimant left voluntarily and was not discharged. *In re Thelen*, 90 Neb. App. Trib. 1000 (May 22, 1990).

Where claimant was discharged from his position as a night custodian at a high school after he was found sleeping in a classroom and later admitted he had been drinking on the job, the employer argued for a finding of gross misconduct and a total benefits disqualification because the claimant was drinking on school grounds. The Appeal Tribunal held that the claimant was discharged for disqualifying misconduct because, but that his because his act of drinking on the job would not likely have resulted in a finding of gross misconduct if it had occurred at a different site, and that the location of his misconduct should not automatically result in a harsher penalty. *In re Weyers*, 89 Neb. App. Trib. 0033 (February 3, 1989).

The claimant was discharged after a pipe and a substance that the claimant later admitted was marijuana were found in his jacket pocket by a co-worker who was looking for a key. The Tribunal found that the claimant was discharged for violating a reasonable company rule against the possession of controlled substances on the work

premises, that the claimant was aware of this policy, and that the claimant's actions constituted disqualifying misconduct under the Nebraska Employment Security Law. *In re Davis*, 90 Neb. App. Trib. 0979 (May 16, 1990).

Claimant's insurance agency was sold to the employer who then hired claimant. The terms of the contract precluded the claimant from competing with the employer. The claimant was discharged after the employer discovered that the claimant was selling and applying for insurance policies for customers in his individual capacity as an agent rather than on behalf of the employer. The claimant also diverted some existing customers from the employers to sell them policies. The Tribunal found the claimant engaged in misconduct which was gross, flagrant and willful or unlawful resulting in the cancellation of all wage credits earned prior to the discharge. The claimant's conduct was blatantly adverse to the employer's interests, harmed the employer economically, violated the contractual agreement between the employer and the claimant, and was so lacking in integrity as to constitute gross misconduct. *In re Mroczek*, 03 Neb. App. Trib. 3912 (November 12, 2003).

Claimant discharged after 17 year old restaurant worker reported instances of sexual harassment by the claimant, her supervisor. Sworn affidavit of the 17 year old employee was received in evidence by the Tribunal. Another supervisor was present and testified to statements the 17 year old made to her about the harassment and her distraught condition at the time she made the statements. The accused supervisor testified and denied all allegations. ALJ concluded employer's case was "substantial" but failed to meet its burden of proving misconduct because its case was based solely upon hearsay evidence. The District Court reversed, finding the hearsay evidence, the affidavit of the 17 year old, the observations of her demeanor by others, the opportunity the claimant had to engage in the harassing behavior, and the lack of any motive to fabricate on the part of the accuser led the District Court to conclude the employer had proven misconduct. The District Court further found the claimant engaged in gross misconduct because he sexually harassed a 17 year old minor girl who worked under his supervision, characterizing his behavior as outrageous. *Val Limited v. Lecuona et al*, District Court of Lancaster County, Nebraska, Case No. CI 03-4734 (May 26, 2004).

MC 255.05 INSUBORDINATION – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF INSUBORDINATION, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 255, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

In a case not involving the Employment Security Law, the Nebraska Supreme Court defined insubordination as an employee's willful or intentional disregard of, or refusal to obey, an employer's reasonable order, rule, or regulation, which is expressed or implied and is given or promulgated under lawful authority related to the employment. *Ballard v. Giltner Public Schools*, 241 Neb. 970, 492 N.W.2d 855 (1992).

Muslim employee who was discharged because she left the production line to pray during required prayer time, when the employer did not accommodate her request to leave, was engaging in protected religious expression and cannot be denied unemployment insurance compensation, a government benefit generally available to the unemployed, absent proof of a compelling state interest which outweighs the claimant's first amendment rights. State asserted no interest in denying benefits, and took the position the claimant was entitled to receive unemployment insurance without disqualification. Despite the employer's efforts to accommodate the religious desires of its many Muslim employees, the claimant's behavior did not constitute misconduct. *In re Intilo*, 05 Neb. App. Trib. 2203 (July 22, 2005).

MC 255.1 INSUBORDINATION – DISOBEDIENCE

WHERE THE CLAIMANT NEGLECTED TO PERFORM ALL THE DUTIES OF THE JOB, FAILED TO WORK OVERTIME OR SOME PARTICULAR TIME, OR FAILED TO COMPLETE OR DO A PARTICULAR TASK,

Employee's failure to designate pension plan or nonparticipation in any pension plan was misconduct sufficient to disqualify employee from benefits, where it was essential that all employees indicate which of four options were desired, employee had been given notice that refusal would result in her discharge, and employee had been given sufficient opportunity to learn about plans and to examine plans personally or by counsel. *Barada v. Sorensen*, 222 Neb. 391, 383 N.W.2d 799 (1986).

Although the claimant's discharge was not finalized until October 25, 2003, for purposes of the Nebraska Employment Security Law, the discharge is considered to have occurred on the date of the disciplinary suspension which preceded the discharge. 219 N.A.C., Chapter 8, § 008 provides that "It shall be presumed that an indefinite or temporary disciplinary suspension by the employer is not a mutually and voluntarily agreed to absence from work. For the purpose of determining eligibility for unemployment benefits, such a claimant is presumed to have been discharged by the employer at the time of the suspension."

Where employer simultaneously told claimant at the time of her suspension not to come on its property or make contact with her co-workers and directed her to return to her office and take her time gathering her things, the claimant's brief conversation with co-workers who were present about business matters they had discussed earlier that day did not constitute misconduct. The employer's conflicting directions resulted in a finding the claimant did not willfully or deliberately violate the employer's instructions. *In re Claxton*, 03 Neb. App. Trib. 4356 (December 16, 2003).

Tribunal found misconduct not proven where employer had a policy prohibiting employees from leaving trucks idling for excessive periods of time. Claimant admitted he was sleeping in his truck while he was remodeling his home. The employer warned the claimant not to sleep in his truck while at home and to abide by the idling time policy. Claimant continued to sleep in his truck while at home the following week. District Court reversed the Tribunal, finding the employer had proven misconduct. *Drivers Management vs. Commissioner of Labor and Weber*, District Court of Lancaster County, Nebraska, Case No. CI03-2439 (November 26, 2003).

MC 255.15 INSUBORDINATION – DISPUTE WITH SUPERIOR

INVOLVES ARGUMENT OR ALTERCATION WITH ONE IN A SUPERVISORY POSITION.

MC 255.2 INSUBORDINATION – EXCEEDING AUTHORITY

WHERE CLAIMANT TOLD OTHER EMPLOYEES HOW TO PERFORM THEIR JOBS, ASSUMED RESPONSIBILITIES NOT AUTHORIZES, OR OTHERWISE OVERSTEPPED HIS OR HER AUTHORITY.

MC 255.25 INSUBORDINATION – NEGATION OF AUTHORITY

WHERE THE CLAIMANT IGNORED OR REFUSED TO DISCUSS A SITUATION WITH THE SUPERVISOR, AND WENT DIRECTLY TO HIGHER AUTHORITY.

MC 255.301 INSUBORDINATION – REFUSAL TO: INCREASE PRODUCTION

WHERE CLAIMANT DECLINED TO RAISE HIS OR HER PRODUCTION OVER THE MINIMUM REQUIREMENTS OF THE JOB OR TO THE AGREED REQUIRED PRODUCTION.

Where claimant responded to his supervisor in an indifferent manner when questioned regarding his production level, the Court found no misconduct. As a long-time employee, the claimant had an extended and significant working relationship with his supervisor and the president of the company. While an employer has the right to expect an employee to follow the reasonable orders of the employer, a single act of misbehavior which is not gross or flagrant, would not normally be sufficient to disqualify an employee under the Employment Security law. *Herrera v. Cornhusker Packing Inc., et al.*, District Court of Douglas County, Nebraska, Doc. 902 Page 539 (May 7, 1992).

As a general rule, poor work performance in and of itself does not rise to the level of misconduct under the Unemployment Security Law. However, where the claimant was clearly able to meet the expectations of the job concerning both quality and quantity of work, and had done so in the past, but later chose not to do so and chose not to obtain any help with regard to the problem, he certainly was not meeting the standards of behavior which the

employer can rightfully expect from the employee, and was intentionally and substantially disregarding the employer's interests and his own duties and obligations. Claimant was discharged for misconduct and disqualified from benefits accordingly. *Sindelar v. Omaha Public Power District et al.*, District Court of Douglas County, Nebraska, Doc. 889 Page 772 (March 18, 1991).

MC 255.302 INSUBORDINATION – REFUSAL TO: TRANSFER

WHERE CLAIMANT REFUSED TO TRANSFER TO ANOTHER SHIFT, TO ANOTHER TYPE OF WORK, TO CLOSED-SHOP WORK, OR TO LOWER-PAYING WORK.

Where claimant, a bartender, was discharged after he refused employer's request that he extend his job duties to include cooking, it was held that claimant committed no misconduct and that cooking duties were outside of his job classification. *Cascio's Inc. v. Department of Labor*, District Court of Douglas County, Nebraska, Doc. 877, Case No. 662 (January 22, 1990).

MC 255.303 INSUBORDINATION – REFUSAL TO: WORK

WHERE CLAIMANT REFUSED TO WORK AT ALL, UNDER CERTAIN CONDITIONS, OR MORE THAN A CERTAIN NUMBER OF HOURS (NOT OVERTIME).

Where claimant walked off his job after being told by his supervisor that he needed to finish the work day or report to the company's medical office following some confusion about a medical directive that the claimant work reduced hours, it was held that the claimant was discharged for misconduct and subject to a benefits disqualification. Despite the fact that the claimant and his employer all had different, apparently legitimate copies of his physician's orders, it was determined that the claimant did not make adequate efforts to resolve the situation before walking off the job. *Hormel Foods Corporation v. Estrada*, District Court of Dodge County, Nebraska, Case No. CI 01-292 (October 4, 2001).

Where claimant was discharged from employment by her temporary agency's client employer when she refused to perform copying duties at her work assignment because she felt such work did not properly utilize her skills as a word processor and secretary, the Tribunal held that although the duties assigned to the claimant were reasonably within the job description of the position to which she had been assigned, and that her refusal to work constituted disqualifying misconduct. *In re Broomfield*, 91 Neb. App. Trib. 0707 (April 2, 1991).

Claimant who submitted notice of resignation because she did not want to cover delivery routes if normal route drivers were not available and she could not find a replacement. This was a required responsibility of her job as a distribution supervisor. During her notice period, the claimant was instructed to cover a route herself if she could not find a replacement driver and she made it clear that she would not do so. The Tribunal found, and the District Court affirmed, that the claimant's refusal was insubordination which constituted misconduct. *In re Svoboda*, District Court of Lancaster County, Nebraska, Case No. CI 04-925 (July 27, 2004).

MC 255.304 INSUBORDINATION – REFUSAL TO: WORK OVERTIME

WHERE CLAIMANT REFUSED TO WORK OVERTIME, TO WORK OVERTIME WITHOUT A HIGHER RATE OF PAY, OR TO WORK WITHOUT PAY FOR THE OVERTIME.

MC 255.35 INSUBORDINATION – RIDICULE OF AUTHORITY

WHERE CLAIMANT DERIDES OR RIDICULES THOSE IN AUTHORITY.

MC 255.4 INSUBORDINATION – VULGAR OR PROFANE LANGUAGE

WHERE VULGAR OR PROFANE LANGUAGE IS USED BY EMPLOYEE TO SUPERVISOR.

MC 255.45 INSUBORDINATION – WAGE DISPUTE

WHERE THE CLAIMANT WAS DISCHARGED FOR REFUSING TO WORK UNLESS GIVEN A HIGHER RATE OF PAY, OR FOR ASKING FOR A RAISE IN WAGE.

MC 270 USE OF DRUGS / ALCOHOL

INCLUDES CASES WHERE CLAIMANT WAS DISCHARGED FOR USE OF DRUGS OR ALCOHOL.

If an employment position requires close personal contact with persons served by the employer, it is not unreasonable for the employer to require that employee report for work without the odor of alcohol on his or her breath. Violation of such a requirement, after warnings to the employee, is misconduct. *Melody A. Jensen v. Mary Lanning Memorial Hospital*, 233 Neb. 66, 443 N.W.2d 891 (1989).

Where claimant consented to a pre-employment drug test on the day he was hired, and was fired one week later when the test came back positive for marijuana, it was held that the claimant committed misconduct when he began work in willful violation of the company's anti-drug policy and was therefore subject to a disqualification period upon his discharge. *Par Electrical Contractors, Inc. v. Lara, et al.*, District Court of Douglas County, Nebraska, Doc. 946 Page 948 (December 10, 1996).

The claimant was discharged from his employment as a truck driver after his pre-employment drug test results came back positive for marijuana several days after he was permitted to begin work. The Tribunal found that the claimant's failure to obtain, as a result of his positive drug test, the federal license necessary to perform his duties pursuant to an agreement of hire constituted a breach of the conditions of employment and that the claimant was discharged for disqualifying misconduct. *In re Rodekohr*, 90 Neb. App. Trib. 0108 (February 5, 1990).

Where claimant was discharged from his position as a night custodian at a high school after he was found sleeping in a classroom and later admitted he had been drinking on the job, the employer argued for a finding of gross misconduct and a total benefits disqualification because the claimant was drinking on school grounds. The Appeal Tribunal held that the claimant was discharged for disqualifying misconduct because, but that his because his act of drinking on the job would not likely have resulted in a finding of gross misconduct if it had occurred at a different site, and that the location of his misconduct should not automatically result in a harsher penalty. *In re Weyers*, 89 Neb. App. Trib. 0033 (February 3, 1989).

The claimant was discharged after a pipe and a substance that the claimant later admitted was marijuana were found in his jacket pocket by a co-worker who was looking for a key. The Tribunal found that the claimant was discharged for violating a reasonable company rule against the possession of controlled substances on the work premises, that the claimant was aware of this policy, and that the claimant's actions constituted disqualifying misconduct under the Nebraska Employment Security Law. *In re Davis*, 90 Neb. App. Trib. 0979 (May 16, 1990).

The claimant, who suffered from a seizure disorder and had been specifically warned by his physician not to drink alcohol because it would interact poorly with his medication, was discharged from his employment after being brought to the company nurse's office in an impaired condition and with the smell of alcohol on his breath. When questioned by the company nurse, the claimant admitted to drinking alcoholic beverages the night before. The results from a drug/alcohol screening came back after his discharge and indicated that the claimant's blood alcohol level at the time was .044. The Tribunal held that although the results from the claimant's drug/alcohol test were not available at the time of his discharge, he did admit to drinking alcohol the night before and was in an obviously impaired condition at work, thus risking his own safety and that of his coworkers; it was held that there was a sufficient nexus between the claimant's off-duty behavior and his inability to function properly at work the day in question, and that because he was aware of the potentially adverse effects of ingesting alcohol in combination with his medication, his actions constituted disqualifying misconduct. *In re Allen*, 89 Neb. App. Trib. 3101 (December 14, 1989).

Where claimant was discharged for positive drug test result administered by the employer by means of “At Home Drug Test” the employer purchased at Walgreens and no confirmatory test was conducted, misconduct not proven. Neb. Rev. Stat. §48-1901 et seq. provides that a drug test result cannot be used to deny continued employment, or in any disciplinary or administrative action unless a positive finding of drugs by preliminary screening procedures has been subsequently confirmed by gas chromatography-mass spectrometry or other approved scientific testing technique by a certified laboratory, clinic or hospital. *In re Durham*, 03 Neb. App. Trib. 3707 (October 22, 2003).

MC 275 REFUSAL TO SUBMIT TO DRUG TEST

Claimant’s refusal to submit to drug test where employer’s policy permitted testing for “reasonable cause” constituted misconduct where evidence showed the claimant was closely associated with a co-worker who had admitted his own involvement in the use of methamphetamines. Company cellular telephone records show the claimant speaking to this co-worker 68 times in one month, most frequently between the hours of midnight and 6:00 a.m., during which time the claimant was not working. The claimant told the employer those calls were most frequently related to gambling. *In re Cerra*, 04 Neb. App. Trib. 2674 (August 18, 2004).

Claimant refused to submit to a drug test requested by the employer after claimant was encouraged to apply for an open position in the store which fit better with his medical restrictions. The position would have been a promotion for the claimant and the employer’s policy requires drug testing upon promotion. The claimant was made aware of the policy though he claimed not to have known about it. At the time of his refusal to submit to the test, the claimant knew the employer would discharge him for refusing the test. The Tribunal found the employer met its burden of proving misconduct in that the claimant deliberately violated the employer’s policy when he refused to submit to the test. *In re Yanov*, 03 Neb. App. Trib. 1029 (March 27, 2003).

Claimant refused to take a drug test after exhibiting irrational, erratic behavior on the job, including giving his supervisor the “finger.” The employer’s policy permitted the employer to drug test an employee when the employer has “reasonable cause to believe the employee is impaired.” Since the testimony regarding the claimant’s normal demeanor was inconsistent, the Tribunal found the employer did not have good cause pursuant to its policies to require the claimant to submit to a drug test. Therefore, the Tribunal found the employer had not proven misconduct. The District Court reversed, finding the evidence of the claimant’s erratic and irrational behavior gave the employer reasonable cause to believe he may have been impaired and the claimant’s refusal to submit to the test under those circumstances, constituted misconduct. *Valmont Industries v. Pulido*, District Court of Douglas County, Nebraska, Docket 1035 No. 394 (June 21, 2004).

MC 280 ADMISSIBILITY OF TEST RESULTS

Positive drug test performed on a sample of the claimant’s hair follicle did not prove the claimant had a detectable level of prohibited drugs “in his system” in violation of employer’s policy. Residual metabolites in the hair of a subject cannot be related back to establish drugs were in claimant’s system at the time of the earlier accident which triggered the testing. *In re Bauer*, 04 Neb. App. Trib. 3045 (September 3, 2004).

Laboratory analysis conducted by gas chromatography showed positive for alcohol at a level exceeding .02 grams by weight. While the employer’s testimony could have been more definitive and specific with respect to the foundational requirements for admissibility and use of the test, the Tribunal found the statutory requirements had been sufficiently met. *In re Feldmayer*, 04 Neb. App. Trib. 4212 (December 21, 2004).

The Nebraska Court of Appeals, in a decision not designated for permanent publication, reversed a summary judgment entered in favor of the employer in a suit filed by discharged employee for wrongful termination. The Court held the affidavit of the medical technologist at the drug testing facility that performed the test was insufficient to prove the foundational requirements in Neb. Rev. Stat. §48-901 et. seq required to use a test result to deny continued employment. Neb. Rev. Stat. §25-1334 provides that affidavits offered in support of a motion for summary judgment must be made on personal knowledge and show the affiant is competent to testify to the matters stated therein. The medical technologist’s affidavit did not establish she had personal knowledge of the process used to test the claimant’s urine sample or other information contained in the toxicology report from the laboratory

attached to her affidavit. *Polinski v. Sky Harbor Air Serv.*, Neb. Court of Appeals, No. A-99-1358 (February 13, 2001).

MC 285 POSSESSION OF DRUGS / ALCOHOL

Possession of marijuana on company property found to constitute misconduct. The opinion evidence of two security officers that the substance found in the claimant's possession was marijuana based upon their observations and experience and the results of a field test kit was sufficient to prove by a preponderance of the evidence that the substance was marijuana. The policy was known to the claimant and bore a sufficient connection to the work to constitute misconduct. *In re Burke*, 03 Neb. App. Trib. 0772 (March 18, 2003).

MC 300 MANNER OF PERFORMING WORK

Where employer had specific procedures for investigating allegations of abuse of a developmentally disabled client by a staff member and the claimant failed to follow those procedures, misconduct was established. The claimant's practice of dealing with unsubstantiated reports of abuse in a perfunctory manner was inconsistent with the employer's written policies. *In re Ferguson-Widders*, 03 Neb. App. Trib. 4050 (November 20, 2003).

MC 300.05 MANNER OF PERFORMING WORK – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF MANNER OF PERFORMING WORK, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 300, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

As a general rule, poor work performance in and of itself does not rise to the level of misconduct under the Unemployment Security Law. However, where the claimant was clearly able to meet the expectations of the job concerning both quality and quantity of work, and had done so in the past, but later chose not to do so and chose not to obtain any help with regard to the problem, he certainly was not meeting the standards of behavior which the employer can rightfully expect from the employee, and was intentionally and substantially disregarding the employer's interests and his own duties and obligations. Claimant was discharged for misconduct and disqualified from benefits accordingly. *Sindelar v. Omaha Public Power District et al.*, District Court of Douglas County, Nebraska, Doc. 889 Page 772 (March 18, 1991).

MC 300.1 MANNER OF PERFORMING WORK – ACCIDENT

WHERE CLAIMANT WAS INVOLVED IN AN ACCIDENT. IN SUCH A CASE, DAMAGE OR LACK OF IT IS NOT THE CONTROLLING ELEMENT.

Where claimant was discharged after three separate accidents in 10 months occurred while the claimant was driving vehicles belonging to the employer or the employer's customers, causing more than \$4,000 in damage and prompting the employer's insurance company to say that they would no longer cover the claimant because of his driving record, it was held that the claimant's behavior, although negligent, did not rise to the level of misconduct as defined under the Nebraska Employment Security Law and that the claimant was entitled to benefits. *Binnick v. Kirk Motors, Inc.*, District Court of Lancaster County, Nebraska, Doc. 541 Page 70 (August 19, 1996).

Claimant, a pilot, was discharged after for violating a company rule requiring that pilots immediately remove themselves from icy conditions, following an incident where claimant's plane slid off the runway after he had taken off, noticed ice build-up on the plane, tried to fly above the storm, and finally been forced to return to his original location. It was held that the claimant, an experienced pilot, acted upon his reasonable professional judgment and that his behavior did not rise to the level of misconduct; he was discharged under non-disqualifying conditions. *Suburban Air Freight, Inc. v. Roland, et al.*, District Court of Douglas County, Nebraska, Doc. 1013 No. 129 (October 4, 2001).

MC 300.15 MANNER OF PERFORMING WORK – DAMAGE TO EQUIPMENT OR MATERIALS

WHERE DAMAGE TO EQUIPMENT OR MATERIAL WAS THE RESULT OF CLAIMANT’S MANNER OF PERFORMING WORK.

In a case where a packing house employee made improper cuts on hides, a finding of misconduct was affirmed where a claimant’s testimony of unintentional damage to the employer’s property was outweighed by the fact that he had clear understanding of his job and how to perform it and was aware of the damage and made no effort to correct his behavior, seek help, or show remorse for his actions. *Bristol v. Hanlon*, 210 Neb. 37, 312 N.W.2d 694 (1981).

Where claimant was discharged after three separate accidents in 10 months occurred while the claimant was driving vehicles belonging to the employer or the employer’s customers, causing more than \$4,000 in damage and prompting the employer’s insurance company to say that they would no longer cover the claimant because of his driving record, it was held that the claimant’s behavior, although negligent, did not rise to the level of misconduct as defined under the Nebraska Employment Security Law and that the claimant was entitled to benefits. *Binnick v. Kirk Motors, Inc.*, District Court of Lancaster County, Nebraska, Doc. 541 Page 70 (August 19, 1996).

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MC 300.2 MANNER OF PERFORMING WORK – JUDGMENT

INCLUDES CASES WHICH CONSIDER THE QUESTION OF WHETHER A POOR EXERCISE IN JUEGMENT CONSTITUTES MISCONDUCT.

Claimant, an assistant in a medical clinic, was discharged for providing a patient list to a doctor who was also a clinic employee, but whose employment contract was to expire without renewal. It was held that the claimant was discharged for misconduct related to aiding a potential competitor and exercising poor judgment against the interests of the employer. *Polivka v. Dolan*, District Court of Lancaster County, Nebraska, Doc. 462 Page 236 (October 9, 1991).

MC 300.25 MANNER OF PERFORMING WORK – QUALITY OF WORK

WHERE CLAIMANT WAS DISCHARGED BECAUSE OF THE POOR QUALITY OF HIS WORK.

As a general rule, poor work performance in and of itself does not rise to the level of misconduct under the Unemployment Security Law. However, where the claimant was clearly able to meet the expectations of the job concerning both quality and quantity of work, and had done so in the past, but later chose not to do so and chose not to obtain any help with regard to the problem, he certainly was not meeting the standards of behavior which the employer can rightfully expect from the employee, and was intentionally and substantially disregarding the employer’s interests and his own duties and obligations. Claimant was discharged for misconduct and disqualified from benefits accordingly. *Sindelar v. Omaha Public Power District et al.*, District Court of Douglas County, Nebraska, Doc. 889 Page 772 (March 18, 1991).

Where claimant was discharged from her position as a surgical instrument technician after failing, after repeated discussions and training, to adequately perform essential job duties such as properly assembling and initialing surgical packs, and where claimant had demonstrated that she was capable of completing the work in a satisfactory

manner, it was held that her actions indicated carelessness or negligence as to manifest culpability and that she was discharged for disqualifying misconduct. *Rydberg v. Alegent Health*, District Court of Douglas County, Nebraska, Doc. 988 No. 547 (June 9, 2000).

In a case where claimant was discharged after leaving a project early without permission, despite the fact that two other employees who left at the same time were not disciplined, and where the employer cited employee's unacceptable work record as contributing to her dismissal but claimant had no prior knowledge that her employer was dissatisfied with her performance, it was held that the claimant was discharged under non-disqualifying conditions and eligible for benefits. *Gerst custom Paperhanging & Painting, Inc. v. Hench*, District Court of Lancaster County, Nebraska, Doc. 554 Page 059 (September 15, 1997).

Misconduct found where claimant willfully disregarded the employer's instructions regarding covering the previous day's work before spraying additional area of the building and working in team with a co-worker. The claimant had established a pattern of substituting his judgment for that of the employer. *In re Stovie*, 05 Neb. App. Trib. 0082 (February 4, 2005).

MC 300.3 MANNER OF PERFORMING WORK – QUANTITY OF WORK

WHERE CLAIMANT WAS DISCHARGED BECAUSE HIS OR HER PRODUCTION WAS INSUFFICIENT.

As a general rule, poor work performance in and of itself does not rise to the level of misconduct under the Unemployment Security Law. However, where the claimant was clearly able to meet the expectations of the job concerning both quality and quantity of work, and had done so in the past, but later chose not to do so and chose not to obtain any help with regard to the problem, he certainly was not meeting the standards of behavior which the employer can rightfully expect from the employee, and was intentionally and substantially disregarding the employer's interests and his own duties and obligations. Claimant was discharged for misconduct and disqualified from benefits accordingly. *Sindelar v. Omaha Public Power District et al.*, District Court of Douglas County, Nebraska, Doc. 889 Page 772 (March 18, 1991).

Where claimant was discharged for consistently failing to meet her production quota, and where claimant had at times demonstrated an ability to meet her production requirements but was never able to sustain an acceptable quota over any meaningful length of time, it was held that the claimant's substandard was not the result of willful misconduct and that she was discharged under non-disqualifying conditions. *American Mail Service, Inc. v. Robinson*, District Court of Douglas County, Nebraska, Doc. 997 No. 402 (December 12, 2000).

MC 310.05 NEGLECT OF DUTY – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF NEGLECT OF DUTY, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 310, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

MC 310.1 NEGLECT OF DUTY – DUTIES NOT DISCHARGED

WHERE CLAIMANT NEGLECTED TO PERFORM ALL THE DUTIES OF THE JOB, FAILED TO WORK OVERTIME OR SOME PARTICULAR TIME, OR FAILED TO COMPLETE OR DO A PARTICULAR TASK.

As a general rule, poor work performance in and of itself does not rise to the level of misconduct under the Unemployment Security Law. However, where the claimant was clearly able to meet the expectations of the job concerning both quality and quantity of work, and had done so in the past, but later chose not to do so and chose not to obtain any help with regard to the problem, he certainly was not meeting the standards of behavior which the employer can rightfully expect from the employee, and was intentionally and substantially disregarding the employer's interests and his own duties and obligations. Claimant was discharged for misconduct and disqualified from benefits accordingly. *Sindelar v. Omaha Public Power District et al.*, District Court of Douglas County, Nebraska, Doc. 889 Page 772 (March 18, 1991).

Where claimant was discharged after failing to support management staffing decisions and not adequately training other employees in computerized accounting procedures, a duty assigned to her when she was hired, it was held that the claimant's conduct evinced a willful disregard of the employer's interests and standards of behavior and claimant was therefore subject to a benefits disqualification period. *Mincer v. Four Seasons Heating and Air Conditioning, etc.*, District Court of Douglas County, Nebraska, Doc. 963 No. 429 (May 19, 1998).

MC 310.15 NEGLECT OF DUTY – PERSONAL COMFORT AND CONVENIENCE

INVOLVES CLAIMANT'S WASTING EMPLOYERS TIME BY, FOR EXAMPLE, TALKING AND LAUGHING OR ANNOYING OTHER EMPLOYEES BY SINGING OR WHISTLING, OR SLEEPING AT HIS OR HER POST OF DUTY.

MC 310.2 NEGLECT OF DUTY – TEMPORARY CESSATION OF WORK

WHERE THE CLAIMANT LEFT BEFORE CLOSING TIME OR FOR SOME REASON CEASED WORKING WITHOUT AUTHORIZATION.

In a case where claimant was discharged after leaving a project early without permission, despite the fact that two other employees who left at the same time were not disciplined, and where the employer cited employee's unacceptable work record as contributing to her dismissal but claimant had no prior knowledge that her employer was dissatisfied with her performance, it was held that the claimant was discharged under non-disqualifying conditions and eligible for benefits. *Gerst custom Paperhanging & Painting, Inc. v. Hench*, District Court of Lancaster County, Nebraska, Doc. 554 Page 059 (September 15, 1997).

MC 330 NEGLIGENCE

Where claimant permitted a postal carrier to observe a baby in the employer's nursery facility, an area not open to the public, the claimant was in violation of the employer's HIPPA based policies requiring employees to exercise due care to maintain the confidence of all personal information about its patients. The claimant had been previously warned about privacy violations when she disclosed information about the death of a patient to the parent of another patient. *In re Thompson*, 04 Neb. App. Trib. 2563 (August 5, 2004).

MC 330.5 CRIMINAL ACTS OF ANOTHER

Claimant was discharged because he failed prevent a thief from stealing cigarettes from the employer's convenience store and turning the pump on for this customer, who drove off without paying for gasoline. The claimant's failure to verbally or physically attempt to halt the thief from leaving the store with the cigarettes not misconduct where events happened quickly and the claimant failed to respond quickly enough to the events taking place. The employer's policy permitted employees to turn pumps on without requiring customers to pre-pay for gasoline if the employer recognized the customer, which the claimant believed he did. Isolated act of arguable negligence in this regard was insufficient to constitute misconduct. *In re Green*, 05 Neb. App. Trib. 1429 (May 18, 2005).

Thief stole \$50.00 from claimant cashier by means of a bill changing scam where thief repeatedly asked for change for different denominations of bills. Claimant was discharged for being \$50.00 short. The Tribunal found the claimant was the victim of the criminal activity of another and did not engage in sufficiently negligent conduct to constitute misconduct. *In re Esquivel*, 05 Neb. App. Trib. 2037 (July 5, 2005).

MC 350.05 PERIOD OF DISQUALIFICATION, FACTORS AFFECTING – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF DISQUALIFICATION, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 350, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Where claimant was discharged after making a statement that could be construed as a threat to a fellow employee, the Appeal Tribunal held that, whether or not the claimant actually meant to threaten her coworker, the fact that her statement could be considered threatening was enough to qualify her actions as misconduct under Nebraska

Employment Security Law. The claimant was found to have been separated from her employment under disqualifying conditions, but was assessed the minimum benefits disqualification period because the evidence was not sufficient to prove that she had actually meant to threaten her coworker. *In re Sloan*, 89 Neb. App. Trib. 3055 (June 1, 1989).

MC 350.15 PERIOD OF DISQUALIFICATION, FACTORS AFFECTING – ATTITUDE OF CLAIMANT

WHERE THE ATTITUDE OF CLAIMANT AFFECTS THE PERIOD OF DISQUALIFICATION.

MC 350.2 PERIOD OF DISQUALIFICATION, FACTORS AFFECTING – CUSTOM IN ESTABLISHMENT

WHERE THE CUSTOM OF THE ESTABLISHMENT AFFECTS THE CLAIMANT’S PERIOD OF DISQUALIFICATION.

MC 350.35 PERIOD OF DISQUALIFICATION, FACTORS AFFECTING – PREVIOUS RECORD OF CLAIMANT

WHERE THE PREVIOUS RECORD OF THE CLAIMANT AFFECTS THE PERIOD OF DISQUALIFICATION.

MC 350.45 PERIOD OF DISQUALIFICATION, FACTORS AFFECTING – SERIOUSNESS OR CONSEQUENCES OF MISCONDUCT

WHERE THE SERIOUSNESS OR CONSEQUENCES OF THE CLAIMANT’S MISCONDUCT AFFECTS THE PERIOD OF DISQUALIFICATION.

The claimant was discharged from his employment as a truck driver after his pre-employment drug test results came back positive for marijuana several days after he was permitted to begin work. The Tribunal found that the claimant’s failure to obtain, as a result of his positive drug test, the federal license necessary to perform his duties pursuant to an agreement of hire constituted a breach of the conditions of employment and that the claimant was discharged for disqualifying misconduct. *In re Rodekohr*, 90 Neb. App. Trib. 0108 (February 5, 1990).

MC 363 PERSONAL APPEARANCE

CASES IN WHICH A CLAIMANT’S PERSONAL APPEARANCE – FOR EXAMPLE, THE MANNER OF WEARING HAIR OR CLOTHING – WAS A FACTOR IN HIS OR HER DISCHARGE, WHETHER OR NOT A COMPANY RULE WAS INVOLVED.

The claimant worked as a newspaper reporter whose responsibilities included covering public meetings. Members of the community and the City Council complained about the claimant’s strong and noxious body odor, and the claimant was discharged for misconduct. The claimant had been warned many times about her body odor. The claimant’s home was covered with a layer of litter and trash and smelled very bad. The claimant’s water service was disconnected at her request a month prior to her discharge and the claimant chose not to have it reconnected. The claimant showered periodically at a friend’s home and used bottled water to flush the toilet. The conditions of the claimant’s home had been investigated over a year prior to her discharge because her disabled adult son lived with her. HHS concluded the claimant had made a lifestyle choice which did not constitute abuse of her son. Cleaning services were offered to the claimant at that time. The Tribunal found the employer had proven misconduct because the claimant was negligent in failing to take steps to alleviate her body odor after being aware others were offended and her job was in jeopardy. The claimant’s choice not to have her water service reconnected was an important fact in the Tribunal’s finding of misconduct. *In re Newport*, 04 Neb. App. Trib. 3007 (September 9, 2004).

MC 385 RELATION OF OFFENSE TO DISCHARGE

INCLUDES CASES IN WHICH THERE IS A DISCUSSION OF WHETHER THE ALLEGED ACT OF MISCONDUCT WAS TOO REMOTE FROM THE TIME OF DISCHARGE TO CONSTITUTE A CAUSAL EFFECT; ALSO, WHETHER THE ALLEGED ACT OF MISCONDUCT WAS THE PRIMARY CAUSE OF THE DISCHARGE.

Where claimant was discharged from her employment after her employer suspected she was romantically involved with a coworker, and where her coworker was allowed to continue working for the employer, the Tribunal found that even if the rule prohibiting such involvement between coworkers was reasonable, the fact that the employer applied the rule inequitably among employees indicated that the rule was unreasonable in effect. The claimant was found to have been separated from her employment for reasons other than disqualifying misconduct. *In re Anderson*, 87 Neb. App. Trib. 3055 (December 10, 1987).

The claimant, an accountant, was discharged from his employment after being involved in a serious motor vehicle accident which occurred while the claimant was under the influence of alcohol and resulted in injuries to both the claimant and other individuals. Following the accident, the employer investigated the circumstances and found out that the claimant had been convicted of DWI offenses on three other occasions, and the employer terminated the claimant because of the potential negative impact of his behavior on company clients and the liability threat he posed. The Appeal Tribunal held that the claimant's off-duty conduct had a nexus to his employment sufficient enough to warrant a finding of misconduct, and the claimant was assessed a benefits disqualification period. *In re Watkins*, 90 Neb. App. Trib. 0964 (May 14, 1990).

Evidence insufficient to establish misconduct where claimant left training seminar early and did not return to the office. The court concluded these acts were better characterized as "poor performance" rather than misconduct because the claimant did not attempt to hide her behavior from the employer. Misrepresenting her time on her time card was misconduct but the employer did not opt to discharge the claimant at that time. Since the evidence did not show that any further misconduct occurred between the date of the time card event and the claimant's discharge approximately six weeks later, the Court found the employer failed to prove the claimant was discharged as the result of misconduct, stating "this court is puzzled as to why Martin was discharged on June 3, 2004." *Southeast Nebraska Appliances, Inc. v. Martin*, District Court of Otoe County, Nebraska, Doc. No. CI 04-236.

The claimant, a child support enforcement worker for the County Attorney's office was suspended then discharged when a report was made that she was involved in an illegal pyramid scheme and the matter was being investigated by the Attorney General. During the investigation, the claimant declined to speak with law enforcement officers and did not voluntarily repay money to the alleged victim. She was discharged for her failure to cooperate with law enforcement or repay monies. No criminal charge had been filed at the time of the hearing. While on suspension, the claimant was arrested for DUI. The claimant's denial of wrongdoing, exercise of her privilege against self-incrimination and refusal to pay money to the alleged victim did not constitute misconduct. The employer was not aware of the claimant's DUI arrest until after her discharge so it could not have been a factor in her discharge. *In re Stevens*, 03 Neb. App. Trib. 3333 (September 17, 2003).

The misconduct must be the reason for the discharge. The employer made a decision to terminate the claimant's employment because she lacked important social skills necessary for the job. Thereafter, the claimant failed to follow the employer's procedure with respect to assigning sleeping quarters to a couple. The employer operated a shelter and its policies prohibited couples from sleeping together if they were not married. In the employer's judgment, the claimant did not do enough to ascertain the parties were married. However, since the policy violation occurred after the discharge decision had been made, the Tribunal found it did not result in the discharge. The claimant's personality and lack of social skills did not constitute deliberate misconduct. *In re Clause*, 03 Neb. App. Trib. 4698 (January 7, 2004).

A lengthy period of time between the misconduct and the discharge, thirteen months in this case, precluded a finding that the misconduct was the reason for the discharge. The employer waited to discharge the claimant until it had found a replacement for him. The discharge was at and or the employer's convenience. *In re Picard*, 04 Neb. App. Trib. 4275 (December 22, 2004).

MC 390.05 RELATIONS WITH FELLOW EMPLOYEES – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF DISCHARGE BECAUSE OF RELATIONS WITH FELLOW EMPLOYEES, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 390, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

MC 390.1 RELATIONS WITH FELLOW EMPLOYEES – ABUSIVE OR PROFANE LANGUAGE

INVOLVES THE USE OF ABUSIVE OR PROFANE LANGUAGE WHICH IS CONTRARY TO THE EMPLOYER’S INTEREST.

Where claimant was discharged after making a statement that could be construed as a threat to a fellow employee, the Appeal Tribunal held that, whether or not the claimant actually meant to threaten her coworker, the fact that her statement could be considered threatening was enough to qualify her actions as misconduct under Nebraska Employment Security Law. The claimant was found to have been separated from her employment under disqualifying conditions, but was assessed the minimum benefits disqualification period because the evidence was not sufficient to prove that she had actually meant to threaten her coworker. *In re Sloan*, 89 Neb. App. Trib. 3055 (June 1, 1989).

The claimant was discharged from his employment after using profane language, namely the terms “fuck you” and “shit,” the Tribunal held that the claimant’s use of such language did constitute misconduct under Nebraska Employment Security Law and he was assessed a benefits disqualification period. *In re Busch*, 89 Neb. App. Trib. 0395 (March 6, 1989).

Where the claimant had a contentious relationship with the employer’s dispatcher, calling her at home late at night and threatening to “take the load and shove it,” misconduct was established based upon the claimant’s failure to get along with the dispatcher and failure to cease arguing with her despite several warnings from the employer. *In re Bauman*, 04 Neb. App. Trib. 4206 (December 21, 2004).

MC 390.15 RELATIONS WITH FELLOW EMPLOYEES – AGITATION

WHERE A CLAIMANT CREATES A DISTURBANCE WHICH IS CONTRARY TO THE EMPLOYER’S INTEREST.

MC 390.2 RELATIONS WITH FELLOW EMPLOYEES – ALTERCATION OR ASSAULT

WHERE CLAIMANT HAS AN ARGUMENT OR FIGHT WITH ANOTHER EMPLOYEE.

Where claimant was discharged from his employment for violating a company rule prohibiting fighting or threatening behavior after he touched a fellow employee on the chest while sliding down from his forklift, and where the facts were disputed as to whether the physical contact was intentional or not, it was held that claimant’s actions did not constitute willful and deliberate misconduct and he was not disqualified from receiving benefits. *Vickers, Inc. v. Christoffersen*, District Court of Douglas County, Nebraska, Doc. 968 Page 846 (December 2, 1998).

The claimant was discharged from his employment after an altercation with a coworker, in which the claimant shoved a fellow employee after he stood on the claimant’s toes and directed insults at the claimant and the claimant’s mother. Because the employer’s case was based primarily on the testimony of a witness who was walking away from the claimant and then seated 20 to 30 feet away from the claimant during the course of the incident, and upon hearsay evidence as to what other witnesses said had occurred, the Appeal Tribunal found that the employer did not meet its burden of proving, by a preponderance of the evidence, that the claimant had engaged in willful misconduct. Specifically, the Tribunal noted that in a case where hearsay evidence is controverted by competent, credible sworn testimony by a witness available for cross-examination, greater weight is generally given to the sworn testimony than to the hearsay evidence. *In re Pethoud*, 91 Neb. App. Trib. 0282 (February 26, 1991).

The claimant engaged in a physical fight with a co-worker in the employer’s plant contrary to the employer’s strict policy. The claimant had no self-defense privilege where claimant did not show he was subjectively concerned about his physical well-being and the objective facts supported that contention. The fact that the co-worker started

the fight does not automatically mean the claimant was entitled to strike him back in self-defense. *In re Arreguin*, 04 Neb. App. Trib. 2668 (August 18, 2004).

MC 390.25 RELATIONS WITH FELLOW EMPLOYEES – ANNOYANCE OF FELLOW EMPLOYEE

WHERE CLAIMANT MOLESTS OR IRRITATES OR OTHERWISE ANNOYS FELLOW EMPLOYEES.

The county District Court affirmed an Appeal Tribunal Decision that claimant, who slapped a fellow employee during the course of an argument, had violated a company policy strictly prohibiting the use of physical force and was thus discharged for disqualifying misconduct. *Olmer v. Iowa Beef Processors, Inc.*, District Court of Madison County, Nebraska, Case No. 23700, (March 25, 1991). However, in a collateral case arising from the same facts, the U.S. District Court later found that the plaintiff had experienced a history of gender-based harassment and hostility at work and was treated disparately at the time of her termination. It was determined that the employer intentionally discriminated against the plaintiff on the basis of her gender in violation of federal law; the plaintiff was awarded back pay and court costs, and was reinstated to her position. *Olmer v. Iowa Beef Processors, Inc.*, 1994 WL 749485 (D.Neb.).

MC 390.3 RELATIONS WITH FELLOW EMPLOYEES – DEBT

INVOLVES A DISCHARGE BECAUSE OF THE DEBT, OR SOME INCIDENT OF SUCH DEBT OF CLAIMANT TO A FELLOW EMPLOYEE.

MC 390.35 RELATIONS WITH FELLOW EMPLOYEES – DISHONESTY

APPLIES TO ACTS OF DISHONESTY IN RELATION TO FELLOW EMPLOYEES.

MC 390.4 RELATIONS WITH FELLOW EMPLOYEES – UNCOOPERATIVE ATTITUDE

CONSIDERS THE EFFECT OF CLAIMANT’S UNCOOPERATIVE ATTITUDE UPON HIS FELLOW EMPLOYEES.

Where the claimant had a contentious relationship with the employer’s dispatcher, calling her at home late at night and threatening to “take the load and shove it,” misconduct was established based upon the claimant’s failure to get along with the dispatcher and failure to cease arguing with her despite several warnings from the employer. *In re Bauman*, 04 Neb. App. Trib. 4206 (December 21, 2004).

MC 400 FAILURE TO OBTAIN OR MAINTAIN NECESSARY LICENSE OR CERTIFICATION

The claimant was unable to pass the necessary tests to become a certified law enforcement officer. The evidence shows the claimant used his best efforts to pass the test. His inability to pass the tests did not constitute misconduct. *In re Sullivan*, 05 Neb. App. Trib. 1526 (June 1, 2005).

MC 435 TARDINESS

INCLUDES CASES WHERE CLAIMANT WAS DISCHARGED FOR BEING LATE TO WORK.

The tardiness of a salaried worker may constitute misconduct if the employer has made the claimant fully aware of its expectations. The employer needed the claimant to arrive at work by 8:30 a.m. because a daily department meeting was held then. Despite many warnings, the claimant continued to be tardy to work. *In re Baker*, 04 Neb. App. Trib. 4173 (December 21, 2004).

MC 440 TERMINATION OF EMPLOYMENT

INCLUDES CASES WHICH INVOLVE SEPARATION FROM EMPLOYMENT BASED UPON CONTRACT EXPIRATION, CONVENIENCE OF EMPLOYER, LAYOFF, SALE OF CLAIMANT’S INTEREST IN BUSINESS, OR SEPARATION BY MUTUAL AGREEMENT. IMPOSITION OF TERMS THAT ARE DIFFERENT FROM THOSE EXISTING AT THE TIME OF HIRE, AND THAT RAISE A QUESTION OF NEW WORK, OR COMPLIANCE WITH SECTION 3304 (A) (5) OF THE INTERNAL REVENUE CODE SHOULD BE CODED TO LINE 315, “NEW WORK.”

In the absence of a promise on the part of the employer that the employment should continue for a period of time that is definite or capable of determination, such employment relationship is terminable at the will of the employer as it constitutes an indefinite hiring. When the employment is not for a definite term and there are no contractual or statutory restrictions upon the right of discharge, an employer may lawfully discharge an employee whenever and for whatever cause he chooses, without incurring liability. *Feola v. Valmont Industries Inc.*, 208 Neb. 527, 304 N.W.2d 377 (1981).

If misconduct is proven, the level of discipline is within the employer’s discretion. The fact that some employees who had engaged in similar policy violations two years earlier, were not all discharged, but some were suspended and demoted instead, does not mean the claimant did not engage in misconduct. Disparate treatment of employees who engage in the same wrongdoing may be relevant to determine whether the misconduct is truly the reason for the discharge. The evidence showed the claimant engaged in a serious policy violation and the employer was entitled to determine the level of punishment appropriate for that violation. *In re Dush*, 04 Neb. App. Trib. 4317 (December 27, 2004).

MC 475.05 UNION RELATIONS – GENERAL

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

MC 475.15 UNION RELATIONS – ARGUMENT WITH REPRESENTATIVE

INVOLVES A DETERMINATION AS TO WHETHER AN ARGUMENT BY CLAIMANT WITH THE UNION REPRESENTATIVE CONSTITUTES MISCONDUCT.

MC 475.35 UNION RELATIONS – LABOR DISPUTE, PARTICIPATION IN

DISCUSSION OF THE LEGAL EFFECT OF A DISCHARGE FOR AN ACT THAT OCCURRED DURING THE COURSE OF A STRIKE OR LABOR DISPUTE.

MC 475.5 UNION RELATIONS – MEMBERSHIP OR ACTIVITY IN UNION

WHERE CLAIMANT IS DISCHARGED FOR JOINING A UNION, OR FOR TAKING AN ACTIVE PART IN A UNION.

MC 475.6 UNION RELATIONS – REFUSAL TO JOIN OR RETAIN MEMBERSHIP IN UNION

INVOLVES A DISCHARGE BECAUSE OF THE CLAIMANT’S REFUSAL TO JOIN OR RETAIN MEMBERSHIP IN ANY UNION, OR SOME PARTICULAR UNION.

MC 475.9 UNION RELATIONS – RIVAL UNION

WHERE DISCHARGE OCCURRED AS A RESULT OF CLAIMANT’S PARTICIPATION IN A CONFLICT BETWEEN RIVAL UNIONS.

MC 475.95 UNION RELATIONS – VIOLATION OF UNION RULE

WHERE CLAIMANT WAS DISCHARGED AT THE INSISTENCE OF HIS OR HER UNION BECAUSE CLAIMANT VIOLATED A UNION RULE.

MC 485.05 VIOLATION OF COMPANY RULE – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF VIOLATION OF COMPANY RULE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 485, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

If an employment position requires close personal contact with persons served by the employer, it is not unreasonable for the employer to require that employee report for work without the odor of alcohol on his or her breath. Violation of such a requirement, after warnings to the employee, is misconduct. *Melody A. Jensen v. Mary Lanning Memorial Hospital*, 233 Neb. 66, 443 N.W.2d 891 (1989).

Collective bargaining agreement/labor contract/employment agreement does not determine whether employee was guilty of misconduct, however, the agreement may be used to determine whether there was a violation of the applicable employment rule. *Smith v. Sorenson*, 222 Neb. 599, 386 N.W.2d 5 (1986). See also: *O'Keefe v. Tabitha, Inc.*, 224 Neb. 594, 399 N.W.2d 798, (1987).

In order for a violation of an employer's rules to constitute misconduct, it is necessary that the rule be a reasonable one. In other words, the rule must "bear a reasonable relationship to the employer's interests." *Smith v. Sorenson*, 222 Neb. 599, 399 N.W.2d 5 (1986).

Employee who was discharged for violating a company rule prohibiting association with ex-employees was determined to be eligible for benefits without disqualification. The Court found that: In order for the violation of an employment rule laid down by the employer to constitute misconduct under the Nebraska Employment Security law, such rule must be a reasonable one, which means that it must bear a reasonable relationship to the employer's interest. *Snyder Industries Inc. v. Otto*, 212 Neb. 40, 321 N.W.2d 77 (1982).

Where claimant was discharged after contacting a female co-worker with whom he had been warned by his employer to have no further contact, the claimant argued that the contact, which consisted of sending a letter asking the co-worker if she wanted to accompany him to a football game using employer-issued tickets, was not sufficiently work-related to constitute misconduct under the law. The District Court held that the contact did in fact occur through work-related circumstances, and further asserted that the employer had a legitimate interest under Nebraska law to limit its exposure to sexual harassment claims resulting from the claimant's continuing contact with a female fellow employee who had complained to the employer about said contact. Subsequently, the claimant was found to have been discharged for misconduct and assessed a benefits disqualification period. *Grand Island Express v. Christensen*, District Court of Hall County, Nebraska, Case No. 133-241 (May 4, 1999).

Where claimant was discharged from his employment for using company telephones and fax machines to inquire about other employment, it was held that the claimant was discharged for misconduct and therefore disqualified from receiving benefits. The employer had no written policy about using company resources for personal business, but it was widely understood that such use was prohibited unless authorized by a supervisor or unless the employee deposited personal funds in a coffer placed in the facility for that purpose. Although the claimant followed this unofficial rule and compensated the employer for his use of company equipment, it was determined that an employer may rightfully expect an employee not to use company time and equipment to engage in job hunting with a competitor and that the claimant's actions exhibited a willful disregard of such an expectation. *Independent Technologies v. Ritchie*, District Court of Douglas County, Nebraska, Doc. 987 No. 859 (February 28, 2000).

Where claimant was discharged from her employment after her employer suspected she was romantically involved with a coworker, and where her coworker was allowed to continue working for the employer, the Tribunal found that even if the rule prohibiting such involvement between coworkers was reasonable, the fact that the employer applied the rule inequitably among employees indicated that the rule was unreasonable in effect. The claimant was

found to have been separated from her employment for reasons other than disqualifying misconduct. *In re Anderson*, 87 Neb. App. Trib. 3055 (December 10, 1987).

MC 485.1 VIOLATION OF COMPANY RULES – ABSENCE, TARDINESS OR TEMPORARY CESSATION OF WORK

WHERE A POINT IS MADE OF THE FACT THAT THE ABSENCE, TARDINESS, OR LEAVING EARLY WAS IN VIOLATION OF A COMPANY RULE.

Where claimant had previously been warned that if she had any further “no call/no show” incidents she would be terminated, and where she tried but was unable to reach her employer by telephone on each of two consecutive days that she was ill and unable to work, she did not contact the employer after the absences because she understood that she had been fired. The District Court affirmed an Appeal Tribunal decision that the claimant did not voluntarily leave her employment but was discharged by the employer, and that because the employer had been experiencing telephone problems which may have caused the claimant’s inability to reach the employer when she needed to call in sick, the discharge was not disqualifying and the claimant was entitled to benefits. *Oriental Trading Company v. Plummer*, District Court of Dodge County, Nebraska, Case No. CI 98-241 (August 21, 1998). *In re Plummer*, 98 Neb. App. Trib. 0613 (April 14, 1998).

Where claimant walked off his job after being told by his supervisor that he needed to finish the work day or report to the company’s medical office following some confusion about a medical directive that the claimant work reduced hours, it was held that the claimant was discharged for misconduct and subject to a benefits disqualification. Despite the fact that the claimant and his employer all had different, apparently legitimate copies of his physician’s orders, it was determined that the claimant did not make adequate efforts to resolve the situation before walking off the job. *Hormel Foods Corporation v. Estrada*, District Court of Dodge County, Nebraska, Case No. CI 01-292 (October 4, 2001).

Where claimant was discharged from her employment after violating the company’s attendance policy by accruing three unexcused absences/tardies, but where claimant presented a credible dispute to one of the three instances and offered evidence of a medical reason for another of the instances, the District Court affirmed an Appeal Tribunal decision that the claimant’s actions did not constitute willful misconduct and that she was discharged under non-disqualifying decisions. *Hormel Foods Corporation v. Aguilar-Fuentes*, District Court of Dodge County, Nebraska, Case No. CI 02-652 (February 18, 2003). *In re Aguilar-Fuentes*, 02 Neb. App. Trib. 3469 (October 16, 2002).

Where claimant was discharged from her employment after accruing a 31% absenteeism rate in a six-month period, the District affirmed an Appeal Tribunal decision that the claimant was discharged for misconduct and therefore subject to a benefits disqualification. *Bazer v. Midwest Assemblers, Inc.*, District Court of Douglas County, Nebraska, Doc. 952 No. 329 (December 3, 1996). *In re Bazer*, 96 Neb. App. Trib. 1352 (July 1, 1996).

Where claimant was discharged after she accumulated more than 10 points on her employer’s absenteeism point scale, despite the fact that she gave timely notice of all the absences and they were primarily due to her illness and the illness of her child, the Appeal Tribunal held that the claimant did not act in such a way as to evince a willful disregard of the employer’s best interests and the claimant was determined to be eligible for benefits. Although the claimant’s absences were great enough in number to allow a discharge under the employer’s absenteeism policy, they were caused by circumstances beyond the claimant’s control and do not constitute misconduct under Nebraska Employment Security Law. *In re Durand*, 86 Neb. App. Trib. 2016 (July 14, 1986).

Claimant was discharged for accruing too many attendance infraction points under an employer policy that generally assessed one point per day of work missed, but wherein the claimant had been given three points for an earlier absence that the claimant said was due to personal reasons but that the employer deemed inappropriate because it felt that the claimant was using the time to look for other employment. The claimant’s final absence was due to an injury, and the claimant properly notified the employer of the absence and offered to supply a doctor’s notification that he needed to miss work. In light of the employer’s inconsistent enforcement of the attendance policy, which resulted in varying point accumulations for absences on different days with the same notice and reasons given, and because the claimant’s final absence was for medical reasons beyond his control, it was held that the claimant was

discharged for reasons other than intentional misconduct and was entitled to unemployment benefits. *In re Mohamed*, 03 Neb. App. Trib. 1336 (April 30, 2003).

Where claimant suffered from a severe disability and was terminated for failure to maintain a regular work schedule after missing approximately 60% of his work days in a five month period for excused health-related absences, the Appeal Tribunal held that the claimant was separated from his employment for reasons other than disqualifying misconduct. While the claimant's attendance record was clearly unacceptable, the circumstances surrounding his absences from work were beyond his control and not due to a deliberate and willful disregard of the employer's interests. *In re Stoxstell*, 89 Neb. App. Trib. 1392 (June 13, 1989).

MC 485.15 VIOLATION OF COMPANY RULES – ASSAULTING FELLOW EMPLOYEE

WHERE CLAIMANT FOUGHT OR VERBALLY ASSAULTED A FELLOW EMPLOYEE IN VIOLATION OF A COMPANY RULE.

The county District Court affirmed an Appeal Tribunal Decision that claimant, who slapped a fellow employee during the course of an argument, had violated a company policy strictly prohibiting the use of physical force and was thus discharged for disqualifying misconduct. *Olmer v. Iowa Beef Processors, Inc.*, District Court of Madison County, Nebraska, Case No. 23700, (March 25, 1991). However, in a collateral case arising from the same facts, the U.S. District Court later found that the plaintiff had experienced a history of gender-based harassment and hostility at work and was treated disparately at the time of her termination. It was determined that the employer intentionally discriminated against the plaintiff on the basis of her gender in violation of federal law; the plaintiff was awarded back pay and court costs, and was reinstated to her position. *Olmer v. Iowa Beef Processors, Inc.*, 1994 WL 749485 (D.Neb.).

The claimant engaged in a physical fight with a co-worker in the employer's plant contrary to the employer's strict policy. The claimant had no self-defense privilege where claimant did not show he was subjectively concerned about his physical well-being and the objective facts supported that contention. The fact that the co-worker started the fight does not automatically mean the claimant was entitled to strike him back in self-defense. *In re Arreguin*, 04 Neb. App. Trib. 2668 (August 18, 2004).

MC 485.2 VIOLATION OF COMPANY RULES – CLOTHES

WHERE CLAIMANT REFUSED TO WEAR CLOTHING IN ACCORDANCE WITH EMPLOYER'S REQUIREMENT.

MC 485.25 VIOLATION OF COMPANY RULES – COMPETITION, OTHER WORK OR RECOMMENDING COMPETITOR TO PATRON

WHERE CLAIMANT CONTRARY TO A COMPANY RULE ESTABLISHED A BUSINESS OF THE SAME KIND AS HIS OR HER EMPLOYER, THUS TAKING AWAY CUSTOMERS, OR ADVISED A CUSTOMER THAT HE COULD OBTAIN A BETTER PRODUCT ELSEWHERE.

MC 485.3 VIOLATION OF COMPANY RULES – DISHONESTY

WHERE CLAIMANT COMMITS A DISHONEST ACT IN VIOLATION OF A COMPANY RULE.

In a case where a city sanitation service employee knowingly received unmetered electrical and water service from the city over a period of ten years the Court found gross misconduct. The Court ruled that conduct of a governmental employee which evinces a conscious and intentional disregard of standards of behavior which his or her governmental employer would have a right to expect from such employee constitutes misconduct in connection with the employee's employment, where continued employment would create a genuine threat to the integrity of the governmental employer and reflect unfavorably upon the governmental employer in the eyes of the general public. *Poore v. City of Minden*, 237 Neb. 78, 464 N.W.2d 791 (1991).

In a case where claimant's physician recommended that he not perform duties of any kind following a work-related injury, but where employer presented evidence that claimant was carrying out his day-to-day activities and engaging in physically demanding activities and subsequently discharged him for his ongoing refusal to seek and perform light-duty work, it was held that claimant was discharged for misconduct and assessed a benefit disqualification period. *Funk v. United States Postal Service*, District Court of Douglas County, Nebraska, Doc. 949 No.158 (October 26, 1996).

MC 485.35 VIOLATION OF COMPANY RULES – EMPLOYMENT OF MARRIED WOMEN

WHERE CLAIMANT IS DISCHARGED BECAUSE OF A COMPANY RULE FORBIDDING EMPLOYMENT OF MARRIED WOMEN.

MC 485.4 VIOLATION OF COMPANY RULES – GAMBLING OR GAME PLAYING

WHERE CLAIMANT IS DISCHARGED BECAUSE OF A COMPANY RULE PROHIBITING GAMBLING OR GAME PLAYING.

MC 485.45 VIOLATION OF COMPANY RULES – DRUGS / ALCOHOL, USE OF

WHERE CLAIMANT IS DISCHARGED BECAUSE OF USE OF DRUGS OR ALCOHOL IN VIOLATION OF A COMPANY RULE.

Where claimant consented to a pre-employment drug test on the day he was hired, and was fired one week later when the test came back positive for marijuana, it was held that the claimant committed misconduct when he began work in willful violation of the company's anti-drug policy and was therefore subject to a disqualification period upon his discharge. *Par Electrical Contractors, Inc. v. Lara, et al.*, District Court of Douglas County, Nebraska, Doc. 946 Page 948 (December 10, 1996).

As a government employee whose job was to safely transport school children, school van driver's positive drug test indicating marijuana use in violation of school district's policy warranted total disqualification from unemployment benefits for gross misconduct. *Douglas County School District 001 v. Dutcher*, 254 Neb. 317, 576 N.W.2d 469 (1998).

Where claimant was discharged from his position as a night custodian at a high school after he was found sleeping in a classroom and later admitted he had been drinking on the job, the employer argued for a finding of gross misconduct and a total benefits disqualification because the claimant was drinking on school grounds. The Appeal Tribunal held that the claimant was discharged for disqualifying misconduct, but that his because his act of drinking on the job would not likely have resulted in a finding of gross misconduct if it had occurred at a different site, and that the location of his misconduct should not automatically result in a harsher penalty. *In re Weyers*, 89 Neb. App. Trib. 0033 (February 3, 1989).

The claimant was discharged after a pipe and a substance that the claimant later admitted was marijuana were found in his jacket pocket by a co-worker who was looking for a key. The Tribunal found that the claimant was discharged for violating a reasonable company rule against the possession of controlled substances on the work premises, that the claimant was aware of this policy, and that the claimant's actions constituted disqualifying misconduct under the Nebraska Employment Security Law. *In re Davis*, 90 Neb. App. Trib. 0979 (May 16, 1990).

The claimant, who suffered from a seizure disorder and had been specifically warned by his physician not to drink alcohol because it would interact poorly with his medication, was discharged from his employment after being brought to the company nurse's office in an impaired condition and with the smell of alcohol on his breath. When questioned by the company nurse, the claimant admitted to drinking alcoholic beverages the night before. The results from a drug/alcohol screening came back after his discharge and indicated that the claimant's blood alcohol level at the time was .044. The Tribunal held that although the results from the claimant's drug/alcohol test were not available at the time of his discharge, he did admit to drinking alcohol the night before and was in an obviously impaired condition at work, thus risking his own safety and that of his coworkers; it was held that there was a

sufficient nexus between the claimant's off-duty behavior and his inability to function properly at work the day in question, and that because he was aware of the potentially adverse effects of ingesting alcohol in combination with his medication, his actions constituted disqualifying misconduct. *In re Allen*, 89 Neb. App. Trib. 3101 (December 14, 1989).

The claimant, an accountant, was discharged from his employment after being involved in a serious motor vehicle accident which occurred while the claimant was under the influence of alcohol and resulted in injuries to both the claimant and other individuals. Following the accident, the employer investigated the circumstances and found out that the claimant had been convicted of DWI offenses on three other occasions, and the employer terminated the claimant because of the potential negative impact of his behavior on company clients and the liability threat he posed. The Appeal Tribunal held that the claimant's off-duty conduct had a nexus to his employment sufficient enough to warrant a finding of misconduct, and the claimant was assessed a benefits disqualification period. *In re Watkins*, 90 Neb. App. Trib. 0964 (May 14, 1990).

Where claimant was discharged for positive drug test result administered by the employer by means of "At Home Drug Test" the employer purchased at Walgreens and no confirmatory test was conducted, misconduct not proven. Neb. Rev. Stat. §48-1901 et seq. provides that a drug test result cannot be used to deny continued employment, or in any disciplinary or administrative action unless a positive finding of drugs by preliminary screening procedures has been subsequently confirmed by gas chromatography-mass spectrometry or other approved scientific testing technique by a certified laboratory, clinic or hospital. *In re Durham*, 03 Neb. App. Trib. 3707 (October 22, 2003).

MC 485.5 VIOLATION OF COMPANY RULES – MAINTENANCE OF EQUIPMENT

WHERE CLAIMANT IS DISCHARGED FOR MISUSE OF OR FAILURE TO GIVE PROPER CARE TO EQUIPMENT IN ACCORDANCE WITH COMPANY RULE.

MC 485.55 VIOLATION OF COMPANY RULES – MANNER OF PERFORMING WORK

WHERE CLAIMANT IS DISCHARGED FOR VIOLATION OF A COMPANY RULE REGULATING THE MANNER IN WHICH EMPLOYEES PERFORM THEIR WORK.

MC 485.6 VIOLATION OF COMPANY RULES – MONEY MATTERS, GARNISHMENTS

WHERE CLAIMANT IS DISCHARGED FOR VIOLATION OF A COMPANY RULE IN REGARD TO REGULATION OF MONEY MATTERS.

Conduct of an employee so as to create a situation where garnishments are filed with his or her employer is not misconduct connected with his or her work. Suffering repeated garnishments is not generally such misconduct as to disqualify a discharged employee from receiving unemployment compensation benefits. *Great Plains Container Co. v. Hiatt*, 225 Neb. 558, 407 N.W.2d 166 (1987).

MC 485.65 VIOLATION OF COMPANY RULES – MOTOR VEHICLE

WHERE CLAIMANT IS DISCHARGED FOR VIOLATION OF A COMPANY RULE IN REGARD TO USE OF A MOTOR VEHICLE.

MC 485.7 VIOLATION OF COMPANY RULES – PERSONAL COMFORT AND CONVENIENCE

WHERE CLAIMANT IS DISCHARGED FOR VIOLATION OF A COMPANY RULE IN REGARD TO TALKING OR SMOKING OR IDLING AWAY TIME IN ANY OTHER MANNER.

Tribunal found misconduct not proven where employer had a policy prohibiting employees from leaving trucks idling for excessive periods of time. Claimant admitted he was sleeping in his truck while he was remodeling his home. The employer warned the claimant not to sleep in his truck while at home and to abide by the idling time policy. Claimant continued to sleep in his truck while at home the following week. District Court reversed the Tribunal, finding the employer had proven misconduct. *Drivers Management vs. Commissioner of Labor and Weber*, District Court of Lancaster County, Nebraska, Case No. CI03-2439 (November 26, 2003).

MC 485.75 VIOLATION OF COMPANY RULES – REMOVAL OF PROPERTY

WHERE CLAIMANT IS DISCHARGED FOR REMOVAL OF PROPERTY IN VIOLATION OF A COMPANY RULE.

MC 485.8 VIOLATION OF COMPANY RULES – SAFETY REGULATION

WHERE CLAIMANT IS DISCHARGED FOR VIOLATION OF A SAFETY RULE OR REGULATION.

MC 485.85 VIOLATION OF COMPANY RULES – STORE PURCHASE

WHERE CLAIMANT IS DISCHARGED FOR VIOLATION OF A COMPANY RULE CONCERNING THE PURCHASE, EITHER BY EMPLOYEES OR BY THE PUBLIC, OF MERCHANDISE.

MC 485.9 VIOLATION OF COMPANY RULES – TIME CLOCK

WHERE CLAIMANT IS DISCHARGED FOR VIOLATION OF A COMPANY RULE IN REGARD TO USE OF ATTENDANCE RECORDS.

Where claimant was discharged after she spent 11 minutes attending to “personal business” between clocking in and beginning work, namely moving her car and putting on makeup, the District affirmed an Appeal Tribunal decision that the claimant’s behavior did not rise to the level of misconduct as defined by the Nebraska Employment Security Law and she was therefore discharged under non-disqualifying conditions. *Sitel Corporation v. Heron*, District Court of Douglas County, Nebraska, Doc. 955 No. 368 (September 4, 1997). *In re Heron*, 96 Neb. App. Trib. 2174 (October 9, 1996).

MC 490.05 VIOLATION OF LAW – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF VIOLATION OF LAW, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 490, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

MC 490.1 VIOLATION OF LAW – CONVERSION OF PROPERTY

INCLUDES CASES IN WHICH CLAIMANT HAS UNLAWFULLY TAKEN PROPERTY OF ANOTHER AND PUT IT TO HIS OR HER OWN USE.

In a case where a city sanitation service employee knowingly received unmetered electrical and water service from the city over a period of ten years the Court found gross misconduct. The Court ruled that conduct of a governmental employee which evinces a conscious and intentional disregard of standards of behavior which his or her governmental employer would have a right to expect from such employee constitutes misconduct in connection with the employee’s employment, where continued employment would create a genuine threat to the integrity of the governmental employer and reflect unfavorably upon the governmental employer in the eyes of the general public. *Poore v. City of Minden*, 237 Neb. 78, 464 N.W.2d 791 (1991).

A claimant who had been accused of converting property of the employer for her own use could not avoid the finding of gross misconduct and the accompanying cancellation of all wage credits by quitting in anticipation of

discharge. The Court found that the claimant was constructively discharged when she quit rather than meet with her supervisor regarding missing drugs. *Lutheran Medical Center v. Filkins, et al*, District Court of Douglas County, Nebraska, Doc. 673 Page 338 (January 7, 1975).

MC 490.15 VIOLATION OF LAW – LIQUOR LAW

INCLUDES CASES IN WHICH CLAIMANT WAS DISCHARGED FOR VIOLATION OF LIQUOR LAW.

MC 490.2 VIOLATION OF LAW – MOTOR VEHICLE LAW

INCLUDES CASES IN WHICH CLAIMANT WAS DISCHARGED FOR VIOLATION OF MOTOR VEHICLE LAW.

The claimant, an accountant, was discharged from his employment after being involved in a serious motor vehicle accident which occurred while the claimant was under the influence of alcohol and resulted in injuries to both the claimant and other individuals. Following the accident, the employer investigated the circumstances and found out that the claimant had been convicted of DWI offenses on three other occasions, and the employer terminated the claimant because of the potential negative impact of his behavior on company clients and the liability threat he posed. The Appeal Tribunal held that the claimant's off-duty conduct had a nexus to his employment sufficient enough to warrant a finding of misconduct, and the claimant was assessed a benefits disqualification period. *In re Watkins*, 90 Neb. App. Trib. 0964 (May 14, 1990).

MC 500 VIOLATING WORK RULES FOR RELIGIOUS REASONS

Muslim employee who was discharged because she left the production line to pray during required prayer time, when the employer did not accommodate her request to leave, was engaging in protected religious expression and cannot be denied unemployment insurance compensation, a government benefit generally available to the unemployed, absent proof of a compelling state interest which outweighs the claimant's first amendment rights. State asserted no interest in denying benefits, and took the position the claimant was entitled to receive unemployment insurance without disqualification. Despite the employer's efforts to accommodate the religious desires of its many Muslim employees, the claimant's behavior did not constitute misconduct. *In re Intilo*, 05 Neb. App. Trib. 2203 (July 22, 2005).

III. ABLE AND AVAILABLE

AA 5 GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF THE MEANING OF “ABLE AND AVAILABLE” OR (2) ABILITY AND AVAILABILITY POINTS WHICH DO NOT FALL WITHIN ANY SPECIFIC LINE IN THE ABLE AND AVAILABLE DIVISION OF THE CODE.

In passing on question whether a claimant is “available for work” within meaning of the Placement and Unemployment Insurance Law, so as to be entitled to compensation thereunder, there is no hard and fast rule, and the answer to such question depends on circumstances of each case. *Hunter v. Miller*, 148 Neb. 402, 27 N.W.2d 638 (1947).

The Placement and Unemployment Insurance Law is to be liberally construed so that its beneficent purposes may be accomplished, but such rule of construction applies to the law and not to the evidence to support a claim, and does not authorize extension of the act to non-compensable claims. *Hunter v. Miller*, 148 Neb. 402, 27 N.W.2d 638 (1947).

AA 40 ATTENDANCE AT SCHOOL OR TRAINING COURSE

INCLUDES CASES IN WHICH CONSIDERATION IS GIVEN TO EFFECT UPON THE CLAIMANT’S AVAILABILITY OF HIS OR HER ENROLLMENT OR ATTENDANCE AT SCHOOL, COLLEGE, OR A TRAINING COURSE.

Where claimant was disqualified from benefits because he was classified as a full-time student at his educational institution, even though his class schedule only required him to attend class for three and a half hours on 4 mornings a week, it was held that his school’s designation of full-time enrollment was sufficient to make the claimant ineligible for benefits. *Lovato v. Yueill*, District Court of Lancaster County, Nebraska, Doc. 442 Page 6 (December 15, 1989).

Where claimant was involved in a pet grooming training program for six hours a day and five days a week, even though the claimant indicated that she was simultaneously sending out resumes on a weekly basis and scanning the newspaper for employment opportunities, it was held that she was unavailable for work and thus ineligible for unemployment benefits during the course of her participation in the training program. *In re Kavalec*, 90 Neb. App. Trib. 2110 (October 10, 1990).

Where claimant was originally employed full time and requested that his hours be reduced to part-time so he could attend school in the mornings, but where the claimant removed his time restriction and again began working more hours after he met with a Claims Deputy, the Appeal Tribunal held that the claimant was unavailable for work during the period where he was employed at reduced hours. According to the Tribunal, the claimant had established a clear priority for making himself first available for school and then available for work, a situation which, although understandable, makes the claimant ineligible to receive unemployment benefits. *In re Gibreal*, 92 Neb. App. Trib. 0477 (March 5, 1992).

AA 70 CITIZENSHIP OR RESIDENCE REQUIREMENTS

CASES INVOLVING CITIZENSHIP OR RESIDENCE AS A PREREQUISITE FOR EMPLOYMENT.

AA 90 CONSCIENTIOUS OBJECTION / RELIGIOUS BELIEF

INCLUDES CASES IN WHICH A CLAIMANT RESTRICTS THE EMPLOYMENT ACCEPTABLE TO HIM OR HER BECAUSE OF CONSCIENTIOUS OBJECTION ON ETHICAL OR RELIGIOUS GROUNDS.

AA 105 CONTRACT OBLIGATION

INCLUDES CASES IN WHICH A CLAIMANT IS BOUND BY CONTRACT WHICH PREVENTS HIM OR HER FROM ACCEPTING OTHER EMPLOYMENT.

AA 139 DISCRIMINATION

CASES IN WHICH ALLEGED DISCRIMINATION – FOR EXAMPLE, ON THE BASIS OF AGE, RACE, OR SEX – OR VIOLATION OF CIVIL RIGHTS LAW AFFECTS CLAIMANT’S AVAILABILITY FOR WORK.

AA 150.05 DISTANCE TO WORK – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF DISTANCE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 150, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Where claimant limited his job search to within fifteen miles of his home, indicating that he had transportation troubles due to lack of funds, the Tribunal held that the claimant’s restrictions significantly reduced his chances for reemployment, and that when he refused to follow a reasonable suggestion to expand his work search after being unemployed for 23 weeks, he made himself unavailable for work and was therefore ineligible for benefits. *In re Ackerson*, 89 Neb. App. Trib. 0806 (April 7, 1989).

AA 150.1 DISTANCE TO WORK – IN TRANSIT

WHERE A CLAIMANT TRAVELS TO OR FROM THE LOCALITY OF HIS WORK OR RESIDENCE TO A DISTANT LOCALITY OR LOCALITIES REMAINING AT ANY ONE POINT ONLY A SHORT TIME.

AA 150.15 DISTANCE TO WORK – REMOVAL FROM LOCALITY

INVOLVES PERMANENT REMOVAL TO ANOTHER LOCALITY, TEMPORARY REMOVAL FROM THE LOCALITY OF WORK, AND WILLINGNESS TO MOVE TO ANOTHER LOCALITY TO WORK.

Where woman who attached herself to labor market near small town, where only available employment was clerking in stores, stated that she would not accept work as a sales clerk but wished to work as a cook, and she refused to go to another community where employment as cook was available, unless housing facilities were assured her, she was not “available for work” within meaning of the Placement and Unemployment Insurance Law, and was therefore not entitled to benefits thereunder. *Hunter v. Miller*, 148 Neb. 402, 27 N.W.2d 638 (1947).

AA 150.2 DISTANCE TO WORK – TRANSPORTATION AND TRAVEL

INVOLVES TRANSPORTATION COST, CONVENIENCE, FACILITIES, AND TIME.

AA 155.05 DOMESTIC CIRCUMSTANCES – GENERAL

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

AA 155.1 DOMESTIC CIRCUMSTANCES – CHILDREN, CARE OF

WHERE CLAIMANT PLACES RESTRICTIONS ON ACCEPTANCE OF WORK BECAUSE OF HIS OR HER NEED TO CARE FOR CHILDREN, CASES INVOLVING ILLNESS OF CHILDREN ARE FOUND UNDER THE SUBLINE “ILLNESS OR DEATH OF OTHERS.”

AA 155.15 DOMESTIC CIRCUMSTANCES – FINANCIAL CIRCUMSTANCES

WHERE THE ECONOMIC OR FINANCIAL CIRCUMSTANCES OF CLAIMANT’S FAMILY ARE CONSIDERED IN DETERMINING WHETHER OR NOT THE CLAIMANT IS AVAILABLE FOR WORK.

AA 155.2 DOMESTIC CIRCUMSTANCES – HOME OR SPOUSE IN ANOTHER LOCALITY

WHERE A CLAIMANT IS UNWILLING TO ACCEPT WORK IN THE CIVINITY BECAUSE OF HIS OR HER DESIRE TO ACCOMPANY OR JOIN SPOUSE IN ANOTHER LOCALITY, OR BECAUSE OF CLAIMANT’S RELUCTANCE TO LEAVE HIS OR HER HOME OR SPOUSE.

AA 155.25 DOMESTIC CIRCUMSTANCES – HOUSEHOLD DUTIES

WHERE A CLAIMANT IS UNWILLING OR UNABLE TO ACCEPT EMPLOYMENT BECAUSE OF SUCH WORK INTERFERING WITH THE PERFORMANCE OF HOUSEHOLD DUTIES.

AA 155.35 DOMESTIC CIRCUMSTANCES – ILLNESS OR DEATH OF OTHERS

INVOLVES RESTRICTIONS ON A CLAIMANT’S AVAILABILITY FOR WORK BECAUSE OF ILLNESS OR DEATH OF OTHERS.

AA 155.45 DOMESTIC CIRCUMSTANCES – PARENT, CARE OF

INVOLVES RESTRICTIONS OR ACCEPTANCE ON WORK BECAUSE OF THE NEED TO CARE FOR A PARENT WHO IS AGED OR INCAPACITATED. CASES INVOLVING ILLNESS OR PARENTS ARE PLACED UNDER THE SUBLINE “ILLNESS OR DEATH OF OTHERS.”

AA 160.05 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF EFFORTS TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK AS AFFECTING A CLAIMANT’S AVAILABILITY FOR OR ABILITY TO WORK, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 160, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Definition provided by the Department of Labor for a “systematic and sustained job search” in which an applicant for federal supplemental unemployment compensation must engage, five or six new job contacts each week, in person on three different days of week claimed, with no duplications, and a report in person after return of three job contact worksheets, constitutes reasonable compliance with federal directives and is not outside authority granted by statute pertaining to eligibility of an individual for extended unemployment benefits. *Carson v. Sorensen*, 222 Neb. 878 N.W.2d 454 (1986).

Applicant, who claimed that job market in his field, social services, was limited so that it was impossible to make required number of weekly contacts, failed to make “systematic and sustained job search” necessary under applicable regulations to establish eligibility for federal supplemental unemployment compensation where record reflected no effort on part of applicant to venture outside social services field of employment when regulations were otherwise explicit in requiring applicant to broaden his job search efforts to include work other than his highest skill or customary work. *Carson v. Sorensen*, 222 Neb. 878 N.W.2d 454 (1986).

Where claimant, who has a masters degree in public health and had been unemployed for 26 weeks, made two contacts on the same day with different departments at the University of Nebraska but made no other contacts and did not send out any resumes during the week in question, the Tribunal held that the claimant’s effort under the circumstances did not constitute a substantial work search and she was disqualified from receiving benefits. *In re Thiesfeld-Carranza*, 87 Neb. App. Trib. 1197 (May 6, 1987).

Where claimant appealed a Claims Deputy's determination of disqualification, and was successful in her appeal but did not maintain records of her work search during the appeal process, it was held that the claimant did not prove her availability for work and her adequate work search during the weeks in question and was therefore disqualified from receiving benefits. *In re Benedict*, 87 Neb. App. Trib. 0485 (March 17, 1987).

Where claimant was disqualified from benefits after a Claims Deputy found that she did not meet the requirements for an active and earnest work search, the Appeal Tribunal reversed and held that the claimant, who had sent three resumes to potential employers and made several telephone calls seeking job contacts during the week in question, did engage in an adequate search for employment, given the custom in her professional field and the fact that it was a holiday week. The claimant was determined to be entitled to unemployment insurance benefits. *In re Estrado*, 88 Neb. App. Trib. 0165 (February 25, 1988).

The claimant made two job contacts with airlines during the week in question by going to the airline ticket counters at the local airport and obtaining applications for employment, which she completed at home and mailed in. The Appeal Tribunal held that by not meeting with the prospective employers, the claimant did not meet the requirement to make *in person* job contacts and was therefore disqualified from receiving unemployment insurance benefits. *In re Hellerich*, 88 Neb. App. Trib. 2836 (November 21, 1988).

The claimant, a 50% shareholder and president of a company that sold and serviced boats, removed himself from the payroll during the winter months and sought unemployment insurance benefits, although he continued to work for the business five to six hours a day. The claimant did not make any effort to secure other employment, because he knew he would be returning to work with the company at a later date. The Appeal Tribunal held that the claimant was unavailable for work and therefore disqualified from receiving benefits, asserting that unemployment insurance was not intended to subsidize a season business that continued to operate at a reduced capacity but chose not to compensate its principals. *In re Rahn*, 85 Neb. App. Trib. 4092 (December 17, 1985).

The claimant was formerly employed as a key punch operator earning \$3.00 per hour, and after nine months of unemployment and unsuccessful attempts to find work in her hometown through newspaper ads and telephone contacts, the claimant continued to limit her job search to full-time work as a key punch operator or bookkeeper and refused to accept any wage under \$3.00/hour, even though the standard rate for such positions in her area was from \$2.10 to \$2.35 per hour. The Appeal Tribunal found that the claimant was disqualified from receiving unemployment benefits because she was unavailable for work, due to her inadequate search for employment and the fact that her wage restriction served to effectively remove her from the labor market. *In re Reinmuth*, 75 Neb. App. Trib. 926 (November 20, 1975).

During a period of lay-off from his employer, the claimant was placed on job attached status and was required, through an arrangement with his employer, to work at least one day per week to remain eligible for benefits. The claimant was given permission from his employer to go out of town for 10 days, based on the fact that the employer did not need the claimant's services during that period and an agreement that the claimant would work the days immediately before and after his period of absence. The Appeal Tribunal held that claimant should not be disqualified from receiving benefits for violating his agreement to be able and available for work, in that he arranged his trip with his employer and was willing to forego his travel plans and be immediately available for work if his absence were to conflict with the employer's needs. *In re Luby*, 92 Neb. App. Trib. 0912 (March 27, 1992).

AA 160.1 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK – APPLICATION FOR WORK

WHERE CLAIMANT'S APPLICATION, OR FAILURE TO APPLY, FOR WORK IS CONSIDERED IN DETERMINING HIS OR HER AVAILABILITY FOR WORK.

The claimant made two job contacts with airlines during the week in question by going to the airline ticket counters at the local airport and obtaining applications for employment, which she completed at home and mailed in. The Appeal Tribunal held that by not meeting with the prospective employers, the claimant did not meet the requirement to make *in person* job contacts and was therefore disqualified from receiving unemployment insurance benefits. *In re Hellerich*, 88 Neb. App. Trib. 2836 (November 21, 1988).

Where claimant was disqualified from receiving benefits for the week in question when he listed one of his two in-person job contacts as with the “unemployment office,” it was later determined that the contact was not a routine visit but that claimant made a legitimate job contact as per the direction of the prospective employer, which required that applicants must apply at the Nebraska Job Service. The disqualification was reversed by the Appeal Tribunal. *In re Anderson*, 89 Neb. App. Trib. 1303 (June 12, 1989).

AA 160.15 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK – ATTITUDE OR BEHAVIOR

APPLIES TO CASES WHERE CLAIMANT’S ATTITUDE OR BEHAVIOR INDICATES WILLINGNESS OR UNWILLINGNESS TO WORK.

AA 160.2 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK – EMPLOYMENT

AA 160.25 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK – REFUSAL OF WORK

AA 160.3 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK – REGISTRATION AND REPORTING

INCLUDES CASES THAT ADDRESS REGISTRATION AND REPORTING, FAILURE TO REGISTER AND REPORT, OR FAILURE TO REGISTER OR REPORT IN THE PROPER LOCALITY OR IN THE PROPER FORM.

Where a claimant was told that, in order to be eligible for benefits, he must submit a medical statement as to his physical ability to work, it was held that claimant was disqualified from benefits because he had not turned in the required information. Although the claimant indicated on his application for unemployment insurance that he was physically able to work, he also noted that he was suffering from significant medical ailments, including a heart condition, and the Claims Deputy acted reasonably in requiring the medical verification of ability to work. *Schetzer v. Department of Labor*, District Court of Douglas County, Nebraska, Doc. 892 No. 063 (May 10, 1991).

Where claimant was disqualified from receiving benefits after failing to document her job contacts correctly after being repeatedly warned to do so, and where the claimant’s job contacts during the week in question were unable to be verified due to the fact that they were listed without adequate information, the Tribunal held that the claimant’s reported work search was inadequate and she was ineligible for benefits. *In re Tomes*, 89 Neb. App. Trib. 0022 (February 7, 1989).

Where claimant was disqualified from receiving benefits after he failed to note the dates of his listed job contacts for the week in question, and when asked to provide the information indicated that he couldn’t remember when he met with those prospective employers, the Tribunal held that although the claimant may have made the required employment contacts within the appropriate time frame, his inability to satisfy the documentation regulations was enough to make him ineligible for benefits. *In re Gaskin*, 89 Neb. App. Trib. 0209 (February 15, 1989).

The claimant resigned from her previous employment for “job stress,” and was subsequently asked to return a medical report filled out by her psychologist to the unemployment office in order to certify that she was able and available for work. The claimant gave the form to her psychologist, and followed up by telephone to remind her psychologist to return the form, but the paperwork was never completed and the claimant was determined to be ineligible for benefits. The Tribunal held that, given the nature of the claimant’s previous job separation, it was reasonable for the Department of Labor to require that the claimant have her psychologist fill out and return a medical report, and that although the claimant took what she believed were sufficient steps to ensure that her psychologist received the paperwork, it was also the claimant’s responsibility to make sure the proper form was received by the agency in a timely manner. The claimant’s benefits disqualification was affirmed. *In re Porter*, 90 Neb. App. Trib. 2028 (September 25, 1990).

AA 160.35 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK – VOLUNTARY LEAVING OR SUSPENSION OF WORK

WHERE THE FACT THAT THE CLAIMANT LEFT OR SUSPENDED WORK VOLUNTARILY, OR HIS OR HER REASONS FOR DOING SO, ARE CONSIDERED IN DETERMINING CLAIMANT’S AVAILABILITY FOR WORK.

AA 165.05 EMPLOYER REQUIREMENTS – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF EMPLOYER REQUIREMENTS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 165, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

AA 165.1 EMPLOYER REQUIREMENTS – BOND

WHERE AN EMPLOYER REQUIRES THAT A CLAIMANT FURNISH A BOND PRIOR TO BECOMING EMPLOYED.

AA 165.15 EMPLOYER REQUIREMENTS – MARITAL STATUS

WHERE COMPANY RULES PROHIBIT THE HIRING OF, OR RETENTION IN EMPLOYMENT OF, MARRIED WOMEN.

AA 165.2 EMPLOYER REQUIREMENTS – PHYSICAL STATUS

WHERE EMPLOYER REQUIRES THAT A CLAIMANT SUBMIT TO A PHYSICAL EXAMINATION AS A PREREQUISITE TO EMPLOYMENT OR REEMPLOYMENT, OR A RULE PROHIBITING THE EMPLOYMENT OF PERSONS OVER OR UNDER A CERTAIN AGE, HEIGHT, OR WEIGHT, OR THOSE SUFFERING FROM CERTAIN DISEASES OR DISABILITIES.

AA 180 EQUIPMENT

INCLUDES CASES WHICH DISCUSS CLAIMANT’S INABILITY TO FURNISH NECESSARY TOOLS, SPECIAL CLOTHING, OR OTHER EQUIPMENT AS AFFECTING HIS AVAILABILITY.

AA 190.05 EVIDENCE – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF EVIDENCE OR OF SPECIFIC POINTS OF EVIDENCE, OR (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 190.

AA 190.1 EVIDENCE – BURDEN OF PROOF AND PRESUMPTIONS

APPLIES TO DISCUSSIONS AS TO WHICH PARTY HAS A BURDEN OF PROOF WHEN ABILITY TO WORK OR AVAILABILITY TO WORK IS AT ISSUE, OR AS TO LEGAL ADEQUACY OF PARTICULAR EVIDENCE TO OVERCOME PRESUMPTIONS CONCERNING ABILITY TO WORK OR AVAILABILITY TO WORK.

AA 190.15 EVIDENCE – WEIGHT AND SUFFICIENCY / STANDARD OF PROOF

DISCUSSION OF THE WEIGHT AND SUFFICIENCY OF THE EVIDENCE AS TO A CLAIMANT’S ABILITY TO WORK OR HIS OR HER AVAILABILITY FOR WORK.

AA 195.05 EXPERIENCE OR TRAINING – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF EXPERIENCE OR TRAINING, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 195, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

AA 195.1 EXPERIENCE OR TRAINING – INSUFFICIENT

INCLUDES CASES IN WHICH THE LACK OF A CLAIMANT’S EDUCATION, EXPERIENCE, OR TRAINING IS A FACTOR IN DETERMINING AVAILABILITY FOR WORK.

AA 195.15 EXPERIENCE OR TRAINING – RISK OF LOSS OF SKILL

AA 195.2 EXPERIENCE OR TRAINING – USE OF HIGHEST SKILL

AA 215.05 GOVERNMENT REQUIREMENTS – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF GOVERNMENT REQUIREMENTS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 215, OR (3) POINTS COVERED BY ALL THE SUBLINES.

AA 215.1 GOVERNMENT REQUIREMENTS – LICENSE OF PERMIT

DISCUSSION OF THE EFFECT OF WORK OR HEALTH PERMIT OR LICENSE REQUIREMENTS UPON CLAIMANT’S AVAILABILITY FOR WORK.

AA 215.15 GOVERNMENT REQUIREMENTS – MANPOWER REGULATION

THIS LINE WAS USED DURING WARTIME ONLY, AND INCLUDED CASES INVOLVING WAR MANPOWER COMMISSION POLICIES AND REGULATIONS CONCERNING THE PLACEMENT OF WORKERS.

AA 235.05 HEALTH OR PHYSICAL CONDITION – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF PHYSICAL ABILITY TO WORK, (2) POINTS CONCERNING HEALTH OR PHYSICAL CONDITION THAT ARE NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 235, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Where a claimant was told that, in order to be eligible for benefits, he must submit a medical statement as to his physical ability to work, it was held that claimant was disqualified from benefits because he had not turned in the required information. Although the claimant indicated on his application for unemployment insurance that he was physically able to work, he also noted that he was suffering from significant medical ailments, including a heart condition, and the Claims Deputy acted reasonably in requiring the medical verification of ability to work. *Schetzer v. Department of Labor*, District Court of Douglas County, Nebraska, Doc. 892 No. 063 (May 10, 1991).

AA 235.1 HEALTH OR PHYSICAL CONDITION – AGE

DISCUSSION OF THE AVAILABILITY OF MINORS OR PERSONS OF ADVANCED AGE.

AA 235.15 HEALTH OR PHYSICAL CONDITION – EMOTIONAL OR MENTAL ILLNESS

DISCUSSION OF THE EFFECT OF EMOTIONAL OR MENTAL ILLNESS ON AVAILABILITY FOR WORK.

The claimant resigned from her previous employment because of “job stress,” and was subsequently asked to return a medical report filled out by her psychologist to the unemployment office in order to certify that she was able and available for work. The claimant gave the form to her psychologist, and followed up by telephone to remind her psychologist to return the form, but the paperwork was never completed and the claimant was determined to be ineligible for benefits. The Tribunal held that, given the nature of the claimant’s previous job separation, it was reasonable for the Department of Labor to require that the claimant have her psychologist fill out and return a medical report, and that although the claimant took what she believed were sufficient steps to ensure that her

psychologist received the paperwork, it was also the claimant's responsibility to make sure the proper form was received by the agency in a timely manner. The claimant's benefits disqualification was affirmed. *In re Porter*, 90 Neb. App. Trib. 2028 (September 25, 1990).

AA 235.2 HEALTH OR PHYSICAL CONDITION – HEARING, SPEECH, OR VISION

WHERE CLAIMANT'S DEFECTIVE HEARING, SPEECH, OR VISION HAS BEARING ON HIS OR HER AVAILABILITY FOR WORK.

AA 235.25 HEALTH OR PHYSICAL CONDITION – ILLNESS OR INJURY

INCLUDES CASES CONCERNED WITH TYPES OF ILLNESS OR INJURY NOT COVERED BY THE SPECIFIC SUBLINES UNDER LINE 235.

Where claimant was only available for work one day per week due to his illness and physical disability, it was held that under Nebraska Employment Security Law regulations, the claimant was unable for work and therefore disqualified from receiving benefits. *In re Hecke*, 89 Neb. App. Trib. 0097 (April 27, 1989).

AA 235.3 HEALTH OR PHYSICAL CONDITION – LOSS OF LIMB (OR USE OF)

WHERE LOSS OF LIMB, OR LOSS OF ADEQUATE USE THEREOF HAS A BEARING ON AVAILABILITY.

AA 235.4 HEALTH OR PHYSICAL CONDITION – PREGNANCY

WHERE A PREGNANT WOMAN'S AVAILABILITY FOR WORK IS AN ISSUE.

AA 235.45 HEALTH OR PHYSICAL CONDITION – RISK OF ILLNESS OR INJURY

WHERE RISK OF ILLNESS OR INJURY AFFECT'S CLAIMANT'S AVAILABILITY.

AA 250 INCARCERATION OR OTHER LEGAL DETENTION

APPLIES TO CASES INVOLVING IMPRISONMENT OR DETENTION OF A WORKER.

AA 285 LEAVE OF ABSENCE OR VACATION

INCLUDES CASES THAT DISCUSS AVAILABILITY OF CLAIMANTS WHO ARE ON A LEAVE OF ABSENCE OR VACATION.

Where claimant's employer was out of the country for a two month period, the claimant filed for unemployment insurance benefits and was found to be job attached and not required to conduct a work search. However, when the claimant traveled out of state on vacation for a one-week period, the Tribunal held that the claimant was unavailable for work and was disqualified from receiving benefits during this time. *In re Mroczek*, 89 Neb. App. Trib. 1706 (July 14, 1989).

During a period of lay-off from his employer, the claimant was placed on job attached status and was required, through an arrangement with his employer, to work at least one day per week to remain eligible for benefits. The claimant was given permission from his employer to go out of town for 10 days, based on the fact that the employer did not need the claimant's services during that period and an agreement that the claimant would work the days immediately before and after his period of absence. The Appeal Tribunal held that claimant should not be disqualified from receiving benefits for violating his agreement to be able and available for work, in that he arranged his trip with his employer and was willing to forego his travel plans and be immediately available for work if his absence were to conflict with the employer's needs. *In re Luby*, 92 Neb. App. Trib. 0912 (March 27, 1992).

The claimant entered into a voluntarily 60-day layoff period with her employer and received benefits through a determination of job attached status. The claimant made plans to travel to Taiwan during her period of unemployment, and arranged to have a friend pick up and review the claimant's mail while she was away; the claimant also left detailed instructions for her friend to reach her by telephone in Taiwan if the employer sent a recall notice by mail, and the claimant planned to return immediately to the U.S. and to her employment if such a request was made. The Appeal Tribunal found that the claimant should not be disqualified for being unavailable for work, due to her willingness and ability to return to work with her employer in the event of a recall. *In re Lo*, 91 Neb. App. Trib. 2606 (October 23, 1991).

AA 295 LENGTH OF UNEMPLOYMENT

EFFECT OF LENGTH OF CLAIMANT'S UNEMPLOYMENT UPON HIS OR HER AVAILABILITY FOR WORK.

The claimant was formerly employed as a key punch operator earning \$3.00 per hour, and after nine months of unemployment and unsuccessful attempts to find work in her hometown through newspaper ads and telephone contacts, the claimant continued to limit her job search to full-time work as a key punch operator or bookkeeper and refused to accept any wage under \$3.00/hour, even though the standard rate for such positions in her area was from \$2.10 to \$2.35 per hour. The Appeal Tribunal found that the claimant was disqualified from receiving unemployment benefits because she was unavailable for work, due to her inadequate search for employment and the fact that her wage restriction served to effectively remove her from the labor market. *In re Reinmuth*, 75 Neb. App. Trib. 926 (November 20, 1975).

AA 305 MILITARY SERVICE

INCLUDES CASES CONSIDERING THE EFFECT OF MILITARY STATUS – IMMINENT DISCHARGE, FURLOUGH FROM MILITARY SERVICE, INACTIVE OR RESERVE MILITARY STATUS, AND MILITARY LEAVE OF ABSENCE UPON A CLAIMANT'S AVAILABILITY.

AA 315 NEW WORK

ONLY USED IN CASES THAT DISCUSS WHETHER A GIVEN EMPLOYMENT CONSTITUTES NEW WORK WITHIN THE MEANING OF THE TERM AS USED IN SECTION 1603 (A) (5) OF THE INTERNAL REVENUE CODE.

AA 320 NOTIFICATION OF ADDRESS

INCLUDES CASES IN WHICH THE FACT OF NOTICE, OR THE LACK OF SUCH NOTICE, BY THE CLAIMANT TO THE EMPLOYMENT AGENCY, OR TO AN EMPLOYER, IS CONSIDERED MATERIAL TO A DETERMINATION OF THE CLAIMANTS AVAILABILITY.

AA 350.05 PERIOD OF INELIGIBILITY – GENERAL

INCLUDES THOSE CASES WHERE A CLAIMANT WAS ILL FOR ONE OR MORE DAYS OR ABSENT FROM THE AREA FOR ONE OR MORE DAYS AND WHERE HIS OR HER ELIGIBILITY FOR THAT PARTICULAR WEEK IS IN QUESTION.

AA 350.1 PERIOD OF INELIGIBILITY – AGGRAVATING CIRCUMSTANCES

AA 350.3 PERIOD OF INELIGIBILITY – MITIGATING CIRCUMSTANCES

AA 360 PERSONAL AFFAIRS

INCLUDES CASES WHICH DISCUSS THE AVAILABILITY OF A CLAIMANT WHO IS ENGAGED IN SUCH MATTERS AS SETTLING AN ESTATE, OR ATTENDING TO FINANCIAL OR CASUAL AFFAIRS WHICH CANNOT STRICTLY BE

CLASSIFIED AS DOMESTIC CIRCUMSTANCES (LINE 155), HEALTH OR PHYSICAL CONDITION (LINE 235), OR SELF-EMPLOYMENT (LINE 415).

AA 363 PERSONAL APPEARANCE

INCLUDES CASES IN WHICH A CLAIMANT'S PERSONAL APPEARANCE – FOR EXAMPLE, THE MANNER OF WEARING HAIR OR CLOTHING – WAS A FACTOR IN DETERMINING HIS OR HER AVAILABILITY FOR WORK.

AA 365 PROSPECT OF OTHER WORK

INCLUDES CASES WHICH DISCUSS A CLAIMANT'S PROSPECTS FOR WORK OF THE TYPE, AND UNDER THE CONDITIONS, ACCEPTABLE TO HIM OR HER.

The claimant, a 50% shareholder and president of a company that sold and serviced boats, removed himself from the payroll during the winter months and sought unemployment insurance benefits, although he continued to work for the business five to six hours a day. The claimant did not make any effort to secure other employment, because he knew he would be returning to work with the company at a later date. The Appeal Tribunal held that the claimant was unavailable for work and therefore disqualified from receiving benefits, asserting that unemployment insurance was not intended to subsidize a season business that continued to operate at a reduced capacity but chose not compensate its principals. *In re Rahn*, 85 Neb. App. Trib. 4092 (December 17, 1985).

AA 370.05 PUBLIC SERVICE – GENERAL

APPLIES TO CASES CONTAINING A GENERAL DISCUSSION OF “PUBLIC SERVICE” AND TO CASES DISCUSSING MISCELLANEOUS TYPES OF PUBLIC SERVICE NOT INCLUDED UNDER “JURY DUTY” OR “PUBLIC OFFICE,” WHERE THE CLAIMANT'S AVAILABILITY FOR WORK MIGHT BE AFFECTED.

AA 370.1 PUBLIC SERVICE – JURY DUTY

AVAILABILITY OF CLAIMANT WHILE SERVING AS A JUROR.

AA 370.15 PUBLIC SERVICE – PUBLIC OFFICE

AVAILABILITY OF OFFICEHOLDERS OR CANDIDATES FOR OFFICE.

AA 375.05 RECEIPT OF OTHER PAYMENTS – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF THE EFFECT OF RECEIPT OF OTHER PAYMENTS ON CLAIMANT'S AVAILABILITY, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 375, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

AA 375.1 RECEIPT OF OTHER PAYMENTS – DISABILITY COMPENSATION

WHERE THE RECEIPT OF SUCH COMPENSATION IS CONSIDERED IN DETERMINING WHETHER OR NOT CLAIMANT IS ABLE TO WORK.

AA 375.25 RECEIPT OF OTHER PAYMENTS – OLD-AGE AND SURVIVORS INSURANCE

WHERE THE FILING FOR, OR RECEIPT OF, SUCH BENEFITS IS CONSIDERED IN DETERMINING CLAIMANT'S AVAILABILITY.

AA 375.3 RECEIPT OF OTHER PAYMENTS – PENSION

CONSIDERATION OF THE RECEIPT OF SUCH PAYMENTS IN DETERMINING CLAIMANT’S AVAILABILITY FOR WORK.

AA 415.05 SELF-EMPLOYMENT OR OTHER WORK – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF SELF-EMPLOYMENT, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 415, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

The claimant’s union went on strike due to a labor dispute, and the Department of Labor determined that company employees who filed claims for benefits at the beginning of the strike remained attached to their employer and were not required to carry out a work search. The claimant, however, did not file a claim for benefits until 10 months after the strike commenced, as he was self employed as a painter; the claimant sought unemployment insurance benefits when work as a painter was no longer available to him, and asserted that he was not able to conduct a work search because he was waiting for his previous employer to work out the labor dispute. The Tribunal found that in view of the length of time since the beginning of the strike, and the claimant’s work activities in the interim, the claimant is no longer attached to his former employer and the requirement that he conduct an active search for other work in order to qualify for benefits is a reasonable one. *In re Butterbaugh*, 91 Neb. App. Trib. 0261 (February 25, 1991).

AA 415.1 SELF-EMPLOYMENT OR OTHER WORK – AGRICULTURE

CONSIDERATION OF THE AVAILABILITY OF A CLAIMANT ENGAGED IN FARMING OR LIVING ON A FARM.

AA 415.15 SELF-EMPLOYMENT OR OTHER WORK – COMMERCIAL ENTERPRISE

PARTICIPATION IN A COMMERCIAL ENTERPRISE AS AFFECTING CLAIMANT’S AVAILABILITY.

The claimant was disqualified from benefits because he was found to be devoting a major portion of his time to establishing his own business, and therefore substantially limiting his availability to seek and accept other employment. The Tribunal held that because the claimant had taken significant steps toward beginning his own company, including purchasing equipment, preparing competitive bids, and pricing materials, the claimant was indeed predominantly occupied with his business preparations and was disqualified from receiving benefits by virtue of being unavailable for other employment. *In re Griffith*, 87 Neb. App. Trib. 1799 (July 10, 1987).

AA 415.2 SELF-EMPLOYMENT OR OTHER WORK – FAMILY ENTERPRISE

EFFECT OF FAMILY ENTERPRISE ON AVAILABILITY.

AA 415.25 SELF-EMPLOYMENT OR OTHER WORK – PROFESSIONAL WORK

AVAILABILITY OF CLAIMANT ENGAGED IN PROFESSIONAL WORK.

AA 415.3 SELF-EMPLOYMENT OR OTHER WORK – SALESPERSON

AVAILABILITY OF SALESPERSON.

AA 450.05 TIME – GENERAL

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

AA 450.1 TIME – DAYS OF WEEK

WHERE CLAIMANT WILL NOT WORK ON CERTAIN DAYS BECAUSE OF RELIGIOUS BELIEFS, DOMESTIC CIRCUMSTANCES, OR OTHER REASONS.

AA 450.151 TIME – HOURS: GENERAL

AA 450.152 TIME – HOURS: IRREGULAR

AA 450.153 TIME – HOURS: LONG OR SHORT

AA 450.154 TIME – HOURS: NIGHT

AA 450.155 TIME – HOURS: PREVAILING STANDARD, COMPARISON WITH

AA 450.156 TIME – HOURS: STATUTORY OR REGULATORY STANDARD, COMPARISON WITH

CLAIMANT’S INSISTENCE UPON, OR OBJECTION TO, ONE OR MORE OF THE ABOVE SPECIFIED HOURS OF WORK.

AA 450.2 TIME – IRREGULAR EMPLOYMENT

INVOLVES RESTRICTIONS TO OR UNWILLINGNESS TO ACCEPT IRREGULAR WORK.

AA 450.35 TIME – OVERTIME

WHERE CLAIMANT’S AVAILABILITY IS AT ISSUE BECAUSE HE OR SHE EITHER WANTS, OR REFUSES TO ACCEPT, OVERTIME WORK.

AA 450.4 TIME – PART-TIME OR FULL-TIME

WHERE CLAIMANT’S AVAILABILITY IS AT ISSUE BECAUSE HE OR SHE EITHER WANTS, OR REFUSES TO ACCEPT, PART-TIME OR FULL-TIME WORK.

AA 450.45 TIME – SEASONAL

CLAIMANT’S OBJECTION TO OR INSISTENCE UPON SEASONAL WORK.

The claimant, a cashier at a thoroughbred racing track, worked for the employer basis during the annual three-month racing season and re-applied annually because employment was not guaranteed from year-to-year. The Tribunal did not find the claimant to be an attached employee, and ruled that in order to qualify for unemployment insurance benefits, she would be required to demonstrate an attachment to the labor market by making an active search for other work. *In re Bobek*, 83 Neb. App. Trib. 0465 (February 28, 1983).

AA 450.5 TIME – SHIFT

INVOLVES RESTRICTIONS TO OR UNWILLINGNESS TO ACCEPT, WORK ON SOME PARTICULAR SHIFT.

AA 450.55 TIME – TEMPORARY

CLAIMANT’S RESTRICTION TO OR UNWILLINGNESS TO ACCEPT TEMPORARY WORK.

AA 475.05 UNION RELATIONS – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF THE EFFECT OF UNION REQUIREMENTS UPON A CLAIMANT'S AVAILABILITY, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 475, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

AA 475.1 UNION RELATIONS – AGREEMENT WITH EMPLOYER

AA 475.25 UNION RELATIONS – HOURS

AA 475.4 UNION RELATIONS – MATTER IN DISPUTE NOT SETTLED

The claimant's union went on strike due to a labor dispute, and the Department of Labor determined that company employees who filed claims for benefits at the beginning of the strike remained attached to their employer and were not required to carry out a work search. The claimant, however, did not file a claim for benefits until 10 months after the strike commenced, as he was self employed as a painter; the claimant sought unemployment insurance benefits when work as a painter was no longer available to him, and asserted that he was not able to conduct a work search because he was waiting for his previous employer to work out the labor dispute. The Tribunal found that in view of the length of time since the beginning of the strike, and the claimant's work activities in the interim, the claimant is no longer attached to his former employer and the requirement that he conduct an active search for other work in order to qualify for benefits is a reasonable one. *In re Butterbaugh*, 91 Neb. App. Trib. 0261 (February 25, 1991).

AA 475.45 UNION RELATIONS – MEANS OF OFFER IN VIOLATION OF UNION RULE

AA 475.5 UNION RELATIONS – MEMBERSHIP

CLAIMANT'S INSISTENCE UPON RETAINING MEMBERSHIP ON HIS REFUSAL TO INSTITUTE OR MAINTAIN UNION MEMBERSHIP, AS AFFECTING HIS OR HER AVAILABILITY FOR WORK.

AA 475.55 UNION RELATIONS – NON-UNION SHOP OR SUPERVISOR

AA 475.65 UNION RELATIONS – REMUNERATION

WHERE CLAIMANT'S INSISTENCE UPON WAGES MEETING THE APPROVAL OF HIS OR HER UNION AFFECTS CLAIMANT'S AVAILABILITY FOR WORK.

AA 475.7 UNION RELATIONS – REQUIREMENT TO JOIN COMPANY UNION

AA 475.75 UNION RELATIONS – REQUIREMENT TO JOIN OR RETAIN MEMBERSHIP IN BONA FIDE LABOR ORGANIZATION

AA 475.8 UNION RELATIONS – REQUIREMENT TO RESIGN FROM OR REFRAIN FROM JOINING BONA FIDE LABOR ORGANIZATION

AA 475.85 UNION RELATIONS – RESTRICTION AS TO TYPE OF WORK

WHERE CLAIMANT RESTRICTS HIM OR HERSELF TO UNION WORK.

Where claimant was previously employed as a union painter and refused to seek non-union work when notified by the Department of Labor that he would be required to expand his job search in order to continue being eligible for benefits, the Tribunal held that by refusing to look for non-union jobs the claimant made himself unavailable for work and was therefore disqualified from receiving benefits. *In re Edmiston*, 89 Neb. App. Trib. 2974 (December 1, 1989).

Where claimant had limited his job search to office work in his hometown with a wage of at least \$7.50 per hour or \$300 per week, and where claimant failed to meet his weekly job contact and reporting requirements, the Tribunal held that the claimant's unduly restricted his work search and in doing so made himself unavailable for employment. The claimant was disqualified from receiving benefits. *In re Ramsey*, 89 Neb. App. Trib. 2806 (November 16, 1989).

AA 475.97 UNION RELATIONS – WORKING PERMIT

EFFECT OF LACK OF A UNION WORK PERMIT, OR A CLAIMANT'S FAILURE TO COMPLY WITH THE REQUIREMENTS FOR SUCH A PERMIT ON CLAIMANT'S AVAILABILITY FOR WORK.

AA 500.05 WAGES – GENERAL

INCLUDES CASES IN WHICH A CLAIMANT'S INSISTENCE UPON A WAGE, BELOW WHICH HE WILL NOT WORK, AFFECTS HIS AVAILABILITY FOR WORK.

AA 500.15 WAGES – APPRENTICESHIP

AA 500.2 WAGES – BENEFIT AMOUNT, COMPARISON WITH

AA 500.25 WAGES – EXPENSES INCIDENT TO JOB

AA 500.35 WAGES – FORMER RATE, COMPARISON WITH

The claimant was formerly employed as a key punch operator earning \$3.00 per hour, and after nine months of unemployment and unsuccessful attempts to find work in her hometown through newspaper ads and telephone contacts, the claimant continued to limit her job search to full-time work as a key punch operator or bookkeeper and refused to accept any wage under \$3.00/hour, even though the standard rate for such positions in her area was from \$2.10 to \$2.35 per hour. The Appeal Tribunal found that the claimant was disqualified from receiving unemployment benefits because she was unavailable for work, due to her inadequate search for employment and the fact that her wage restriction served to effectively remove her from the labor market. *In re Reinmuth*, 75 Neb. App. Trib. 926 (November 20, 1975).

AA 500.45 WAGES – LIVING WAGE

AA 500.5 WAGES – LOW

AA 500.6 WAGES – MINIMUM

The claimant was formerly employed as a key punch operator earning \$3.00 per hour, and after nine months of unemployment and unsuccessful attempts to find work in her hometown through newspaper ads and telephone contacts, the claimant continued to limit her job search to full-time work as a key punch operator or bookkeeper and refused to accept any wage under \$3.00/hour, even though the standard rate for such positions in her area was from \$2.10 to \$2.35 per hour. The Appeal Tribunal found that the claimant was disqualified from receiving unemployment benefits because she was unavailable for work, due to her inadequate search for employment and the

fact that her wage restriction served to effectively remove her from the labor market. *In re Reinmuth*, 75 Neb. App. Trib. 926 (November 20, 1975).

AA 500.65 WAGES – PIECE RATE, COMMISSION BASIS, OR OTHER METHOD OF COMPUTATION

AA 500.7 WAGES – PREVAILING RATE

AA 505 EMPLOYMENT BENEFITS

AA 510.05 WORK, NATURE OF – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF THE RESTRICTIONS AS TO THE NATURE OF WORK WITH REFERENCE TO A CLAIMANT’S AVAILABILITY, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 510, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

AA 510.1 WORK, NATURE OF – CUSTOMARY

WHERE A CLAIMANT’S INSISTENCE UPON, OR INABILITY OR UNWILLINGNESS TO ACCEPT, WORK IN HIS OR HER USUAL OCCUPATION RAISES A QUESTION AS TO CLAIMANT’S AVAILABILITY.

AA 510.15 WORK, NATURE OF – ESSENTIAL

USED DURING WAR AND EMERGENCY PERIODS IN CASES WHERE CLAIMANT’S WILLINGNESS OR ABILITY TO ACCEPT WAR WORK, OR OTHER WORK ESSENTIAL TO RECONVERSION, AFFECTED HIS OR HER AVAILABILITY.

AA 510.2 WORK, NATURE OF – FORMER EMPLOYER OR EMPLOYMENT

AA 510.25 WORK, NATURE OF – HOME WORK

WHERE CLAIMANT’S DESIRE TO ACCEPT ONLY WORK WHICH CAN BE PERFORMED IN HIS OR HER HOME, OR WHERE CLAIMANT’S INABILITY OR UNWILLINGNESS TO OBTAIN GOVERNMENTAL PERMIT FOR THE PERFORMANCE OF SUCH, AFFECTS HIS OR HER AVAILABILITY FOR WORK.

AA 510.3 WORK, NATURE OF – INSIDE OR OUTSIDE

AA 510.35 WORK, NATURE OF – LIGHT OR HEAVY

AA 510.4 WORK, NATURE OF – PREFERRED EMPLOYER OR EMPLOYMENT

EFFECT UPON AVAILABILITY OF CLAIMANT’S WILLINGNESS TO WORK ONLY FOR A PARTICULAR EMPLOYER, OR IN A PARTICULAR EMPLOYMENT.

The claimant restricted his work search to positions which involved the buying/selling of heavy equipment, offered a salary of at least \$40,000 annually, and would not require him to relocate. Because there were only four primary heavy equipment dealers in the area where the claimant was searching for work, and he had completed applications with each of them, the Tribunal found that the claimant’s work search restrictions effectively removed him from the labor market and made him unavailable for employment, thus disqualifying him from benefits. *In re Boysen*, 90 Neb. App. Trib. 1012 (May 21, 1990).

AA 510.5 WORK, NATURE OF – VETERANS' REEMPLOYMENT

AA 515.05 WORKING CONDITIONS – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF WORKING CONDITIONS OR PLACES, AS AFFECTING AVAILABILITY, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 515, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

AA 515.1 WORKING CONDITIONS – ADVANCEMENT, OPPORTUNITY FOR

AA 515.35 WORKING CONDITIONS – ENVIRONMENT

AA 515.4 WORKING CONDITIONS – FELLOW EMPLOYEE

WHERE THE CLAIMANT'S AVAILABILITY IS AN ISSUE BECAUSE OF HIS OR HER OBJECTIONS TO WORKING WITH PARTICULAR INDIVIDUALS OR SUPERVISORS.

AA 515.45 WORKING CONDITIONS – METHOD OR QUALITY OF WORKMANSHIP

AA 515.5 WORKING CONDITIONS – MORALS

WHERE A CLAIMANT'S MAINTAINS MORAL RESTRICTIONS AS TO THE WORK, OR THE ENVIRONMENT THEREOF, THUS AFFECTING HIS OR HER AVAILABILITY.

AA 515.55 WORKING CONDITIONS – PREVAILING FOR SIMILAR WORK IN LOCALITY; CONSISTENT WITH LABOR STANDARDS

COMPARISON OF CLAIMANT'S RESTRICTIONS REGARDING WORKING CONDITIONS WITH THOSE EXISTING FOR SIMILAR WORK IN THE LOCALITY. INCLUDES CASES IN WHICH CONSIDERATION IS GIVEN TO THE QUESTION OF WHETHER OR NOT THE "LABOR STANDARDS" PROVISIONS ARE APPLICABLE IN SUCH SITUATIONS.

AA 515.6 WORKING CONDITIONS – PRODUCTION REQUIREMENTS OR QUANTITY OF DUTIES

AA 515.65 WORKING CONDITIONS – SAFETY

EFFORT UPON AVAILABILITY OF A CLAIMANT'S UNWILLINGNESS TO ACCEPT A PARTICULAR JOB, OR TYPE OF WORK, BECAUSE OF SOME ALLEGED RISK TO LIFE OR PHYSICAL SAFETY.

AA 515.7 WORKING CONDITIONS – SANITATION

AA 515.75 WORKING CONDITIONS – SENIORITY

AVAILABILITY OF CLAIMANTS WHO RESTRICT THEMSELVES TO A PARTICULAR EMPLOYER IN ORDER TO PROTECT AND ENJOY SOME ADVANTAGE RESULTING FROM SENIORITY WITH THAT EMPLOYER, AND OF CLAIMANTS WHO REJECT EMPLOYMENT IN WHICH THEY CANNOT OBTAIN SENIORITY BENEFITS.

AA 515.8 WORKING CONDITIONS – SUPERVISOR

AA 515.85 WORKING CONDITIONS – TEMPERATURE OR VENTILATION

CLAIMANT’S OBJECTION TO CERTAIN TYPES OF EMPLOYMENT BECAUSE OF THE TEMPERATURE OR VENTILATION INVOLVED.

AA 515.95 WORKING CONDITIONS – WEATHER OR CLIMATE

EFFECT UPON CLAIMANT’S AVAILABILITY BECAUSE OF HIS OR HER OBJECTION TO WORKING UNDER CERTAIN WEATHER OR CLIMATE CONDITIONS, OR WHEN THE WEATHER PREVENTS CLAIMANT FROM PERFORMING HIS OR HER TYPE OF WORK.

IV. TOTAL AND PARTIAL UNEMPLOYMENT

TPU 5 GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF THE MEANING OF “TOTAL AND/OR PARTIAL UNEMPLOYMENT,” AND (2) MISCELLANEOUS POINTS WHICH ARE NOT COVERED BY ANY OTHER LINE IN THE TOTAL AND PARTIAL UNEMPLOYMENT DIVISION OF THE CODE.

TPU 20.05 AMOUNT OF COMPENSATION – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF THE EFFECT OF THE AMOUNT OF COMPENSATION RECEIVED UPON UNEMPLOYMENT STATUS, OR (2) CASES CONTAINING POINTS NOT COVERED BY THE SECOND SUBLINE.

TPU 20.1 AMOUNT OF COMPENSATION – MORE OR LESS THAN BENEFIT AMOUNT

COMPARISON OF THE AMOUNT OF COMPENSATION RECEIVED WITH THE CLAIMANTS BENEFIT AMOUNT.

After a lay-off claimant was called back to work by his employer and told that he would not be paid right away and that claimant should draw unemployment insurance benefits in the meantime. The Tribunal found that the claimant was nevertheless not unemployed because he had wages payable with respect to the weeks in question in excess of his weekly benefit amount. Said weeks were not, therefore, “weeks of unemployment” within the meaning of Neb. Rev. Stat. §48-602(18). The law does not refer to wages actually paid; only wages payable are necessary. It was held that the claimant had received benefits to which he was not entitled; overpayment determination affirmed. *In re Blair*, 75 Neb. App. Trib. 710 (September 25, 1975).

Where claimant worked 32 hours per week at \$2.25 per hour and thereby earned less than his weekly benefits amount, the Tribunal found that each week claimed was therefore, a “week of unemployment” under Neb. Rev. Stat. §48-602(18). It was held that the claimant was unemployed and eligible for benefits. *In re Sonnenfield*, 75 Neb. App Trib. 1004, October 31, 1975).

TPU 30 APPRENTICESHIP OR PREPARATORY SERVICES

INCLUDES CASES IN WHICH THE DETERMINATION IS AFFECTED BY THE CLAIMANT’S LEARNING A TRADE OR BUSINESS, OR SERVING AS AN APPRENTICE FOR A TRIAL PERIOD WITH OR WITHOUT REMUNERATION.

Claimant became enrolled in a training program for which he was paid \$2.51 per hour for a 24-hour week. His wages from the program compute to more than one-half but less than his full weekly benefit amount of \$66. The Tribunal found that claimant was not disqualified as a student under Nebraska Employment Security Law because, like other employees, he was simply receiving on-the-job training. Under the circumstances of this case, the claimant’s status was more like that of an employee than that of a student. *In re Kirkendall*, 75 Neb. App. Trib. No. 596 (September 23, 1975).

TPU 40 ATTENDANCE AT SCHOOL OR TRAINING COURSE

APPLIES TO CASES WHERE CLAIMANT’S ATTENDANCE AT SCHOOL OR A TRAINING COURSE IS THE CONDERATION IN DETERMINING WHETHER OR NOT HE OR SHE IS UNEMPLOYED.

Claimant became enrolled in a training program for which he was paid \$2.51 per hour for a 24-hour week. His wages from the program compute to more than one-half but less than his full weekly benefit amount of \$66. The Tribunal found that claimant was not disqualified as a student under Nebraska Employment Security Law because, like other employees, he was simply receiving on-the-job training. Under the circumstances of this case, the

claimant's status was more like that of an employee than that of a student. *In re Kirkendall*, 75 Neb. App. Trib. No. 596 (September 23, 1975).

TPU 80.05 COMPENSATION NOT PAYABLE OR NO WORK DONE – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF COMPENSATION NOT PAYABLE OR NO WORK DONE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 80, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Teacher, who gave notice to the school district in the spring of 1982 that she would not return to her teaching position the following fall, was not engaged in seasonal employment when she worked for a six-week period during the summer of 1982 in the migrant program and, hence, was not ineligible for unemployment benefits since her summer employment did not fall between two years or terms in which she had contracts or a reasonable assurance of employment. *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

The phrase "regular terms," within the statute disqualifying an individual from receiving benefits for a week of unemployment if claim is based on services performed in an instructional capacity for an educational institution and week of unemployment begins during period between two successive years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave, refers to a definite period representing a regular division of an academic year during which instruction is regularly given to students of a particular school college, or university. *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

TPU 80.1 COMPENSATION NOT PAYABLE OR NO WORK DONE – ALTERNATE OR STAGGERED WORK PERIODS

WHERE THE CLAIMANT WORKS FOR SPECIFIED PERIODS ONLY, OR IS KEPT ON THE EMPLOYER'S ROLLS SUBJECT TO CALL.

TPU 80.15 COMPENSATION NOT PAYABLE OR NO WORK DONE – LEAVE OF ABSENCE OR VACATION

CONSIDERS A PERSON'S UNEMPLOYMENT STATUS WHILE ON VACATION OR LEAVE OF ABSENCE.

Claimant, a welder and crane driver, was forced to leave due to hyperventilation attacks but his name was left on the roster pending possible reinstatement if his condition improved. The Tribunal held that it was not necessary for the employer-employee relationship to be completely severed in order that one be considered unemployed within the meaning of the law. Claimant had not been working and was receiving no salary; he was, therefore, unemployed. *In re Daniels*, 75 Neb. App. Trib. No. 601 (August 6, 1975).

TPU 80.2 COMPENSATION NOT PAYABLE OR NO WORK DONE – SHUTDOWN

INVOLVES CLAIMANT'S UNEMPLOYMENT STATUS DURING SHUTDOWN (E.G. TOTAL SHUTDOWN PERIODS IN EXCESS OF A WEEK) OF HIS OR HER REGULAR EMPLOYMENT.

Where the claimant objected to being forced to use his vacation leave during a period when the employer terminated operations for repairs, the Tribunal stated that it was unable to grant the claimant any relief. Claimants entitled to receive vacation pay are considered not unemployed and are ineligible for benefits during a vacation period where such period is chosen by the employer pursuant to an employer-employee agreement. *In re Thompson*, 76 Neb. App. Trib. No. 1625 (February 28, 1977).

TPU 105 CONTRACT OBLIGATION

INCLUDES CASES IN WHICH THE CLAIMANT’S CONTRACTS OR AGREEMENTS HAVE AN EFFECT ON DETERMINING HIS UNEMPLOYMENT STATUS.

Claimant was a cook for a high school and received an hourly wage. She was laid off work in May with the ending of the spring semester. Benefits had been disallowed by the Commissioner’s deputy on the grounds that since she was under contract of employment she was not unemployed and not available for employment. The Tribunal found that claimant’s contract for services did not provide for wages to be paid or accrued to her during the summer months and that claimant did not perform services during this time. As the claimant performed no services and had no wages payable with respect to the weeks in question, she was unemployed; the existence of the contract had no legal relevance. *In re Strand*, 76 Neb. App. Trib. No. 072 (July 31, 1976).

TPU 110 CORPORATE OR UNION OFFICER

INCLUDES CASES INVOLVING EMPLOYMENT STATUS OF A CORPORATION OR UNION OFFICER, WHETHER OR NOT HE OR SHE RECEIVES COMPENSATION.

Claimant was the president of a corporation which operated a bar. After claimant left his regular job as a painter, he did some bartending for the corporation. The Tribunal found that claimant’s duties as a corporate officer were minimal, and further that his services as bartender (14-16 hours per week) were less than full-time and the wages payable with respect to those weeks were less than his weekly benefit amount; the claimant’s position as corporation president did not render him employed. *In re Stolarsky*, 75 Neb. App. Trib. No. 591 (September 30, 1975).

TPU 190.05 EVIDENCE – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF EVIDENCE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 190, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

TPU 190.1 EVIDENCE – BURDEN OF PROOF AND PRESUMPTIONS

APPLIES TO DISCUSSIONS AS TO WHICH PARTY HAS A BURDEN OF PROOF WHEN ABILITY TO WORK OR AVAILABILITY TO WORK IS AT ISSUE, OR AS TO LEGAL ADEQUACY OF PARTICULAR EVIDENCE TO OVERCOME PRESUMPTIONS CONCERNING RELATING TO APPLICATION OF TOTAL AND PARTIAL UNEMPLOYMENT PROVISIONS.

TPU 190.15 EVIDENCE – WEIGHT AND SUFFICIENCY / STANDARD OF PROOF

DISCUSSION OF THE WEIGHT AND SUFFICIENCY OF PARTICULAR EVIDENCE RELATING TO APPLICATION OF TOTAL AND PARTIAL UNEMPLOYMENT PROVISIONS.

TPU 305 MILITARY SERVICE

INCLUDES CASES IN WHICH CLAIMANT’S ENLISTMENT IN ARMED FORCES, ANTICIPATED UNDUCTION, OCCUPATIONAL DEFERMENT, OR HIS OR HER BEING SUBJECT TO ANY MILITARY ORDERS OR SIDCIPLINE AS A MEMBER OF THE ARMY, NAVY, COAST GUARD, ETC., HAS A PART IN DETERMINING HIS UNEMPLOYMENT STATUS.

TPU 325 ODD-JOB OR SUBSIDIARY WORK

INCLUDES CASES WHERE (1) A DETERMINATION IS MADE AS TO WHETHER OR NOT THE CLAIMANT IS TOTALLY OR PARTIALLY UNEMPLOYED WHEN, DURING A PERIOD OF UNEMPLOYMENT FROM HIS OR HER REGULAR EMPLOYMENT, CLAIMANT WORKS AT SUBSIDIARY WORK OR ODD JOBS, OR (2) A DEFINITION OF THE TERMS “ODD-JOB” OR “SUBSIDIARY” WORK IS INVOLVED.

TPU 370.05 PUBLIC SERVICE – GENERAL

APPLIES TO CASES WHICH DISCUSS THE NATURE OF GOVERNMENT EMPLOYMENT AS OPPOSED TO PRIVATE EMPLOYMENT, AND TO CASES WHICH CONCERN THE MISCELLANEOUS TYPES OF PUBLIC EMPLOYMENT NOT INCLUDED IN “JURY DUTY” AND “PUBLIC OFFICE,” WHERE SUCH EMPLOYMENT IS DEEMED TO AFFECT CLAIMANT’S UNEMPLOYMENT STATUS.

TPU 370.1 PUBLIC SERVICE – JURY DUTY

INVOLVES A DISCUSSION OF WHETHER CLAIMANT IS UNEMPLOYED WHILE SERVING ON A JURY.

TPU 370.15 PUBLIC SERVICE – PUBLIC OFFICE

INVOLVES A DISCUSSION OF WHETHER CLAIMANT IS UNEMPLOYED WHILE HOLDING OR SEEKING PUBLIC OFFICE.

TPU 395 RELIEF WORK OR PUBLIC ASSISTANCE

APPLIES TO CASES IN WHICH THE DETERMINATION AS TO THE CLAIMANT’S UNEMPLOYMENT STATUS IS AFFECTED BY THE RECEIPT OF RELIEF FUNDS, WHETHER OR NOT SERVICES ARE PERFORMED IN EXCHANGE FOR SAME.

TPU 415.05 SELF-EMPLOYMENT OR OTHER WORK – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF SELF EMPLOYMENT OR OTHER WORK, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 415, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

TPU 415.1 SELF-EMPLOYMENT OR OTHER WORK – AGRICULTURE

WHERE THERE IS A QUESTION AS TO WHETHER CLAIMANT WAS TOTALLY OR PARTIALLY UNEMPLOYED BECAUSE HE OR SHE WAS ENGAGED IN AGRICULTURAL WORK.

TPU 415.15 SELF-EMPLOYMENT OR OTHER WORK – COMMERCIAL ENTERPRISE

WHERE THE CLAIMANT WAS ENGAGED IN BUSINESS OF A COMMERCIAL NATURE.

TPU 415.2 SELF-EMPLOYMENT OR OTHER WORK – FAMILY ENTERPRISE

WHERE THE CLAIMANT WAS ENGAGED IN A FAMILY BUSINESS (OTHER THAN FAMILY FARMING).

TPU 415.25 SELF-EMPLOYMENT OR OTHER WORK – PROFESSIONAL WORK

WHERE THE CLAIMANT WAS ENGAGED IN PROFESSIONAL WORK.

TPU 415.3 SELF-EMPLOYMENT OR OTHER WORK – SALESPERSON

WHERE CLAIMANT WAS ENGAGED AS A SOLICITOR OR SALESPERSON.

Claimant held an Avon sales route while actively seeking other full-time employment. The Tribunal found that the claimant’s Avon business was not intended to supplant a regular, full-time job, but to supplement it and to help make ends meet until the claimant found other work. Claimant’s sales activities were not inconsistent with a finding

of availability for work; claimant was determined to be eligible for benefits. *In re Bolles*, 73 Neb. App. Trib. No. 455 (June 18, 1974).

TPU 455.05 TIME OF SERVICES – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF THE TIME DURING WHICH SERVICES ARE, OR MUST BE, PERFORMED, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 455, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

TPU 455.1 TIME OF SERVICES – FULL TIME OR PART TIME

WHERE CLAIMANT WAS EMPLOYED FULL OR PART TIME, OR IN WHICH HE OR SHE RECEIVED REMUNERATION FOR FULL-TIME OR PART-TIME WORK.

TPU 455.15 TIME OF SERVICES – INTERMITTENT WORK

WHERE CLAIMANT WAS EMPLOYED IRREGULARLY OR PERIODICALLY.

V. SUITABLE WORK

SW 5 GENERAL

INCLUDES CASES WHICH CONTAIN (1) INTERPRETATIONS OF “SUITABILITY,” “WORK,” AND/OR “GOOD CAUSE,” (2) DISCUSSIONS AS TO THE PURPOSE OF THE UNEMPLOYMENT COMPENSATION LAW, AND ITS EFFECT UPON SUITABILITY DETERMINATIONS; (3) GENERAL INTERPRETATIONS AS TO LEGISLATIVE INTENT AND THE MEANING OF STATUTES; AND (4) OTHER SUITABLE WORK POINTS WHICH DO NOT FALL WITHIN ANY SPECIFIC LINE IN THE SUITABLE WORK DIVISION OF THE CODE.

Neb. Rev. Stat. §48-628(c) applies when an unemployed person refuses an offer of suitable work and chooses to remain unemployed, and is not applicable when an employed person voluntarily leaves over a change in working conditions. The correct inquiry when an employed person refuses a demotion and leaves is whether good cause existed to voluntarily sever the employment relationship. *Ponderosa Villa v. Hughes*, 224 Neb. 627, 399 N.W.2d 813 (1987).

Retired farmer without other training who was discharged from employment as night-watchman in brewery was not entitled to refuse employment as attendant doing janitorial work in men’s dressing room of brewery for same hours at higher pay and claim unemployment benefits on ground that janitorial work was not “suitable” in absence of showing that work involved risk to claimant’s health and physical fitness. *Beecham v. Falstaff Brewing Company*, 150 Neb. 792, 36 N.W.2d 233 (1949).

SW 40 ATTENDANCE AT SCHOOL OR TRAINING COURSE

INCLUDES CASES IN WHICH THE CLAIMANT’S UNWILLINGNESS TO LEAVE SCHOOL, OR TO CHANGE HIS SCHOOL LOCATION OR HOURS, RESULTS IN REFUSAL OF AN OFFER OF WORK.

SW 70 CITIZENSHIP OR RESIDENCE REQUIREMENTS

WHERE CLAIMANT FAILS TO SECURE, OR IS UNABLE TO OBTAIN EMPLOYMENT BECAUSE OF CITIZENSHIP OR RESIDENCE REQUIREMENTS.

SW 90 CONSCIENTIOUS OBJECTION / RELIGIOUS BELIEF

INCLUDES CASES IN WHICH AN OFFER OF, OR REFERRAL TO WORK IS REFUSED BECAUSE OF RELIGIOUS SCRUPLES OR ETHICAL CONCEPTS.

Where claimant refused temporary job placement which would have required him to work on Sunday, disqualification for refusal of suitable work was reversed upon a finding that the requirement violated the free exercise clause of the First Amendment and consequently claimant had good cause to refuse the placement. The Supreme Court found that claimant’s sincere religious belief need not be a tenet of a particular religious sect in order to be afforded protection under the First Amendment. *Frazee v. Illinois Dept. of Employment Security*, 489 U.S. 829, 109 S.Ct. 1514 (1989).

SW 116 CUSTOMARY SELF-EMPLOYMENT, RETURN TO

APPLIES TO CASES WHICH INVOLVE FAILURE OF CLAIMANTS TO RETURN TO CUSTOMARY SELF-EMPLOYMENT, WHEN SO DIRECTED.

SW 139 DISCRIMINATION

CASES IN WHICH ALLEGED DISCRIMINATION – FOR EXAMPLE ON THE BASIS OF AGE, RACE, OR SEX – OR VIOLATION OF CIVIL RIGHTS LAW, AFFECTED REFERRALS, OFFERS, OR REFUSALS OF WORK, OR IN WHICH SUCH FACTORS ARE CONSIDERED IN DETERMINING SUITABILITY OF WORK.

SW 150.05 DISTANCE TO WORK – GENERAL

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

SW 150.15 DISTANCE TO WORK – REMOVAL FROM LOCALITY

WHERE CLAIMANT REFUSES A JOB BECAUSE OF (1) HIS REMOVAL FROM THE LOCALITY OF THE EMPLOYER'S PREMISES, (2) THE REQUIREMENT THAT HE MOVE TO THE LOCALITY OF THE JOB, OR (3) THE REMOVAL OF THE EMPLOYER'S PLACE OF BUSINESS TO ANOTHER LOCALITY.

SW 150.2 DISTANCE TO WORK – TRANSPORTATION AND TRAVEL

INVOLVES REFUSAL OF WORK BECAUSE OF CLAIMANT'S LACK OF TRANSPORTATION, EXPENSE OF TRAVEL, OR TIME OF TRAVEL.

SW 155.05 DOMESTIC CIRCUMSTANCES – GENERAL

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

SW 155.1 DOMESTIC CIRCUMSTANCES – CHILDREN, CARE OF

WHERE REFUSALS OF WORK ARE MOTIVATED BY THE NEED OF THE CLAIMANT TO CARE FOR CHILDREN. CASES INVOLVING THE CARE OF CHILDREN DURING ILLNESS ARE PLACED IN UNDER THE "ILLNESS OR DEATH OF OTHERS" SUBLINE.

SW 155.2 DOMESTIC CIRCUMSTANCES – HOME OR SPOUSE IN ANOTHER LOCALITY

WHERE A CLAIMANT REFUSES WORK BECAUSE OF HIS OR HER DESIRE TO ACCOMPANY OR JOIN SPOUSE IN ANOTHER LOCALITY, OR BECAUSE OF CLAIMANT'S UNWILLINGNESS TO LEAVE HIS OR HER HOME OR SPOUSE TO ACCEPT EMPLOYMENT IN ANOTHER LOCALITY.

SW 155.25 DOMESTIC CIRCUMSTANCES – HOUSEHOLD DUTIES

WHERE CLAIMANT REFUSES WORK BECAUSE ACCEPTANCE OF SUCH EMPLOYMENT WOULD MAKE THE PERFORMANCE OF HOUSEHOLD DUTIES DIFFICULT OR IMPOSSIBLE.

SW 155.3 DOMESTIC CIRCUMSTANCES – HOUSING

WHERE CLAIMANT REFUSES WORK BECAUSE OF HOUSING DIFFICULTIES.

SW 155.35 DOMESTIC CIRCUMSTANCES – ILLNESS OR DEATH OF OTHERS

WHERE CLAIMANT REFUSES WORK BECAUSE OF ILLNESS OR DEATH OF OTHERS.

SW 155.45 DOMESTIC CIRCUMSTANCES – PARENT, CARE OF

WHERE CLAIMANT REFUSES WORK BECAUSE OF RESPONSIBILITY FOR CARE OF A PARENT.

SW 165 EMPLOYER REQUIREMENTS

INCLUDES CASES IN WHICH WORK WAS REFUSED OR NOT OFFERED BECAUSE OF CLAIMANT’S INABILITY TO MEET SPECIFIC EMPLOYER REQUIREMENTS, SUCH AS AGE, EDUCATION, LICENSE, OR PHYSICAL STATUS; OR WHEN SUCH REQUIREMENTS HAVE A BEARING ON THE SUITABILITY OF THE WORK.

SW 170.05 EMPLOYMENT OFFICE OR OTHER AGENCY REFERRAL – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF REFUSAL OF REFERRALS BY EMPLOYMENT OFFICES OR OTHER AGENCIES, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 170, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

SW 170.1 EMPLOYMENT OFFICE OR OTHER AGENCY REFERRAL – DIRECTION TO APPLY FOR WORK

DISCUSSION OF QUESTIONS SUCH AS (1) THE ADEQUACY OR PROPRIETY OF A DIRECTION TO APPLY FOR, OR A REFERRAL TO, A JOB; OR (2) THE PURPOSE AND USE OF REFERRAL CARDS.

Where claimant was informed by a Nebraska Job Service representative about a job but not specifically directed to apply for the position, the Tribunal held that the claimant did not fail to apply for available, suitable work and was not disqualified from benefits by indicating that he did not want to apply for the employment in question. *In re Shepherd*, 92 Neb. App. Trib. 3288 (November 6, 1992).

SW 170.15 EMPLOYMENT OFFICE OR OTHER AGENCY REFERRAL – FAILURE TO REPORT TO EMPLOYMENT OFFICE

WHERE CLAIMANT FOR SOME REASON DID NOT COME TO THE EMPLOYMENT OFFICE, OR DID NOT REPORT TO THE PLACEMENT INTERVIEWER FOR REFERRAL.

SW 170.2 EMPLOYMENT OFFICE OR OTHER AGENCY REFERRAL – REFUSAL OF REFERRAL

WHERE THE ISSUE OF DISQUALIFICATION IS DEPENDENT SOLELY UPON THE CLAIMANT’S REFUSAL OF THE REFERRAL, WITHOUT REFERENCE TO ANY REASON HE MAY HAVE HAD FOR THE REFUSAL.

Where claimant failed to contact one of two job referrals from the Nebraska Job Service because she favored the other prospective employer because the length of employment favorably corresponded to her expected return to her primary employment and because she had continued to make other contacts on her own, the Appeal Tribunal held that the claimant’s refusal to apply for suitable work disqualified her from receiving unemployment insurance benefits. *In re Hawke*, 89 Neb. App. Trib. 1519 (July 5, 1989).

Where claimant refused to apply for a job referral from the Nebraska Job Service because she believed she would not be hired due to past personal associations, the Tribunal held that the claimant’s failure to contact the potential

employer constituted a refusal to apply for suitable work and the claimant was disqualified from receiving benefits. *In re Dalrymple*, 88 Neb. App. Trib. 3043 (December 27, 1988).

Where claimant was informed by a Nebraska Job Service representative about a job but not specifically directed to apply for the position, the Tribunal held that the claimant did not fail to apply for available, suitable work and was not disqualified from benefits by indicating that he did not want to apply for the employment in question. *In re Shepherd*, 92 Neb. App. Trib. 3288 (November 6, 1992).

The claimant, a union residential carpenter with many years of experience, was disqualified from receiving Emergency Unemployment Compensation (EUC) benefits after declining to apply for a commercial carpentry position that offered half of his prior wage and would require him to learn an entirely new set of skills. The claimant indicated that he refused to contact the potential employer because he was concerned that the offered wage would not be enough to support his family, because he had a reasonable assurance of receiving work in his chosen field within a short period of time, and because if he were unavailable to accept a position through his union hiring list he would be risking his eligibility for union pension benefits upon retirement. The Tribunal held that, although the claimant was subject to the more stringent requirements of EUC recipients, the claimant did have a reasonable good chance of obtaining work in his customary occupation and the referral turned down by the claimant was for a position that could certainly be considered unsuitable work, given the claimant's experience and previous wage. The claimant was not disqualified from benefits. *In re Roth*, 94 Neb. App. Trib. 1433 (July 7, 1994).

SW 180 EQUIPMENT

INCLUDES CASES WHERE CLAIMANT REFUSES WORK BECAUSE OF HIS OR HER INABILITY OR UNWILLINGNESS TO SECURE NECESSARY EQUIPMENT, SUCH AS TOOLS, SPECIAL CLOTHING, ETC.

SW 190.05 EVIDENCE – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF EVIDENCE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 190, OR (3) POINTS COVERED BY ALL THREE SUBLINES.

The claimant, a union residential carpenter with many years of experience, was disqualified from receiving Emergency Unemployment Compensation (EUC) benefits after declining to apply for a commercial carpentry position that offered half of his prior wage and would require him to learn an entirely new set of skills. The claimant indicated that he refused to contact the potential employer because he was concerned that the offered wage would not be enough to support his family, because he had a reasonable assurance of receiving work in his chosen field within a short period of time, and because if he were unavailable to accept a position through his union hiring list he would be risking his eligibility for union pension benefits upon retirement. The Tribunal held that, although the claimant was subject to the more stringent requirements of EUC recipients, the claimant did have a reasonable good chance of obtaining work in his customary occupation and the referral turned down by the claimant was for a position that could certainly be considered unsuitable work, given the claimant's experience and previous wage. The claimant was not disqualified from benefits. *In re Roth*, 94 Neb. App. Trib. 1433 (July 7, 1994).

SW 190.1 EVIDENCE – BURDEN OF PROOF AND PRESUMPTIONS

DISCUSSION AS TO WHICH PARTY HAS BURDEN OF PROOF, OR AS TO LEGAL ADEQUACY OF PARTICULAR EVIDENCE TO OVERCOME PRESUMPTIONS RELATING TO APPLICATION OF THE SUITABLE WORK PROVISION.

The burden of proof is upon the claimant to show by a preponderance of the evidence that there was good cause for refusing to accept an offer of suitable employment. *Burger v. Yueill*, District Court of Lancaster County, Nebraska, Doc. 450 Page 70 (August 30, 1990).

SW 190.15 EVIDENCE – WEIGHT AND SUFFICIENCY / STANDARD OF PROOF

DISCUSSION OF WEIGHT AND SUFFICIENCY OF EVIDENCE RELATING TO APPLICATION OF THE SUITABLE WORK PROVISION.

The burden of proof is upon the claimant to show by a preponderance of the evidence that there was good cause for refusing to accept an offer of suitable employment. *Burger v. Yueill*, District Court of Lancaster County, Nebraska, Doc. 450 Page 70 (August 30, 1990).

SW 195.05 EXPERIENCE OR TRAINING – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF EXPERIENCE OR TRAINING, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 155, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

SW 195.1 EXPERIENCE OR TRAINING – INSUFFICIENT

WHERE A JOB IS REFUSED ON GROUNDS OF LACK OF TRAINING OR EXPERIENCE.

SW 195.15 EXPERIENCE OR TRAINING – RISK OF LOSS OF SKILL

INVOLVES A CLAIMANT’S UNWILLINGNESS TO TAKE CERTAIN TYPES OF WORK BECAUSE OF THE RISK OF LOSS OF A SKILL.

SW 195.2 EXPERIENCE OR TRAINING – USE OF HIGHEST SKILL

WHERE THE QUESTION OF MAXIMUM UTILIZATION OF CLAIMANT’S SKILLS DETERMINES WHETHER OR NOT THERE IS JUSTIFICATION FOR THE REFUSAL OF A PARTICULAR JOB.

SW 210 GOOD CAUSE

GENERAL DISCUSSIONS AS TO WHAT CONSTITUTES “GOOD CAUSE” FOR REFUSING SUITABLE WORK.

In a case where a claimant who had been unemployed for a considerable period of time, and refused an offer of temporary, full-time employment which was otherwise suitable, it was held that neither the temporary nature of the job nor the lack of additional employment benefits constituted good cause to refuse to apply for or accept the position. *Burger v. Yueill*, District Court of Lancaster County, Nebraska, Doc. 450 Page 70 (August 30, 1990).

The District Court affirmed an Appeal Tribunal decision that claimant had good cause to refuse otherwise suitable employment when the offer was from a previous employer who had compelled the claimant to take vacation and then replaced her. *Help, Inc. v. Commissioner of Labor, et al.*, District Court of Douglas County, Nebraska, Doc. 877 No. 367 (January 29, 1990). *In re Meister*, 89 Neb. App. Trib. 0954 (April 25, 1989).

Where claimant failed to contact one of two job referrals from the Nebraska Job Service because she favored the other prospective employer because the length of employment favorably corresponded to her expected return to her primary employment and because she had continued to make other contacts on her own, the Appeal Tribunal held that the claimant’s refusal to apply for suitable work disqualified her from receiving unemployment insurance benefits. *In re Hawke*, 89 Neb. App. Trib. 1519 (July 5, 1989).

SW 215.05 GOVERNMENT REQUIREMENTS – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF REFUSAL OF WORK BECAUSE OF INABILITY OR UNWILLINGNESS TO MEET GOVERNMENT REQUIREMENTS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 215, OR (3) POINTS COVERED BY ALL THREE SUBLINES.

SW 215.1 GOVERNMENT REQUIREMENTS – LICENSE OF PERMIT

WHERE CLAIMANT REFUSES WORK BECAUSE OF INABILITY OR UNWILLINGNESS TO MEET LICENSE OR PERMIT REQUIREMENTS.

SW 215.15 GOVERNMENT REQUIREMENTS – MANPOWER REGULATION

USED ONLY DURING WAR EMERGENCIES. WHERE CLAIMANT REFUSES WORK BECAUSE OF FEAR THAT HE OR SHE WILL BE FROZEN FOR THE DURATION OF THE WAR EMERGENCY IN ACCORDANCE WITH WMC REGULATIONS.

SW 235.05 HEALTH OR PHYSICAL CONDITION – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF HEALTH OR PHYSICAL CONDITION, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 230, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

SW 235.1 HEALTH OR PHYSICAL CONDITION – AGE

SW 235.2 HEALTH OR PHYSICAL CONDITION – HEARING, SPEECH, OR VISION

SW 235.25 HEALTH OR PHYSICAL CONDITION – ILLNESS OR INJURY

The claimant was separated from her previous employment due to an injury, and later received three separate medical releases from two physicians and an occupational therapist. Two months before filing for unemployment benefits, the claimant turned down a position as a cafeteria worker because, although the employment was approved by one of her doctors, the claimant felt that the job requirements for extended standing, stooping, lifting, and carrying were inconsistent with the directives of her other physician and physical therapist. The Tribunal held that, not only was the position offered to the claimant not suitable work considering her medical restrictions, the claimant's refusal to accept the employment was not disqualifying because it occurred before she filed for benefits. *In re Schultz*, 94 Neb. App. Trib. 1433 (July 7, 1994).

SW 235.3 HEALTH OR PHYSICAL CONDITION – LOSS OF LIMB (OR USE OF)

SW 235.4 HEALTH OR PHYSICAL CONDITION – PREGNANCY

SW 235.45 HEALTH OR PHYSICAL CONDITION – RISK OF ILLNESS OR INJURY

INCLUDES CASES IN WHICH ONE OR MORE OF THE FACTORS IN THESE SUBLINES ARE DISCUSSED IN DETERMINING WHETHER OR NOT THERE WAS GOOD CAUSE FOR THE REFUSAL.

Retired farmer without other training who was discharged from employment as night-watchman in brewery was not entitled to refuse employment as attendant doing janitorial work in men's dressing room of brewery for same hours at higher pay and claim unemployment benefits on ground that janitorial work was not "suitable" in absence of showing that work involved risk to claimant's health and physical fitness. *Beecham v. Falstaff Brewing Company*, 150 Neb. 792, 36 N.W.2d 233 (1949).

SW 265.05 INTERVIEW AND ACCEPTANCE – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF INTERVIEW AND ACCEPTANCE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 265, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

SW 265.1 INTERVIEW AND ACCEPTANCE – AGREEMENT, FAILURE TO REACH

WHERE THE EFFECT OF VARIOUS PROPOSALS AND COUNTER-PROPOSALS OF CLAIMANT AND PROSPECTIVE EMPLOYER AT THE INTERVIEW IS DISCUSSED.

SW 265.15 INTERVIEW AND ACCEPTANCE – AVAILABILITY

WHERE THE ISSUE TURNS UPON THE IMMEDIATE EXISTENCE OF WORK FOR THE CLAIMANT OR ON THE CLAIMANT’S AVAILABILITY FOR WORK.

SW 265.2 INTERVIEW AND ACCEPTANCE – DISCHARGE OR LEAVING AFTER TRIAL

DISCUSSION OF WHETHER THE EARLY TERMINATION OF NEWLY ACCEPTED WORK CONSTITUTES A REFUSAL OF WORK OR A LEAVING OR A DISCHARGE.

SW 265.25 INTERVIEW AND ACCEPTANCE – FAILURE TO ACCEPT OR SECURE JOB OFFERED

DISCUSSION OF THE EFFECT OF CIRCUMSTANCES OCCURRING DURING OR AFTER THE INTERVIEW WHICH RESULT IN THE CLAIMANT’S NOT BECOMING EMPLOYED.

The claimant, whose prior experience and post-secondary educational training included a focus on sales and purchasing, accepted a full-time position in the service department of a tire company and later requested his hours to be reduced to part-time so he could look for other work more commensurate with his skills and background. He indicated that he stayed in the part-time position so that he would maintain an employment relationship with the company in the hope that he might be eventually transferred to his employer’s sales department. The Tribunal held that by accepting the full-time position, the claimant effectively deemed the employment to be suitable work, even though the job did not utilize his skills and training. When he refused the continued availability of full-time work and requested that his hours be reduced, his actions were consistent with a refusal of suitable work and he was therefore disqualified from receiving benefits. *In re Virus*, 92 Neb. App. Trib. 3080 (October 9, 1992).

SW 265.3 INTERVIEW AND ACCEPTANCE – FAILURE TO REPORT FOR INTERVIEW OR WORK

DISCUSSION OF CIRCUMSTANCES WHICH PREVENT CLAIMANT FROM REPORTING OR REPORTING ON TIME FOR INTERVIEWS WITH THE PROSPECTIVE EMPLOYERS AFTER THE ACCEPTANCE OF REFERRALS, OR FROM REPORTING FOR WORK AFTER THEY HAVE BEEN HIRED.

SW 265.35 INTERVIEW AND ACCEPTANCE – INABILITY TO PERFORM OFFERED WORK

WHERE THE CLAIMANT’S INABILITY TO PERFORM THE WORK OFFERED IS CONSIDERED IN DETERMINING THE SUITABILITY OF THE WORK.

SW 265.4 INTERVIEW AND ACCEPTANCE – NECESSITY FOR INTERVIEW

DISCUSSION OF THE NECESSITY OF A PERSONAL INTERVIEW FOR THE PURPOSE OF CLARIFYING THE TERMS OF THE OFFER AND THE CIRCUMSTANCES UNDER WHICH THE EMPLOYMENT WILL BE PERFORMED.

SW 265.45 INTERVIEW AND ACCEPTANCE – REFUSAL OR INABILITY TO MEET EMPLOYER’S REQUIREMENTS

INVOLVES EMPLOYER’S REQUIREMENTS WHICH CLAIMANT IS UNWILLING OR UNABLE TO MEET.

SW 295 LENGTH OF UNEMPLOYMENT

INCLUDES CASES WHERE THE LENGTH OF UNEMPLOYMENT IS CONSIDERED IN DETERMINING WHETHER OR NOT THERE IS JUSTIFICATION FOR A REFUSAL.

In a case where a claimant who had been unemployed for a considerable period of time, and refused an offer of temporary, full-time employment which was otherwise suitable, it was held that neither the temporary nature of the job nor the lack of additional employment benefits constituted good cause to refuse to apply for or accept the position. *Burger v. Yueill*, District Court of Lancaster County, Nebraska, Doc. 450 Page 70 (August 30, 1990).

SW 315 NEW WORK

THIS LINE IS USED ONLY WITH REFERENCE TO DETERMINATIONS AS TO WHETHER A JOB OFFER IS “NEW WORK” WITHIN THE MEANING OF SECTION 1603 (A) (5) OF THE INTERNAL REVENUE CODE OR OF STATE LABOR STANDARDS PROVISIONS PATTERNED AFTER IT. INCLUDES CASES INVOLVING INTERPRETATIONS AS TO WHAT CONSTITUTES “NEW WORK,” NEW CONTRACT OF HIRE, OR WORK OFFERED BY OLD EMPLOYER TO A DIFFERENT PLANT OR TO A DIFFERENT DEPARTMENT IN THE SAME PLANT.

SW 330.05 OFFER OF WORK – GENERAL

INCLUDES CASES WHICH (1) DEFINE AN “OFFER,” (2) DETERMINE WHETHER OR NOT THERE HAS IN FACT BEEN AN OFFER, (3) DISCUSS POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 330, OR (3) DISCUSS POINTS COVERED BY THREE OR MORE SUBLINES.

Employees who refused to cross a picket line were not disqualified from receiving unemployment compensation benefits on the grounds that they had failed to accept an offer of suitable work absent any evidence that the employer made specific offers of work or that the employees’ positions remained open. *George C. Hormel and Company v. Hair*, 229 Neb. 284, 426 NW 2d 281 (1988).

SW 330.1 OFFER OF WORK – GENUINENESS

DISCUSSION OF THE BONA FIDE NATURE OF THE OFFER OF WORK.

SW 330.15 OFFER OF WORK – MEANS OF COMMUNICATION

QUESTIONS AS TO (1) THE SOURCE AND METHOD OF COMMUNICATION OF THE WORK OFFER, AND (2) THE ADEQUACY OF THE MEANS OF NOTIFICATION.

SW 330.2 OFFER OF WORK – NECESSITY

DISCUSSION OF THE NECESSITY OF AN OFFER OF WORK AS A PREREQUISITE TO DISQUALIFICATION FOR A JOB REFUSAL.

SW 330.25 OFFER OF WORK – TERMS

CONSIDERATION OF THE ADEQUACY OF THE OFFER OR CLARITY OF ITS TERMS.

SW 330.3 OFFER OF WORK – TIME

DISCUSSION OF THE TIME OF THE OFFER AS RELATED TO (1) THE DATE OF THE CLAIM, OR (2) THE DATE CLAIMANT BECAME UNEMPLOYED.

The claimant was separated from her previous employment due to an injury, and later received three separate medical releases from two physicians and an occupational therapist. Two months before filing for unemployment benefits, the claimant turned down a position as a cafeteria worker because, although the employment was approved by one of her doctors, the claimant felt that the job requirements for extended standing, stooping, lifting, and carrying were inconsistent with the directives of her other physician and physical therapist. The Tribunal held that, not only was the position offered to the claimant not suitable work considering her medical restrictions, the claimant's refusal to accept the employment was not disqualifying because it occurred before she filed for benefits. *In re Schultz*, 94 Neb. App. Trib. 1433 (July 7, 1994).

Where claimant left her former employer because of a business takeover and her decision not to apply for work with the new owners, as was required of old employees if they wished to remain in their positions and become employees of the new company, and where claimant was never directed by the Department of Labor to apply for a job with the new business, the Tribunal held that because the employer's invitation to apply for work occurred prior to the claimant's filing for benefits and because the claimant was never told she must apply for the position subsequent to seeking unemployment insurance, the claimant did not refuse to apply for or turn down an offer of suitable work. *In re Danielson*, 90 Neb. App. Trib. 12556 (November 30, 1990).

SW 330.35 OFFER OF WORK – WITHDRAWAL

CONSIDERATION OF WHETHER OR NOT THE CIRCUMSTANCES SURROUNDING THE OFFER CONSTITUTE ITS WITHDRAWAL.

SW 335 OFFERED WORK PREVIOUSLY REFUSED

INCLUDES CASES WHICH CONSIDER THE EFFECT OF OFFERS OF WORK PREVIOUSLY REFUSED, OR REPEATED REFUSALS OF A PARTICULAR JOB. THE OFFERS MAY BE EITHER THOSE MADE BY EMPLOYERS OR BY THE EMPLOYMENT OFFICE.

SW 350.05 PERIOD OF DISQUALIFICATION – GENERAL

INVOLVES POINTS ON DISQUALIFICATION NOT COVERED BY THE OTHER TWO SUBLINES UNDER LINE 350.

SW 350.1 PERIOD OF DISQUALIFICATION – AGGRAVATING CIRCUMSTANCES

DISCUSSION OF DISQUALIFICATION PERIOD AS AFFECTED BY AGGRAVATING CIRCUMSTANCES.

SW 350.3 PERIOD OF DISQUALIFICATION – MITIGATING CIRCUMSTANCES

DISCUSSION OF MITIGATING CIRCUMSTANCES IN DETERMINING THE LENGTH OF DISQUALIFICATION PERIOD.

SW 360 PERSONAL AFFAIRS

INCLUDES CASES IN WHICH THE REFUSAL IS BASED ON SOME PERSONAL CIRCUMSTANCES NOT COVERED BY ANY OTHER LINE IN THE SUITABLE WORK DIVISION OF THE CODE.

Where claimant refused to apply for a job referral from the Nebraska Job Service because she believed she would not be hired due to past personal associations, the Tribunal held that the claimant's failure to contact the potential employer constituted a refusal to apply for suitable work and the claimant was disqualified from receiving benefits. *In re Dalrymple*, 88 Neb. App. Trib. 3043 (December 27, 1988).

SW 363 PERSONAL APPEARANCE

CASES IN WHICH A CLAIMANT'S PERSONAL APPEARANCE – FOR EXAMPLE, THE MANNER OF WEARING HAIR OR CLOTHING – AFFECTED REFERRALS, OFFERS, OR REFUSALS OF WORK; ALSO, IN WHICH A QUESTION IS RAISED AS TO WHETHER AN EMPLOYER'S STANDARDS OF PERSONAL APPEARANCE AFFECTED THE SUITABILITY OF THE WORK.

SW 365 PROSPECT OF OTHER WORK

INCLUDES CASES WHERE THE CLAIMANT'S LIKELIHOOD OF OBTAINING EMPLOYMENT IN HIS OR HER CUSTOMARY OCCUPATION, OR IN SOME OTHER TYPE OF WORK, IS CONSIDERED IN DETERMINING WHETHER OR NOT THERE IS JUSTIFICATION FOR A REFUSAL.

The claimant, a union residential carpenter with many years of experience, was disqualified from receiving Emergency Unemployment Compensation (EUC) benefits after declining to apply for a commercial carpentry position that offered half of his prior wage and would require him to learn an entirely new set of skills. The claimant indicated that he refused to contact the potential employer because he was concerned that the offered wage would not be enough to support his family, because he had a reasonable assurance of receiving work in his chosen field within a short period of time, and because if he were unavailable to accept a position through his union hiring list he would be risking his eligibility for union pension benefits upon retirement. The Tribunal held that, although the claimant was subject to the more stringent requirements of EUC recipients, the claimant did have a reasonable good chance of obtaining work in his customary occupation and the referral turned down by the claimant was for a position that could certainly be considered unsuitable work, given the claimant's experience and previous wage. The claimant was not disqualified from benefits. *In re Roth*, 94 Neb. App. Trib. 1433 (July 7, 1994).

SW 450.05 TIME – GENERAL

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

Where claimant failed to contact one of two job referrals from the Nebraska Job Service because she favored the other prospective employer because the length of employment favorably corresponded to her expected return to her primary employment and because she had continued to make other contacts on her own, the Appeal Tribunal held that the claimant's refusal to apply for suitable work disqualified her from receiving unemployment insurance benefits. *In re Hawke*, 89 Neb. App. Trib. 1519 (July 5, 1989).

SW 450.1 TIME – DAYS OF WEEK

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF TIME, (2) POINTS NOT COVERED BY WHERE CLAIMANT REFUSES WORK BECAUSE OF HIS OR HER INSISTENCE UPON, OR OBJECTION TO, WORKING PARTICULAR DAYS OF THE WEEK.

SW 450.151 TIME – HOURS: GENERAL

INCLUDES CASES WHICH CONTAIN (1) POINTS PERTAINING TO HOURS NOT COVERED BY ANY OTHER SUBHEADING UNDER SUBLINE 450.15, OR (3) POINTS COVERED BY THREE OR MORE SUBHEADINGS .

SW 450.152 TIME – HOURS: IRREGULAR

WHERE THE REFUSAL OCCURS BECAUSE OF THE CLAIMANT’S INSISTENCE UPON OR OBJECTION TO IRREGULAR WORKING HOURS.

SW 450.153 TIME – HOURS: LONG OR SHORT

WHERE THE REFUSAL OCCURS BECAUSE OF THE CLAIMANT’S INSISTENCE UPON OR OBJECTION TO WORKING LONG OR SHORT HOURS.

SW 450.154 TIME – HOURS: NIGHT

WHERE THE REFUSAL OCCURS BECAUSE OF THE CLAIMANT’S OBJECTION TO WORKING AT NIGHT.

SW 450.155 TIME – HOURS: PREVAILING STANDARD, COMPARISON WITH

CONSIDERATION AS TO WHETHER THE WORKING HOURS OF THE OFFERED JOB ARE SUBSTANTIALLY BELOW THOSE MOST COMMONLY TO BE FOUND FOR SIMILAR WORK IN THE COMMUNITY. THIS LINE IS ALSO USED IN DETERMINATIONS AS TO WHETHER OR NOT THE HOURS OF THE JOB OFFERED WERE THOSE PREVAILING WITHIN THE MEANING OF SECTION 1603 (A) (5) OF THE INTERNAL REVENUE CODE OR OF THE STATE LABOR STANDARDS PROVISIONS ENACTED IN CONFORMITY WITH THE FEDERAL STATUTE.

SW 450.156 TIME – HOURS: STATUTORY OR REGULATORY STANDARD, COMPARISON WITH

WHERE A COMPARISON IS MADE OF THE HOURS REQUIRED ON THE OFFERED JOB WITH THOSE AUTHORIZED BY STATUTE OR GOVERNMENTAL REGULATIONS, IN DETERMINING THE SUITABILITY OF THE OFFERED WORK AND THE CLAIMANT’S “GOOD CAUSE” FOR REFUSAL.

SW 450.2 TIME – IRREGULAR EMPLOYMENT

WHERE WORK REFUSAL RESULTED FROM CLAIMANT’S INSISTENCE UPON OR UNWILLINGNESS TO ACCEPT IRREGULAR EMPLOYMENT.

SW 450.35 TIME – OVERTIME

WHERE CLAIMANT REFUSES WORK BECAUSE OF HIS OR HER INSISTENCE UPON OR OBJECTION TO WORKING OVERTIME.

SW 450.4 TIME – PART-TIME OR FULL-TIME

WHERE CLAIMANT REFUSES WORK BECAUSE OF HIS OR HER INSISTENCE UPON OR OBJECTION TO WORKING PART TIME OR FULL TIME.

SW 450.45 TIME – SEASONAL

WHERE CLAIMANT REFUSES WORK BECAUSE OF INSISTENCE UPON OR UNWILLINGNESS TO ACCEPT SEASONAL WORK.

SW 450.5 TIME – SHIFT

RELATES TO WORK REFUSAL WHERE THE CLAIMANT INSISTS UPON OR OBJECTS TO WORKING ANY PARTICULAR SHIFT.

SW 450.55 TIME – TEMPORARY

DISCUSSION OF A CLAIMANT’S INSISTENCE UPON OR REFUSAL OF TEMPORARY WORK.

SW 475.05 UNION RELATIONS – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF THE RELATIONSHIP BETWEEN A UNION AND UNION MEMBERS, AND OF THE LATTER WITH AN EMPLOYER, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 475, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

SW 475.1 UNION RELATIONS – AGREEMENT WITH EMPLOYER

WHERE CLAIMANT REFUSES WORK BECAUSE OF ALLEGED VIOLATION, BY THE EMPLOYER, OF AN EMPLOYER-UNION AGREEMENT.

SW 475.25 UNION RELATIONS – HOURS

DISCUSSES REFUSAL OR WORK BECAUSE OF HOURS, WHEN THE QUESTION OF HOURS IS TREATED WITH REFERENCE TO THOSE ESTABLISHED UNDER CONTRACT OR AGREEMENT. THIS LINE SERVES TO DISTINGUISH THE PROBLEM AS A STRICTLY UNION ONE FROM THE GENERAL CONSIDERATION OF HOURS AS A PERSONAL FACTOR IN THE CASES CLASSIFIED TO SUBLINE 450.15.

SW 475.4 UNION RELATIONS – MATTER IN DISPUTE NOT SETTLED

DISCUSSES WHETHER OR NOT A DISQUALIFICATION SHOULD BE IMPOSED FOR A REFUSAL OF AN OFFER MADE SUBSEQUENT TO THE TERMINATION OF A LABOR DISPUTE OR A LAY-OFF BUT BEFORE ANY SPECIFIC AGREEMENT HAS BEEN REACHED WITH THE EMPLOYER WITH WHOM THE WORKER HAD PREVIOUSLY BEEN EMPLOYED.

SW 475.45 UNION RELATIONS – MEANS OF OFFER IN VIOLATION OF UNION RULE

CONSIDERS THE QUESTION OF A DISQUALIFICATION FOR REFUSING WORK BECAUSE THE OFFER WAS NOT TRANSMITTED THROUGH UNION CHANNELS, AS PROVIDED BY UNION AGREEMENT.

SW 475.55 UNION RELATIONS – NON-UNION SHOP OR SUPERVISOR

WHERE CLAIMANT REFUSES WORK BECAUSE OF HIS OR HER DESIRE TO WORK ONLY IN A UNION SHOP OR UNDER UNION SUPERVISION.

The claimant, a union residential carpenter with many years of experience, was disqualified from receiving Emergency Unemployment Compensation (EUC) benefits after declining to apply for a commercial carpentry position that offered half of his prior wage and would require him to learn an entirely new set of skills. The claimant indicated that he refused to contact the potential employer because he was concerned that the offered wage would

not be enough to support his family, because he had a reasonable assurance of receiving work in his chosen field within a short period of time, and because if he were unavailable to accept a position through his union hiring list he would be risking his eligibility for union pension benefits upon retirement. The Tribunal held that, although the claimant was subject to the more stringent requirements of EUC recipients, the claimant did have a reasonable good chance of obtaining work in his customary occupation and the referral turned down by the claimant was for a position that could certainly be considered unsuitable work, given the claimant's experience and previous wage. The claimant was not disqualified from benefits. *In re Roth*, 94 Neb. App. Trib. 1433 (July 7, 1994).

SW 475.65 UNION RELATIONS – REMUNERATION

DISCUSSES REFUSAL OR WORK BECAUSE OF WAGES, WHEN THE QUESTION OF HOURS IS TREATED WITH REFERENCE TO THOSE ESTABLISHED UNDER CONTRACT OR AGREEMENT. THIS LINE SERVES TO DISTINGUISH THE PROBLEM AS A STRICTLY UNION ONE FROM THE GENERAL CONSIDERATION OF HOURS AS A PERSONAL FACTOR IN THE CASES CLASSIFIED TO SUBLINE 500.

SW 475.7 UNION RELATIONS – REQUIREMENT TO JOIN COMPANY UNION

DISCUSSES REFUSAL OR WORK BECAUSE OF A REQUIREMENT TO JOIN A COMPANY UNION; ALSO INCLUDES DETERMINATIONS AS TO WHAT CONSTITUTES A COMPANY UNION WITHIN THE MEANING OF SECTION 1603 (A) (5) OF THE INTERNAL REVENUE CODE, AS AMENDED, OR OF THE STATE PROVISIONS PATTERNED AFTER FEDERAL PROVISIONS.

SW 475.75 UNION RELATIONS – REQUIREMENT TO JOIN OR RETAIN MEMBERSHIP IN BONA FIDE LABOR ORGANIZATION

CONSIDERS THE QUESTION OF WHETHER OR NOT A CLAIMANT MAY, WITHOUT BEING SUBJECT TO DISQUALIFICATION, REFUSE WORK WHICH WOULD REQUIRE HIM OR HER TO JOIN OR TO RETAIN MEMBERSHIP IN A BONA FIDE LABOR ORGANIZATION.

SW 475.8 UNION RELATIONS – REQUIREMENT TO RESIGN FROM OR REFRAIN FROM JOINING BONA FIDE LABOR ORGANIZATION

DISCUSSES REFUSAL OF WORK, ACCEPTANCE OF WHICH WOULD REQUIRE THE CLAIMANT TO ABANDON OR CHANGE HIS UNION AFFILIATION, OR REFRAIN FROM JOINING A BONA FIDE LABOR ORGANIZATION, WITHIN THE MEANING OF SECTION 1603 (A) (5) OF THE INTERNAL REVENUE CODE OR OF THE STATE PROVISIONS ENACTED IN CONFORMITY WITH THE FEDERAL PROVISIONS.

SW 475.85 UNION RELATIONS – RESTRICTION AS TO TYPE OF WORK

APPLIES TO REFUSAL OF WORK BECAUSE OF UNION RULES OR REGULATIONS CONCERNING CHANGES IN OCCUPATION BY A UNION MEMBER.

SW 480 VACANT DUE TO A LABOR DISPUTE

INCLUDES CASES IN WHICH A WORKER REFUSES A REFERRAL TO, OR OFFER OF, A POSITION AT AN ESTABLISHMENT WHERE A LABOR DISPUTE EXISTS, AND IT IS DETERMINED WHETHER OR NOT THE JOB REFUSED WAS VACANT DUE TO A LABOR DISPUTE WITHIN THE MEANING OF SECTION 16-3 (A) (5) OF THE INTERNAL REVENUE CODE OR OF STATE LABOR STANDARDS PROVISIONS ENACTED IN CONFORMITY WITH THE FEDERAL PROVISIONS.

In determining whether work is suitable, an unemployment compensation claimant who refused a position shall not be denied benefits if the position offered is vacant due directly to a labor dispute. *George C. Hormel and Company v. Hair*, 229 Neb. 284, 426 NW 2d 281 (1988).

SW 500.05 WAGES – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF REMUNERATION, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 500, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

The claimant had earned \$3.15 at her previous employment and was willing to accept new work which paid no less than \$2.50 per hour, though when speaking to a Nebraska Job Service representative about a position that paid \$2.30 per hour she indicated that she would like to earn about as much as she had earned at her old job. The Tribunal held that because the claimant was not officially directed to apply for the \$2.30/hour position, she did not refuse a referral of suitable work by not contacting the prospective employer. Further, the Tribunal found that the claimant's desire to earn as much in her new employment as she had in her previous job was distinct from her stated willingness to accept employment at \$2.50/hour and above, a reasonable wage restriction given the claimant's circumstances. The claimant was found to be effectively attached to the labor market and she was assessed no benefits disqualification with respect to availability for work or refusal of a job referral. *In re Dunn*, 76 Neb. App. Trib. 1025 (April 14, 1976).

SW 500.15 WAGES – APPRENTICESHIP

INCLUDES CASES IN WHICH A JOB IS REFUSED UPON THE GROUNDS THAT THE WAGE OFFERED IS AT THE LEARNER'S OR BEGINNER'S RATE.

SW 500.2 WAGES – BENEFIT AMOUNT, COMPARISON WITH

WHERE THE CLAIMANT'S JUSTIFICATION FOR REFUSAL IS TESTED BY COMPARISON OF THE WAGE OFFERED WITH THE WEEKLY BENEFIT AMOUNT TO WHICH THE WORKER WOULD BE ENTITLED.

SW 500.25 WAGES – EXPENSES INCIDENT TO JOB

DISCUSSES REFUSAL OF A REFERRAL OR A JOB BECAUSE OF THE EXTRA EXPENSES WHICH WOULD BE INCIDENT TO THE JOB.

SW 500.35 WAGES – FORMER RATE, COMPARISON WITH

WHERE THE WORKER'S JUSTIFICATION FOR REFUSAL IS TESTED BY A COMPARISON OF THE OFFERED WAGE WITH THAT WHICH HE OR SHE HAD FORMERLY EARNED.

SW 500.45 WAGES – LIVING WAGE

WHERE JUSTIFICATION FOR REFUSAL IS BASED UPON A DETERMINATION AS TO WHETHER THE WAGE OFFERED CONSTITUTES A LIVING WAGE.

SW 500.5 WAGES – LOW

INCLUDES DECISIONS BASED SOLELY UPON THE VALIDITY OF THE CLAIMANT'S CONTENTION THAT THE WAGES OFFERED WERE TOO LOW.

In a case where a claimant receiving Emergency Unemployment Benefits did not apply for a position referred to him by the Nebraska Job Service and was subsequently disqualified from benefits for refusing a referral of suitable work, but where it became known during the Appeal Tribunal hearing that the position referred to the claimant was filled three days before the referral date and was no longer available, the Tribunal found that the claimant had not, in fact, refused a referral of suitable work because the work did not exist. *In re Boyle*, 92 Neb. App. Trib. 1293 (May 4, 1992).

The claimant, a union residential carpenter with many years of experience, was disqualified from receiving Emergency Unemployment Compensation (EUC) benefits after declining to apply for a commercial carpentry position that offered half of his prior wage and would require him to learn an entirely new set of skills. The claimant indicated that he refused to contact the potential employer because he was concerned that the offered wage would not be enough to support his family, because he had a reasonable assurance of receiving work in his chosen field within a short period of time, and because if he were unavailable to accept a position through his union hiring list he would be risking his eligibility for union pension benefits upon retirement. The Tribunal held that, although the claimant was subject to the more stringent requirements of EUC recipients, the claimant did have a reasonable good chance of obtaining work in his customary occupation and the referral turned down by the claimant was for a position that could certainly be considered unsuitable work, given the claimant's experience and previous wage. The claimant was not disqualified from benefits. *In re Roth*, 94 Neb. App. Trib. 1433 (July 7, 1994).

SW 500.6 WAGES – MINIMUM

INVOLVES CASES IN WHICH THE CLAIMANT'S OBJECTION TO THE WAGES OFFERED FOR A PARTICULAR JOB IS RESOLVED BY REFERENCE TO THE STATUTORY AND REGULATORY MINIMUM WAGE STANDARDS.

SW 500.65 WAGES – PIECE RATE, COMMISSION BASIS, OR OTHER METHOD OF COMPUTATION

DISCUSSION OF REFUSAL BASED ON THE CLAIMANT'S INSISTENCE UPON, OR OBJECTION TO, THE METHOD WAGE COMPUTATION.

SW 500.7 WAGES – PREVAILING RATE

COMPARISON OF THE WAGE REFUSED TO THE RATE OF PAY PREVAILING FOR SIMILAR WORK IN LOCALITY, AND ALSO INCLUDES CASES WHICH DISCUSS THE METHODS OF DETERMINING PREVAILING WAGE RATES.

THIS LINE IS ALSO USED IN DETERMINATIONS AS TO WHETHER OR NOT THE WAGES OF THE OFFERED JOB WERE THOSE PREVAILING WITHIN THE MEANING OF SECTION 1603 (A) (5) OF THE INTERNAL REVENUE CODE OR OF STATE LABOR STANDARDS PROVISIONS ENACTED IN CONFORMITY WITH THE FEDERAL PROVISIONS.

SW 510.05 WORK, NATURE OF – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF REFUSAL BECAUSE OF THE CLAIMANT'S DESIRE TO OBTAIN WORK OF A DIFFERENT NATURE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 510, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

SW 510.1 WORK, NATURE OF – CUSTOMARY

WHERE CLAIMANT REFUSES EMPLOYMENT BECAUSE OF HIS OR HER INSISTENCE UPON OR UNWILLINGNESS TO ACCEPT WORK IN HIS OR HER USUAL OCCUPATION.

SW 510.2 WORK, NATURE OF – FORMER EMPLOYER OR EMPLOYMENT

WHERE AN OFFER OR FORK BY THE INDIVIDUAL'S FORMER EMPLOYER IS REFUSED. SUCH AN OFFER MAY OR MAY NOT CONCERN THE PRECISE TYPE OF WORK PERFORMED FORMERLY BY THE INDIVIDUAL.

SW 510.3 WORK, NATURE OF – INSIDE OR OUTSIDE

CLAIMANT'S REFUSAL OF WORK BECAUSE OF HIS OR HER RESTRICTION TO OR UNWILLINGNESS TO ACCEPT INSIDE OR OUTSIDE WORK.

SW 510.35 WORK, NATURE OF – LIGHT OR HEAVY

WHERE A CLAIMANT REUSES EMPLOYMENT BECAUSE OF HIS OR HER DESIRE TO OBTAIN SEDENTARY WORK OR WORK REQUIRING LESS PHYSICAL EXERTION.

SW 510.4 WORK, NATURE OF – PREFERRED EMPLOYER OR EMPLOYMENT

CLAIMANT'S REFUSAL OF EMPLOYMENT BECAUSE OF DESIRE TO WORK FOR A PARTICULAR EMPLOYER OR IN PARTICULAR EMPLOYMENT, OR BECAUSE OF OBJECTION TO WORK FOR THE PROSPECTIVE EMPLOYER OR IN THE OFFERED EMPLOYMENT.

SW 510.5 WORK, NATURE OF – VETERANS' REEMPLOYMENT

SW 515.05 WORKING CONDITIONS – GENERAL

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

SW 515.1 WORKING CONDITIONS – ADVANCEMENT, OPPORTUNITY FOR

WHERE A WORKER REFUSES A JOB BECAUSE OF LACK OF OPPORTUNITY FOR ADVANCEMENT.

SW 515.35 WORKING CONDITIONS – ENVIRONMENT

INVOLVES DISCUSSION OF OBJECTIONS TO THE LOCATION OR PHYSICAL CONDITIONS SURROUNDING THE WORK ESTABLISHMENT AT WHICH THE JOB WAS OFFERED.

SW 515.4 WORKING CONDITIONS – FELLOW EMPLOYEE

CONSIDERATION OF REFUSAL BASED ON UNWILLINGNESS TO WORK WITH PARTICULAR INDIVIDUALS, OR PERSONS OF A CERTAIN RACE OR NATIONAL ORIGIN.

SW 515.45 WORKING CONDITIONS – METHOD OR QUALITY OF WORKMANSHIP

WHERE CLAIMANT REFUSES TO WORK BECAUSE OF HIS OR HER OBJECTION TO THE MANNER IN WHICH THE WORK IS TO BE PERFORMED, TO THE QUALITY OF WORKMANSHIP, OR TO THE MATERIALS USED.

SW 515.5 WORKING CONDITIONS – MORALS

CLAIMANT'S REFUSEAL OF A REFERRAL OR JOB OFFER BECAUSE OF HIS BELIEF THAT SUCH EMPLOYMENT WOULD BE CONTRARY TO PRINCIPLES OF GOOD MORAL CONDUCT.

SW 515.55 WORKING CONDITIONS – PREVAILING; OR CONSISTENT WITH LABOR STANDARDS

COMPARISON OF WORKING CONDITIONS, OTHER THAN WAGES AND HOURS, OF A JOB REFUSED WITH THOSE MOST COMMONLY TO BE OBTAINED FOR SIMILAR WORK IN LOCALITY. THIS LINE IS ALSO USED IN DETERMINATIONS AS TO WHETHER OR NOT THE WORKING CONDITIONS OF THE JOB OFFERED WERE THOSE PREVAILING WITHIN THE MEANING OF SECTION 1603 (A) (5) OF THE INTERNAL REVENUE CODE OR OF THE STATE STANDARDS PROVISIONS ENACTED IN CONFORMITY WITH THE FEDERAL PROVISIONS.

SW 515.6 WORKING CONDITIONS – PRODUCTION REQUIREMENTS OR QUANTITY OF DUTIES

INVOLVES DISCUSSION OF A CLAIMANT’S REFUSAL OF WORK BECAUSE OF SOME PRODUCTION REQUIREMENTS, OR THE AMOUNT OF WORK HE OR SHE WOULD BE REQUIRED TO PERFORM.

SW 515.65 WORKING CONDITIONS – SAFETY

CLAIMANT’S REFUSAL OF WORK BECAUSE OF SOME SAFETY HAZARD.

SW 515.7 WORKING CONDITIONS – SANITATION

WHERE WORK IS REFUSED BECAUSE OF ALLEGED UNSANITARY WORKING CONDITIONS.

SW 515.75 WORKING CONDITIONS – SENIORITY

WHERE SENIORITY IS THE BASIS FOR THE CLAIMANT’S REFUSAL. SUCH CASES ARE DIFFERENTIATED, HOWEVER, FROM THOSE IN WHICH THE OBJECTION AS TO SENIORITY ARISES IN CONNECTION WITH SOME UNION REQUIREMENT.

SW 515.8 WORKING CONDITIONS – SUPERVISOR

CONSIDERATION OF THE VALIDITY OF THE CLAIMANT’S OBJECTION TO WORK UNDER A CERTAIN SUPERVISOR OR FOR A PARTICULAR EMPLOYER.

SW 515.85 WORKING CONDITIONS – TEMPERATURE OR VENTILATION

CLAIMANT’S REFUSAL OF WORK BECAUSE OF UNDESIRABLE TEMPERATURE OR VENTILATION CONDITIONS AT THE ESTABLISHMENT OF PROSPECTIVE EMPLOYMENT.

SW 515.95 WORKING CONDITIONS – WEATHER OR CLIMATE

WHERE CLAIMANT REFUSES WORK FOR REASONS OF WEATHER OR CLIMATE.

VI. LABOR DISPUTE

LD 5 GENERAL

INCLUDES CASES WHICH DISCUSS (1) THE LEGISLATIVE INTENT TO DISQUALIFY WORKERS, IN SPECIFIC SITUATIONS, UNDER THE LABOR DISPUTE PROVISION RATHER THAN UNDER THE VOLUNTARY LEAVING OR MISCONDUCT DISQUALIFICATION PROVISIONS, (2) THE EFFECT TO BE GIVEN TO DEFINITIONS OF VISION, (2) GENERAL DISCUSSION OF THE DISQUALIFICATION, ITS PURPOSE, ETC., AND (4) POINTS CONCERNING THE LABOR DISPUTE DISQUALIFICATION PROVISION NOT COVERED BY ANY SPECIFIC LINE IN THE LABOR DISPUTE DIVISION.

The quitting work by employees, singly or collectively, without any intention to return to the employment, does not constitute a “strike” or a “labor dispute”, within Unemployment Compensation Law, whatever employees’ motivating reason for so doing may have been. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 2 N.W.2d 332 (1942).

The term “stoppage of work”, as used in section of Unemployment Compensation Law disqualifying employees from receiving benefits under the law when unemployment is caused by stoppage of work due to a labor dispute, means a substantial curtailment of work in an employing establishment. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 2 N.W.2d 332 (1942).

Under section of Unemployment Compensation Law disqualifying an employee from receiving benefits under the law when unemployment was caused by stoppage of work due to a labor dispute, disqualification depends upon the fact of voluntary action and not the motives which brought it about. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 2 N.W.2d 332 (1942).

LD 35.05 AT THE FACTORY, ESTABLISHMENT, OR OTHER PREMISES – GENERAL

INCLUDES CASES WHICH CONTAIN (1) INTERPRETATION OF THE TERMS “FACTORY,” “ESTABLISHMENT,” AND “OTHER PREMISES,” AND IN WHICH THE APPLICATION OF THE DISQUALIFICATION DEPENDS UPON A FINDING THAT THE DISPUTE WAS LOCALIZED, WITH RESPECT TO THE PLACE OF CLAIMANT’S WORK, AND (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 35.

LD 35.1 AT THE FACTORY, ESTABLISHMENT, OR OTHER PREMISES – INTEGRATION OR PROXIMITY OF OPERATIONS

INVOLVES QUESTIONS AS TO THE LOCALE OF THE LABOR DISPUTE, WHERE THE PLANT HAS BRANCHES, OR WHERE CERTAIN OPERATIONS ARE JOBBED OUT TO OTHER ESTABLISHMENTS, I.E. THE EFFECT OF SUCH A SEPARATION OF THE WORK, THE RELATIONSHIP BETWEEN DISTANCE TO PLANTS AND THE OPERATIONS PERFORMED IN EACH, AND THE CONTINUITY AND INTERDEPENDENCE OF SUCH OPERATIONS.

LD 35.15 AT THE FACTORY, ESTABLISHMENT, OR OTHER PREMISES – SEPARATE BRANCH OR DEPARTMENT

DETERMINATION AS TO WHETHER THE SEPARATE BRANCHES OF WORK UNDER CONSIDERATION, (1) ARE SUCH AS ARE COMMONLY CONDUCTED AS SEPARATE BUSINESSES IN SEPARATE PREMISES, AND (2) ARE CONDUCTED IN THE CASE AT HAND IN SEPARATE DEPARTMENTS OF THE SAME BUSINESS, FOR THE PURPOSE OF DETERMINING WHETHER THEY SHALL BE DEEMED SEPARATE FACTORIES, ESTABLISHMENTS, OR PREMISES.

LD 125.05 DETERMINATION OF EXISTENCE – GENERAL

INTERPRETATION OF OR LIMITATIONS UPON THE TERM “LABOR DISPUTE,” (2) VIOLATIONS OF STATUTE BY EMPLOYER, (3) GENERAL OBSERVATIONS AS TO WHAT CONSTITUTES A LABOR DISPUTE, STRIKE, OR LOCK-OUT, (4) POINTS ON DETERMINATION OF EXISTENCE OF LABOR DISPUTE NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 125, AND (6) POINTS COVERED BY THREE OR MORE SUBLINES.

LD 125.1 DETERMINATION OF EXISTENCE – CLOSING OF PLANT OR LOCK-OUT

INCLUDES CASES WHICH DEFINE THE TERM “LOCK-OUT,” AND THOSE WHICH CONSIDER THE ACTIONS OF BOTH THE EMPLOYER AND THE WORKER IN DETERMINING WHETHER THERE IS A LOCK-OUT OR A STRIKE.

LD 125.15 DETERMINATION OF EXISTENCE – CONTINUANCE OF EMPLOYER-EMPLOYEE RELATIONSHIP

CONSIDERATION AS TO WHETHER THE EMPLOYER-EMPLOYEE RELATIONSHIP WAS CONTINUED, OR AS TO THE DECISIVENESS OF THIS FACTOR IN DETERMINING THE EXISTENCE OF A LABOR DISPUTE.

LD 125.201 DETERMINATION OF EXISTENCE – DISPUTE OVER CONDITIONS OF EMPLOYMENT: GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF WHAT CONSTITUTES A DISPUTE OVER A CONDITION OF EMPLOYMENT, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 125.2, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

LD 125.202 DETERMINATION OF EXISTENCE – DISPUTE OVER CONDITIONS OF EMPLOYMENT: CHECK-OFF SYSTEM

DISPUTES INVOLVING THE PAYMENT OF UNION DUES BY MEANS OF A CHECK-OFF SYSTEM.

LD 125.203 DETERMINATION OF EXISTENCE – DISPUTE OVER CONDITIONS OF EMPLOYMENT: DISCHARGE AND REINSTATEMENT

PROTEST AGAINST DISCHARGE OF FELLOW EMPLOYEE AND STRIKE TO GAIN HIS OR HER REINSTATEMENT.

LD 125.204 DETERMINATION OF EXISTENCE – DISPUTE OVER CONDITIONS OF EMPLOYMENT: MANAGEMENT OF PLANT

OBJECTION TO SOME PHASE OF SUPERVISION, HIRING POLICY, WORK QUOTAS, USE OF MACHINERY.

LD 125.205 DETERMINATION OF EXISTENCE – DISPUTE OVER CONDITIONS OF EMPLOYMENT: SAFETY CONDITION

PROTEST OVER NEGLECT BY EMPLOYER WHICH MIGHT RESULT IN INJURY, OR THE EMPLOYEE’S INSISTENCE UPON COMPLIANCE WITH “SAFETY” REGULATIONS.

LD 125.206 DETERMINATION OF EXISTENCE – DISPUTE OVER CONDITIONS OF EMPLOYMENT: TRANSFER

REFUSAL OF, OR PROTEST AGAINST, TRANSFER TO OTHER WORK, OR THE EMPLOYEE’S UNWILLINGNESS TO MAKE SUCH A TRANSFER.

LD 125.207 DETERMINATION OF EXISTENCE – DISPUTE OVER CONDITIONS OF EMPLOYMENT: WAGES AND HOURS

ALL QUESTIONS OF CONTROVERSIES OVER WAGES AND HOURS.

LD 125.25 DETERMINATION OF EXISTENCE – JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

COMPLAINTS LOGGED WITH NLRB OR OTHER AGENCY; SUITS IN FEDERAL OR OTHER COURTS, AS EVIDENCE OF AND INCIDENT TO DISPUTE.

LD 125.3 DETERMINATION OF EXISTENCE – JURISDICTIONAL DISPUTE

CONTROVERSIES BETWEEN RIVAL UNIONS INVOLVING RIGHT TO ACT AS BARGAINING AGENCY; TRANSFER OF AFFILIATION; ELECTIONS, ETC.

LD 125.35 DETERMINATION OF EXISTENCE – LACK OF CONTRACT

STATUS OF EMPLOYER-EMPLOYEE RELATIONSHIP AFTER EXPIRATION OF CONTRACT; REFUSAL TO SIGN NEW ONE; EFFECT OF WORKING WITHOUT CONTRACT; REFUSAL TO WORK WITHOUT CONTRACT.

LD 125.4 DETERMINATION OF EXISTENCE – MERITS OF THE DISPUTE

QUESTIONS OF JURISDICTION UNDER UNEMPLOYMENT INSURANCE LAWS TO DETERMINE MERITS OF DISPUTE.

LD 125.45 DETERMINATION OF EXISTENCE – NEGOTIATION WITH EMPLOYER

DETERMINATION AS TO WHETHER NEGOTIATION IS TANTAMOUNT TO A LABOR DISPUTE; REFUSAL BY EMPLOYER OR UNION TO NEGOTIATE; LAY-OFF OR WALK-OUTS DURING NEGOTIATION; DURATION OF NEGOTIATIONS AS FACTOR IN DECIDING LENGTH OF UNEMPLOYMENT OR LABOR DISPUTE.

LD 125.5 DETERMINATION OF EXISTENCE – SYMPATHETIC STRIKE

DETERMINATION AS TO WHETHER PARTICIPATION IN, OR FAILURE OR REFUSAL TO WORK OR BOYCOTT BECAUSE OF, A LABOR DISPUTE AT ANOTHER FACTORY, ESTABLISHMENT, OR OTHER PREMISES CONSTITUTES A LABOR DISPUTE AT THE FACTORY, ESTABLISHMENT, OR OTHER PREMISES AT WHICH THE CLAIMANT IS OR WAS LAST EMPLOYED.

LD 125.55 DETERMINATION OF EXISTENCE – UNION RECOGNITION

DISTINGUISHED FROM “JURISDICTIONAL DISPUTE,” LINE IN THAT ONLY ONE UNION IS INVOLVED.

LD 125.6 DETERMINATION OF EXISTENCE – VIOLATION OF CONTRACT OR AGREEMENT

CONTRACT VIOLATION AS REASON FOR THE CONCERTED ACTION OF EMPLOYEES; OF SPECIAL IMPORTANCE IN THOSE STATES HAVING SPECIFIC EXEMPTION FROM DISQUALIFICATION FOR SUCH VIOLATIONS. “ALSO APPLIES IN CASES WHERE EMPLOYEES GO ON STRIKE IN VIOLATION OF THE EMPLOYER-UNION CONTRACT.”

LD 130 DIRECTLY INTERESTED IN

INCLUDES CASES WHICH DEFINE OR INTERPRET THIS PHRASE, PARTICULARLY IN CONSIDERING RELIEF FROM DISQUALIFICATION OF NON-STRIKING WORKERS.

Members of non-striking unions and nonunion employees who are not participating in or financing or directly interested in labor dispute which caused work stoppage, and who do not belong to grade or class of striking workers, are not disqualified from receiving unemployment compensation benefits; overruling *A. Borchman Sons v. Carpenter*, 166 Neb. 322, 89 N.W.2d 123. (1958). *Gilmore Construction Company v. Miller*, 213 Neb. 133, 327 N.W.2d 628 (1982).

LD 175 EMPLOYMENT SUBSEQUENT TO DISPUTE OR STOPPAGE OF WORK

INCLUDES CASES WHICH DISCUSS THE BONA FIDE NATURE OF PERMANENCY OF EMPLOYMENT OBTAINED DURING THE COURSE OF A DISPUTE OR WORK STOPPAGE, AND THE EFFECT OF SUCH EMPLOYMENT UPON DISQUALIFICATION; THOSE WHICH CONSIDER WHETHER OR NOT NEW EMPLOYMENT TERMINATES A WORKER'S EMPLOYMENT RELATIONSHIP WITH THE "STRUCK" EMPLOYER; AND CASES WHICH DISCUSS THE SIGNIFICANCE OF THE WORKER'S INTENTION TO REMAIN AT WORK OBTAINED DURING THE COURSE OF THE STRIKE AT HIS OR HER FORMER ESTABLISHMENT.

LD 190.05 EVIDENCE – GENERAL

INCLUDES CASES WHICH DISCUSS TECHNICAL POINTS OF EVIDENCE RELATING TO THE APPLICATION OF THE LABOR DISPUTE PROVISION NOT COVERED BY THE OTHER SUBLINES UNDER LINE 190.

LD 190.1 EVIDENCE – BURDEN OF PROOF AND PRESUMPTIONS

APPLIES TO DISCUSSIONS AS TO WHICH PARTY HAS BURDEN OF PROOF OR AS TO LEGAL ADEQUACY OF PARTICULAR EVIDENCE TO OVERCOME PRESUMPTIONS RELATING TO APPLICATION OF THE LABOR DISPUTE PROVISION.

Employer, a federal credit union, failed to establish that there had been substantial curtailment of work produced by labor dispute, so as to prove existence of work stoppage to warrant disqualification of employee from receiving unemployment benefits. In this case, 53 of 115 employees went on strike, three of seven offices shut down, certain operations were temporarily curtailed, and there was some reduction in work force in teller and loan areas. *Bell Federal Credit Union v. Christianson, et al.*, 244 Neb. 267, 505 N.W.2d 710 (1993).

LD 190.15 EVIDENCE – WEIGHT AND SUFFICIENCY / STANDARD OF PROOF

CONSIDERATION OF WEIGHT AND ADEQUACY OF PARTICULAR EVIDENCE RELATING TO APPLICATION OF THE LABOR DISPUTE PROVISION.

LD 205.05 FINANCING AND PARTICIPATING – GENERAL

INCLUDES CASES WHICH DISCUSS (1) FINANCING AND PARTICIPATION, ESPECIALLY IN CONSIDERING RELIEF FROM DISQUALIFICATION OF NON-STRIKING WORKERS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 205, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

LD 205.1 FINANCING AND PARTICIPATING – AFFILIATION WITH ORGANIZATION

DISCUSSION OF MEMBERSHIP OR NON-MEMBERSHIP IN STRIKING UNION AS FACTOR IN PARTICIPATION, PARTICULARLY IN CONSIDERING RELIEF FROM DISQUALIFICATION OF NON-STRIKING EMPLOYEES.

LD 205.15 FINANCING AND PARTICIPATING – PAYMENT OF UNION DUE

DISCUSSION AS TO WHETHER PAYMENT OF UNION DUES CONSTITUTES PARTICIPATION IN, OR FINANCING OF, LABOR DISPUTE, PARTICULARLY IN APPLICATION OF RELIEF FROM DISQUALIFICATION CLAUSE.

LD 205.2 FINANCING AND PARTICIPATING – PICKETING OR REFUSAL TO PASS PICKET LINE

INVOLVES QUESTIONS OF PICKETING, OR REFUSAL OF INABILITY TO PASS PICKET LINE AND REASONS FOR SUCH INABILITY AND REFUSAL. USED ESPECIALLY IN APPLICATION OF RELIEF FROM DISQUALIFICATION.

“Work stoppage” exists, within meaning of statute disqualifying employees from receiving unemployment benefits, when substantial curtailment of work occurs in employing establishment, and court looks to effect that curtailment of work has upon employer’s operations produced by labor dispute to determine whether it is substantial, rather than simply whether cessation of work by claimants occurred. *George C. Hormel and Company v. Hair*, 229 Neb. 284, 426 NW 2d 281 (1988).

LD 205.25 FINANCING AND PARTICIPATING – RECEIPT OF STRIKE BENEFIT

EFFECT OF ACCEPTANCE OF FOOD OR MONEY FROM UNION OR PAYMENT FOR SERVICE AS A PICKET. GENERALLY USED IN APPLICATION OF RELIEF FROM DISQUALIFICATION CLAUSE.

LD 220.05 GRADE OR CLASS OF WORKER – GENERAL

INCLUDES CASES WHICH DISCUSS (1) DEFINITION OF WORDS “GRADE OR CLASS,” PARTICULARLY AS USED IN APPLICATION OF RELIEF FROM DISQUALIFICATION CLAUSE, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 220, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

LD 220.1 GRADE OR CLASS OF WORKER – MEMBERSHIP IN BARGAINING UNIT

DISCUSSION OF STATUS OF EMPLOYEES IN THE SAME COLLECTIVE BARGAINING UNIT OR WITH THE SAME COLLECTIVE BARGAINING AGENCY FOR ALL EMPLOYEES, REGARDLESS OF WHETHER CLAIMANTS ARE MEMBERS OF THE UNION WHICH IS THE COLLECTIVE BARGAINING AGENT, OR WHETHER SUCH MEMBERSHIP IS REQUIRED, IN RELATION TO “GRADE OR CLASS,” PARTICULARLY IN CONSIDERATION OF THE RELIEF FROM DISQUALIFICATION CLAUSE.

LD 220.15 GRADE OR CLASS OF WORKER – MEMBERSHIP OR NON-MEMBERSHIP IN UNION

DISCUSSION OF STATUS OF NONUNION MEMBERS, OR MEMBERSHIP IN DIFFERENT UNION OR TYPE OF UNION, IN RELATION TO “GRADE OR CLASS.” APPLIES ESPECIALLY IN CONSIDERATION OF RELIEF FROM DISQUALIFICATION CLAUSE.

Unemployment of ironworker foreman was due to stoppage of work which existed because of a labor dispute, and the ironworker was member of same grade or class of workers as was his striking crew, and thus, he was disqualified from receiving unemployment benefits, where ironworkers left job after carpenters walked off job as a

result of labor dispute and where the ironworker was terminated because there was not work available for him. *Laursen v. Kiewit Construction Company*, 223 Neb. 471, 390 N.W.2d 534 (1986).

LD 220.2 GRADE OR CLASS OF WORKER – METHOD OF PAYMENT

EFFECT OF METHOD OF PAYMENT UPON DETERMINATION OF GRADE OR CLASS, PARTICULARLY FOR APPLICATION OF RELIEF FROM DISQUALIFICATION CLAUSE.

LD 220.25 GRADE OR CLASS OF WORKER – PERFORMANCE OF WORK

DETERMINATION OF “GRADE OR CLASS” UPON BASIS OF TYPE OF WORK PERFORMED. USED ESPECIALLY IN CONSIDERING RELIEF FROM DISQUALIFICATION OF NON-STRIKING WORKERS.

LD 245 IN ACTIVE PROGRESS

INCLUDES CASES WHICH DETERMINE (1) PERIOD IN WHICH AN EXISTING LABOR DISPUTE IS IN ACTIVE PROGRESS, OR (2) WHAT CONSTITUTES “ACTIVE PROGRESS.”

LD 315 NEW WORK

THIS LINE IS USED IN CASES WHICH CONSIDER WHETHER WORK FOR A STRUCK EMPLOYER WOULD BE “NEW WORK” FOR A CLAIMANT, UNDER THE PROVISION OF THE UNEMPLOYMENT INSURANCE LAW OF THE STATE WHICH CORRESPONDS TO SECTION 3304 (A) (5) OF THE INTERNAL REVENUE CODE, FOR THE PURPOSE OF DETERMINING WHETHER THE APPLICATION OF THE LABOR DISPUTE DISQUALIFICATION PROVISION TO THAT INDIVIDUAL WOULD CONFLICT WITH THE REQUIREMENTS OF THE LABOR STANDARD.

(NOTE: FOR POINTS RELATING TO “NEW WORK” DECIDED UNDER THE ABLE AND AVAILABLE, SUITABLE WORK, AND VOLUNTARY LEAVE PROVISIONS, SEE CODE LINES AA-315, SW-315 AND VL-315.)

LD 350.05 PERIOD OF DISQUALIFICATION – GENERAL

INCLUDES CASES WHICH DISCUSS (1) THE IMPOSITION OF DISQUALIFICATION DURING A PERIOD OF INELIGIBILITY, (2) AN ADDITIONAL DISQUALIFICATION FOR SECOND LEAVING IN SAME LABOR DISPUTE, AND (3) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 150.

LD 350.4 PERIOD OF DISQUALIFICATION – RELATION TO WORK LOST

DISQUALIFICATION FOR NUMBER OF DAYS OF WORK LOST BECAUSE OF LABOR DISPUTE OR STOPPAGE OF WORK; DURATION OF WAITING PERIOD DETERMINED BY THE FACT THAT WORK WAS STOPPED BY A STRIKE.

LD 350.55 PERIOD OF DISQUALIFICATION – TERMINATION OF

EFFECT OF SUCH FACTORS EVIDENCING END OF DISQUALIFICATION, SUCH AS RETURN TO WORK; ABANDONMENT OF BUSINESS BY EMPLOYER; CONCURRENCE OF STOPPAGE AND LABOR DISPUTE AS AFFECTING RETURN TO NORMAL OPERATION.

LD 420.1 STOPPAGE OF WORK – DETERMINATION OF EXISTENCE OF

INCLUDES CASES WHICH (1) DEFINE “STOPPAGE OF WORK,” (2) DETERMINE DEGREE OF CURTAILMENT OF OPERATIONS NECESSARY TO CONSTITUTE STOPPAGE OF WORK, AND (3) DISCUSS PURPOSE OF DISQUALIFICATION ONLY DURING STOPPAGE OF WORK.

Where more than 90 per cent. of employees of factory quit work at appointed hour for purpose of coercing prompt payment of past-due wages, and factory was unable to continue operation, there was a stoppage of work, disqualifying employees from receiving benefits under the law. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 2 N.W.2d 332 (1942).

Employer, a federal credit union, failed to establish that there had been substantial curtailment of work produced by labor dispute, so as to prove existence of work stoppage to warrant disqualification of employee from receiving unemployment benefits. In this case, 53 of 115 employees went on strike, three of seven offices shut down, certain operations were temporarily curtailed, and there was some reduction in work force in teller and loan areas. *Bell Federal Credit Union v. Christianson, et al.*, 244 Neb. 267, 505 N.W.2d 710 (1993).

Employees who refused to cross picket line were not disqualified from receiving unemployment compensation benefits on ground that they had failed to accept offer of suitable work absent evidence that employer made specific offer of work to employees, or that their positions remained open. *George C. Hormel and Company v. Hair*, 229 Neb. 284, 426 NW 2d 281 (1988).

The phrase “stoppage of work”, as used in section of Unemployment Compensation Law disqualifying employees from receiving benefits under law when unemployment is caused by stoppage of work due to a labor dispute, means a substantial curtailment of work in an employing establishment, not the cessation of work by claimant or claimants. *Magner v. Kinney*, 141 Neb. 122, 2 N.W.2d 689 (1942).

A labor dispute may produce a “stoppage of work” in an employing establishment, within the meaning of the Unemployment Compensation Law, disqualifying an employee from receiving benefits under the law when unemployment was caused by stoppage of work due to a labor dispute, by the cessation of work by all or part of the employees, by the cessation of work by a part of the employees which disables employer from utilizing services of other employees, and by diminishing patronage of the employing establishment thereby producing unemployment of workers. *Magner v. Kinney*, 141 Neb. 122, 2 N.W.2d 689 (1942).

Where a strike produced a decrease of the total business transacted by the employer in excess of 30 percent, a “stoppage of work” was found to have occurred. *Magner v. Kinney*, 141 Neb. 122, 2 N.W.2d 689 (1942).

LD 420.15 STOPPAGE OF WORK – EXISTING BECAUSE OF LABOR DISPUTE

DISCUSSION OF ALL THE PROBABLY CAUSES OF STOPPAGE OF WORK, INCLUDING A LABOR DISPUTE. INCLUDES CASES WHICH DISCUSS DURATION OF STOPPAGE OF WORK DETERMINED, POINT AT WHICH STOPPAGE OF WORK CEASES TO BE DUE TO LABOR DISPUTE, AND/OR PROBABLE CAUSES OF STOPPAGE OF WORK, INCLUDING LABOR DISPUTE.

LD 420.2 STOPPAGE OF WORK – TERMINATION OF

DETERMINATION OF FACTORS ENDING STOPPAGE OF WORK.

LD 445.05 TERMINATION OF LABOR DISPUTE – GENERAL

INCLUDES CASES WHICH DISCUSS (1) FACTORS EVIDENCING TERMINATION OF LABOR DISPUTE NOT COVERED BY OTHER SUBLINES UNDER LINE 445, OR (2) POINTS COVERED BY THREE OR MORE SUBLINES.

LD 445.1 TERMINATION OF LABOR DISPUTE – AGREEMENT OR ARBITRATION

DETERMINATIONS OF (1) WHETHER STRIKE IS ENDED BY AGREEMENT, TEMPORARY OR OTHERWISE, (2) ARBITRATION OR AGREEMENT TO ARBITRATE, (3) RETURN TO WORK IN ACCORDANCE WITH AGREEMENT, (4) ACCEPTANCE OF EMPLOYERS’ TERMS BY STRIKERS, OR (5) ABANDONMENT OF PICKETING.

LD 445.15 TERMINATION OF LABOR DISPUTE – CLOSING OF PLANT OR DEPARTMENT

EFFECT OF CLOSING OF PLANT OR DEPARTMENT BY THE EMPLOYER UPON EXISTENCE OF LABOR DISPUTE AND ITS TERMINATION.

LD 445.2 TERMINATION OF LABOR DISPUTE – DISCHARGE OR REPLACEMENT OF WORKERS

EFFECT OF DISCHARGE OR REPLACEMENT OF WORKERS ON EXISTENCE OF LABOR DISPUTE AND ITS TERMINATION.

LD 445.25 TERMINATION OF LABOR DISPUTE – NATIONAL LABOR RELATIONS BOARD PROCESSING ORDER

EFFECT OF (1) NLRB STIPULATIONS OR ORDERS ON TERMINATION OF LABOR DISPUTE, (2) CERTIFICATION BY NLRB OF BARGAINING AGENCY, (3) ELECTION UNDER NLRB AUSPICES, OR (4) REFUSAL TO ACCEDE TO NLRB ORDERS ON LABOR DISPUTE’S TERMINATION.

LD 465.05 UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK – GENERAL

INCLUDES CASES WHICH INVOLVE (1) STATUS OF CLAIMANTS LEAVING WORK FOR REASONS OTHER THAN LABOR DISPUTE, (2) UNEMPLOYMENT DUE TO TEMPORARY TERMINATION OF A UNION CONTRACT, (3) UNEMPLOYMENT SUBSEQUENT TO TERMINATION OF DISPUTE, (4) DISCUSSION OF PHRASE “DIRECTLY DUE TO LABOR DISPUTE,” (5) ANY PRESUMPTION AS TO CAUSE OF THE WORKER’S UNEMPLOYMENT DURING A STOPPAGE OF WORK AT THE PLANT, (6) POINTS RELATING TO WHETHER CLAIMANT’S UNEMPLOYMENT IS DUE TO LABOR DISPUTE OR STOPPAGE OF WORK NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 465, AND (7) POINTS COVERED BY THREE OR MORE SUBLINES.

LD 465.1 UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK – DISCHARGE OR RESIGNATION

DISCUSSION OF EFFECT OF (1) DISCHARGE OF WORKER DURING OR SUBSEQUENT TO LABOR DISPUTE (2) RESIGNATION, (3) REMOVAL OF STRIKER’S NAME FROM THOSE ENTITLED TO INSURANCE UNDER COMPANY PLAN, (4) ANY BREAK IN EMPLOYER-EMPLOYEE RELATIONSHIP, (5) REPLACEMENT OF STRIKERS, (6) LETTER OF DISCHARGE WHEN NOT ACTED UPON BY WORKER AND EMPLOYER, OR WHEN ACCEPTED AS EVIDENCE OF DISCHARGE, OR (7) DISCHARGE AND SUBSEQUENT PICKETING.

LD 465.15 UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK – LACK OF WORK

CONSIDERATION OF (1) VARIOUS CASES OF LACK OF WORK, WHETHER DUE TO LABOR DISPUTE, CUSTOMARY SLACK SEASON, OR LACK OF ORDERS, OR (2) PROBLEM OF WORKERS IN NON-STRIKING DEPARTMENTS BEING THROWN OUT OF WORK BECAUSE OF WALK-OUT IN OTHER DEPARTMENTS.

Where a single plant was shut down in a multiple-site company due to a labor dispute, claimants argued that the term “establishment,” for the purpose of determining whether a stoppage of work existed, should take into account the interdependence between facilities and be applied not to individual plants but to the company as a whole. It was held, however, that “establishment” and “premises” are commonly understood as units of place, and the fact that

work continued at other plants did not preclude determining the existence of a work stoppage at the establishment. *IBP, Inc v. Aanenson, et al*, 234 Neb. 603, 452 N.W.2d 59 (1990).

Where employer decided not to reopen an extension facility after a lockout caused by a labor dispute, despite the fact that there were adequate applicants to fill the positions at the facility, it was determined to be a management decision and not a result of the ongoing strike. It was held that when the employer decided not to rehire workers at the extension plant, work stoppage ceased to be due to a labor dispute and striking claimants were no longer disqualified from unemployment benefits. *IBP, Inc v. Aanenson, et al*, 234 Neb. 603, 452 N.W.2d 59 (1990).

LD 465.2 UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK – PREVENTED FROM WORKING

DISCUSSION OF (1) PRESSURES EXERTED ON NONPARTICIPATING CLAIMANTS, SUCH AS STRONG PICKET LINES, FEAR OF INJURY, ETC., (2) FAILURE TO OBSERVE UNION RULES, OR (3) PREVENTION OF ENTRANCE BY EMPLOYER, WHO MAY LOCK GATES IN ANTICIPATION OF, OR AT OUTBREAK OF, STRIKE.

LD 465.25 UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK – TEMPORARY, EXTRA, OR SEASONAL WORK

PROBLEMS AS TO INTERMITTENT WORKERS, TEMPORARY, EXTRA, AND SEASONAL WORKERS, WHOSE UNEMPLOYMENT MAY OR MAY NOT BE DUE TO EXISTENCE OF LABOR DISPUTE, PARTICULARLY WHEN THEY ARE SCHEDULED TO WORK OR WOULD NORMALLY WORK AT THE TIME THE LABOR DISPUTE BEGINS OR WHILE IT REMAINS IN EXISTENCE.

LD 465.3 UNEMPLOYMENT DUE TO LABOR DISPUTE OR STOPPAGE OF WORK – VOLUNTARY SUSPENSION AND LEAVING WORK

APPLIES PARTICULARLY TO CALIFORNIA CASES BECAUSE OF PECULIAR WORDING OF STATUTE. DISCUSSIONS AS TO WHETHER CLAIMANT’S UNEMPLOYMENT DURING LABOR DISPUTE IS VOLUNTARY OR INVOLUNTARY.

LD 470.05 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK – GENERAL

INCLUDES CASES WHICH DISCUSS (1) EFFECT OF LOSING WORK OR FAILURE TO BE REINSTATED PRIOR TO LABOR DISPUTE, (2) POINTS CONCERNING UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK NOT COVERED BY OTHER SUBLINES UNDER LINE 445, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

No work stoppage occurred, within meaning of statute precluding employees from receiving unemployment compensation benefits where only one of meat packing company’s production sections was shut down for one day, and company was able to resume substantially normal operations within one week. *George C. Hormel and Company v. Hair*, 229 Neb. 284, 426 NW 2d 281 (1988).

LD 470.1 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK – ABSENCE

INCLUDES CASES WHICH DISCUSS STATUS OF CLAIMANT ON LEAVE OF ABSENCE, ON SICK LEAVE, OR ABSENT FROM THE COMMUNITY FOR A PERIOD PRIOR TO A LABOR DISPUTE.

LD 470.15 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK – DISCHARGE OR RESIGNATION

INVOLVES (1) STATUS OF CLAIMANT DISCHARGED ORALLY OR BY LETTER BEFORE LABOR DISPUTE OR FOR WHOSE DISCHARGE THE OTHER WORKERS GO OUT ON STRIKE, (2) DISCUSSION OF WHAT CONSTITUTES A DISCHARGE STATUS OF CLAIMANT FOR WHOSE DISCHARGE THE OTHER WORKERS GO OUT ON STRIKE, (3) EFFECT OF VOLUNTARY LEAVING OR RESIGNATION PRIOR TO LABOR DISPUTE, (4) INTENTION AS A FACTOR IN DETERMINING WHETHER EMPLOYER-EMPLOYEE RELATIONSHIP WAS SEVERED, OR (5) RESIGNATION BECAUSE OF IMPENDING STRIKE.

LD 470.2 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK – LACK OF WORK

CONSIDERATION FO (1) VARIOUS CAUSES OF LACK OF WORK, WHETHER DUE TO LABOR DISPUTE, CUSTOMARY CLACK SEASON, OR LACK OF ORDERS, OR (2) PROBLEM OF WORKERS IN NON-STRIKING DEPARTMENTS BEING THROWN OUT OF WORK BECAUSE OF WALK-OUT IN OTHER DEPARTMENTS.

LD 470.25 UNEMPLOYMENT PRIOR TO LABOR DISPUTE OR STOPPAGE OF WORK – TEMPORARY, EXTRA, OR SEASONAL WORK

(NOTE: SAME TYPE OF CASES AS UNDER “TEMPORARY, EXTRA, OR SEASONAL WORK” LINE 465, WITH SPECIFIC APPLICATION TO PERIOD PRIOR TO LABOR DISPUTE.)

VII. OTHER COMPENSATION

OC 5 GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF THE MEANING OF “OTHER COMPENSATION” OR (2) OTHER PAYMENTS POINTS WHICH DO NOT FALL WITHIN ANY SPECIFIC LINE IN THE OTHER COMPENSATION SECTION.

OC 50.05 OTHER PAYMENTS – GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF OTHER PAYMENTS (WHEN CLAIMANT RECEIVES PAYMENTS WHICH DO NOT CONSTITUTE WAGES), (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 50, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

Receipt of benefits pursuant to the G.I. Bill is not disqualifying. *In re Doering*, 89 Neb. App. Trib. 1363 (June 20, 1989).

OC 50.1 OTHER PAYMENTS – SOCIAL SECURITY DISABILITY

INCLUDES CASES WHERE A CLAIMANT IS ALSO A RECIPIENT OF SOCIAL SECURITY DISABILITY PAYMENTS OR THE BENEFICIARY OF A PRIMARY INSURANCE BENEFIT PURSUANT TO TITLE II OF THE SECURITY ACT.

Where claimant was awarded Social Security disability benefits, it was held that his weekly unemployment benefits should be reduced dollar for dollar by 50% of the gross weekly value of the Social Security benefit award. Although the claimant testified that for some portion of his unemployment he was self-employed and therefore paying both the employee and employer portions of the Social Security tax, he presented no evidence to this effect and it was therefore held that he was not entitled to any smaller reduction in his unemployment award. *In re Schnebel*, 03 Neb. App. Trib. 4221 (November 21, 2003).

Where the claimant was simultaneously entitled to receive Social Security disability and unemployment insurance benefits, it was held that her weekly unemployment award should be reduced by 50% of her weekly Social Security disability payment in accordance with Neb. Rev. Stat. §48-628(5)(c). *In re Jungeman*, 03 Neb. App. Trib. 4221 (November 21, 2003).

OC 50.15 OTHER PAYMENTS – PRIVATE DISABILITY INSURANCE

INCLUDES CASES WHERE A CLAIMANT IS THE RECIPIENT OF BENEFITS FROM NON-GOVERNMENTAL DISABILITY INSURANCE.

OC 50.2 OTHER PAYMENTS – SOCIAL SECURITY RETIREMENT

INCLUDES CASES WHERE THE CLAIMANT IS THE RECIPIENT OF SOCIAL SECURITY RETIREMENT BENEFITS.

Social Security retirement benefits received by a claimant must be deducted from and reduce the amount of unemployment insurance benefits a claimant is otherwise eligible to receive. *In re Foster*, 83 Neb. App. Trib. 1239 (April 27, 1989).

OC 50.25 OTHER PAYMENTS – PRIVATE PENSION/ANNUITY

INCLUDES CASES WHERE THE CLAIMANT IS THE RECIPIENT OF NON-GOVERNMENTAL PENSION, RETIREMENT, OR ANNUITY PAYMENTS.

According to Neb. Rev. Stat. §48-628 (1), an individual shall be disqualified from benefits for any week with respect to which he or she has received remuneration in the form of retirement or retired pay, pension, annuity, or other similar periodic payment under a plan maintained or contributed to by an employer. In a case where claimant withdrew a plan funded by company profits and denominated a profit-sharing plan but which benefits were paid only upon retirement or termination, it was held that the claimant was disqualified from unemployment insurance benefits. *Yueill v. Bixby*, District Court of Douglas County, Nebraska, Doc. 879 No. 705 (December 12, 1989).

The claimant was disqualified from receiving unemployment benefits because he had received remuneration in the form of a profit-sharing plan cashed upon his separation, even though the claimant had specifically inquired with the Department of Labor before he withdrew the fund and was erroneously told by a Claims Deputy that it would not make him ineligible for benefits because it was classified as profit sharing and not a retirement plan. Although Nebraska Unemployment Security Law makes it clear that statutory disqualification is applied to a lump sum distribution whether or not the fund is profit sharing or retirement, the claimant argued that the Commissioner of Labor should be estopped from asserting a position contrary to the original assurance given by the Department regarding the claimant's eligibility for benefits. It was held that the doctrine of equitable estoppel does not apply in this case because both the claimant and the Department had access to the proper statutes and the inaccurate advice therefore did not exempt the claimant from a later disqualification. *Yueill v. Bixby*, District Court of Douglas County, Nebraska, Doc. 879 No. 705 (December 12, 1989).

After separation, the claimant received lump sum payouts from the employer's 401K program, a portion of which had been contributed by the claimant, the remainder of which had been contributed by the employer. Several weeks later, the claimant rolled over those amounts into another IRS-approved retirement account. The Tribunal held that lump sum distributions from an employer's retirement plan are disqualifying to the extent of the employer's contribution thereto, until such time as they are actually rolled over into an approved plan. *In re Cooper*, 90 Neb. App. Trib. 2503 (December 5, 1990).

OC 50.3 OTHER PAYMENTS – WORKERS' COMPENSATION

INCLUDES CASES WHERE THE CLAIMANT IS THE RECIPIENT OF WORKERS' COMPENSATION BENEFITS.

Claimant's receipt of workers' compensation benefits for temporary total disability did not disqualify her from receiving unemployment benefits; by statute, claimant would be disqualified from receiving unemployment benefits only if she received temporary partial disability payments under workers' compensation law. *Memorial Hospital of Dodge County v. Porter*, 251 Neb. 327, 557 N.W.2d 21 (1996).

OC 50.35 OTHER PAYMENTS – BENEFITS WHERE CLAIMANT IS "OWNER" OF CORPORATION

INCLUDES CASES WHERE THE CLAIMANT HAS AN INTEREST IN A BUSINESS OR CORPORATION AND RECEIVES BENEFITS AS A RESULT OF THAT INTEREST.

Where claimant was the President and sole shareholder of a Subchapter "S" Corporation, the District Court held that although the claimant's earnings (close to \$12,000 for the period in question) were not characterized as salary or dividends for tax purposes, they did constitute wages under Nebraska Labor Statutes. The District Court judge focused on the net benefit received by the claimant from her work and earnings, and finding that a good deal of the claimant's living expenses were paid by her company, ruled that the claimant was not entitled to receive unemployment benefits. *Lecuona v. McCord*, District Court of Douglas County, Nebraska, Doc. 1027 No. 088, (November 25, 2003).

OC 50.4 OTHER PAYMENTS – SEVERANCE

INCLUDES CASES WHERE THE CLAIMANT RECEIVES SEVERANCE PAY UPON SEPARATION

Where claimant entered into an agreement with her employer to work until the date of the employer's plant closure in exchange for an additional lump sum payment, calculated based on years of service and weekly pay and to be made one week prior to the claimant's termination, it was held that the additional payment was wages received for the week prior to the claimant's leaving employment. Although the claims deputy characterized the sum as severance pay according to information from the employer's accountant, the Appeal Tribunal found this determination to be incorrect based on testimony that the payment was clearly in exchange for working until the plant closure, and the claimant was found to be entitled to receive benefits after leaving her employment if otherwise eligible. *In re Neal*, 99 Neb. App. Trib. 1035 (June 22, 1999).

Where claimant received a lump sum of nearly \$30,000 in severance pay, which was given in lieu of notice and was not for hours worked, the Appeal Tribunal held that the payment was to be prorated in the amount which was reasonably attributable to each week based on the claimant's rate of pay while employed. According to this calculation, the claimant was found to be disqualified from receiving benefits for a period of 46 weeks. *In re Arenas*, 01 Neb. App. Trib. 2326 (September 24, 2001).

A lump sum payment received after separation in exchange for waiver of all claims against the employer was held not to constitute severance pay and was not disqualifying. *In re Snelson*, 96 Neb. App. Trib. 1610 (August 6, 2001).

The requirement of Nebraska Employment Security Law that a lump sum severance allowance be prorated is intended to prevent a claimant from receiving double payments for the same period of time in the form of unemployment benefits. *Sorensen v. Meyer*, 220 Neb. 475, 370 N.W.2d 173 (1985).

An enforceable contract regarding payment of a wage bonus may be created without a written document. The term "contract of employment" within the meaning of the Nebraska Employment Security Law does not mean the agreement must be reduced to writing although it does require the agreement be understood and agreed upon by the parties.

Under the terms of the agreement, the claimant received a \$.25 per hour *bonus* at the end of the construction season if he worked throughout the entire season. The lump sum bonus was legally enforceable and thus attributable to the week in which the season ended and the bonus was determinable rather than to the later week in which the bonus was actually received. *In re Wiley*, 91 Neb. App. Trib. 0100 (January 28, 1991).

OC 50.45 OTHER PAYMENTS – NON-WAGE BONUS (GIFT OR OTHER)

INCLUDES CASES WHERE A CLAIMANT RECEIVES A GIFT BONUS OR OTHER NON-WAGE BONUS UPON SEPARATION

The claimant received a bonus in the form of a computer modem having a cash equivalent value of \$635.00. The cash equivalent value of the item was considered a wages (rather than disqualifying separation pay) and was applied to the week in which the bonus was determinable, in this case the week in which it was received, six months prior to the claimant's separation. The bonus was not disqualifying. *In re Britson*, 91 Neb. App. Trib. 0076 (January 28, 1991).

OC 50.5 OTHER PAYMENTS – SETTLEMENT OF A CLAIM

INCLUDES CASES WHERE A CLAIMANT RECEIVES A LUMP SUM FROM THE EMPLOYER IN SETTLEMENT OF A DISPUTE, CLAIM, OR LAWSUIT.

A lump sum payment received after separation in exchange for waiver of all claims against the employer was held not to constitute severance pay and was not disqualifying. *In re Snelson*, 96 Neb. App. Trib. 1610 (August 6, 1996).

Payment received in settlement of a dispute and in exchange for the claimant's waiver of claims against the employer is not a dismissal or separation allowance nor a wage bonus, and is thus not disqualifying compensation within the meaning of the Nebraska Employment Security Law. In order to be considered wages, the payment must

have been received as remuneration for personal services. Despite the parties' characterization of the lump sum payment at "gross wages payable for the contract year," this sum was not earned by the claimant but represented an amount which would have been due him had he continued to work through the school contract year.

Absent an agreement as to the nature of a lump sum payment, whether it is properly considered a dismissal or separation allowance involves consideration of factors including whether the payment is based upon prior length of service, whether the employer has a practice of remitting severance pay, whether the separation was instigated by the claimant, and whether the payment is a gratuity paid in appreciation of prior service. When the primary purpose of the payment was in settlement of claims or to resolve an existing dispute, the payment did not fall within the meaning of any of the statutory terms describing disqualifying compensation. *In re Quillen*, 2005 Neb. App. Trib. 0088 (February 8, 2005).

The claimant was discharged, appealed her discharge and threatened to bring a civil rights suit against the employer. The claimant's separation was found to be non-disqualifying and she received unemployment insurance benefits. Subsequently, the claimant was reinstated pursuant to a settlement agreement. The claimant also received a lump sum payment which was characterized by the parties in their agreement as "back pay" and represented the amount of gross wages the claimant would have received had she not been discharged but remained continuously employed. The claimant also agreed to waive all claims against the employer in the settlement agreement. The Department found the lump sum received by the claimant represented wages for the weeks in which she had previously received benefits and ordered the claimant to repay those benefits.

The Tribunal found the lump sum payment constituted back pay and disqualifying wages properly attributable to the weeks in which the claimant received benefits after her discharge and prior to her reinstatement. The fact that the back pay was received as part of a settlement of a legal dispute does not render the payment non-disqualifying. *In re Bellamy*, 2003 Neb. App. Trib. 3260 (September 15, 2003). Appeal dismissed for lack of jurisdiction in *Bellamy v. Commissioner*, CI 03-4017 Lancaster District Court (February 24, 2004).

VIII. TRIBUNAL PROCEDURE

TP 5 GENERAL

INCLUDES CASES INVOLVING (1) A GENERAL DISCUSSION OF ADMINISTRATIVE TRIBUNAL PROCEDURAL QUESTIONS, (2) PROCEDURAL POINTS NOT COVERED BY ANY SPECIFIC LINE IN THE PROCEDURAL DIVISION OF THE CODE.

The Nebraska Supreme Court recognizes that the State Legislature possesses the power to determine procedures to be followed in appealing actions arising under unemployment laws. *Smith v. Sorenson*, 222 Neb. 599, 386 N.W.2d 5 (1986).

TP 10 ABATEMENT

APPLIES TO CASES WHICH CONSIDER (1) SUSPENSION OF A PROCEEDING FOR WANT OF PROPER PARTIES CAPABLE OF PROCEEDING, OR (2) TERMINATION OF A PARTICULAR PROCEEDING SO THAT IT CANNOT BE REVIVED, WITHOUT DETERMINING OR DEFEATING CLAIMANTS RIGHTS OR BARRING INSTITUTE OF A NEW PROCEEDING.

TP 25 APPEARANCE

APPLIES TO CASES IN WHICH THE HOLDING DEPENDS ON WHETHER THE CLAIMANT OR HIS OR HER REPRESENTATIVE APPEARED BEFORE THE TRIBUNAL OR WHETHER THE CLAIMANT WAS GIVEN A FULL AND FAIR OPPORTUNITY TO BE HEARD.

TP 100 CONTINUANCE

APPLIES TO CASES IN WHICH A POSTPONEMENT OF THE TRIAL IS REQUESTED OR GRANTED, USUALLY WHERE SUCH RELIEF IS ASKED ON SOME SPECIFIED GROUND OR CAUSE IS SHOWN WHY THE APPLICANT IS OR IS NOT ENTITLED TO THE POSTPONEMENT.

TP 108 CROSS-EXAMINATION

APPLIES TO CASES WHICH INVOLVE POINTS RELATING TO CROSS-EXAMINATION.

The United States Court of Appeals found that a former Nebraska state employee was denied due process because the Commissioner of Labor relied upon ex parte communications between Commissioner and employee's supervisor directly related to the stated reasons for employee's dismissal, which denied employee his right to be confronted with all adverse evidence and to have the right to cross-examine available witnesses. *Nevels v. Hanlon*, 656 F.2d 372 (1981).

TP 145 DISMISSAL, WITHDRAWAL, OR ABANDONMENT

APPLIES TO CASES WHICH DISCUSS THE FINAL DISPOSITION OF A CLAIM FOR BENEFITS BY DISMISSAL, WITHDRAWAL, OR ABANDONMENT WITHOUT A TRIAL UPON ANY ISSUES INVOLVED IN IT.

TP 190 EVIDENCE

APPLIES TO DISCUSSIONS OF (1) BURDEN OF PROOF AS A PROCEDURAL MATTER, (2) LEGAL ADEQUACY OR PARTICULAR EVIDENCE TO OVERCOME PRESUMPTIONS, (3) WEIGHT AND SUFFICIENCY OF PARTICULAR EVIDENCE, AND (4) OTHER POINTS OF EVIDENCE.

Where claimant had the burden of proving she left her employment for good cause, claimant failed to sustain her claim, by a preponderance of the evidence, that treatment by her superiors which made her feel tense, uncomfortable and frustrated constituted good cause for terminating her employment. *Neaman v. Northwestern Bell Telephone Company*, 202 Neb. 255, 275 N.W.2d 57 (1979).

Under Nebraska Employment Security Law, where a claimant appeals from a disqualification, the burden of proof is on the claimant to show that he or she involuntarily left his or her employment or did so voluntarily with good cause. *Taylor v. Collateral Control Corporation*, 218 Neb. 232, 355 N.W.2d 788 (1984).

In an employment security law case, it is the employer's burden to show by a preponderance of the evidence that an employee was discharged for misconduct. *Meints v. Store Kraft Manufacturing Company*, 1994 WL 72130 (Neb. App.). (Note: This opinion has not been approved by the Nebraska Supreme Court for publication in the permanent law reports.)

When only a partial disqualification from benefits is ordered in an employment security law case, only a showing of ordinary misconduct is required. *Great Plains Container Company v. Hiatt*, 225 Neb. 558, 407 N.W.2d 166 (1987).

The burden of proof is on the claimant to show by a preponderance of the evidence that he or she had good cause for refusing an offer of suitable employment. *Burger v. Yueill*, District Court of Lancaster County, Nebraska, Doc. 450 Page 70 (August 30, 1990).

TP 195 FAIR HEARING AND DUE PROCESS

APPLIES TO CASES WHICH CONSIDER WHETHER ANY PARTY WAS DENIED A FAIR HEARING OR DUE PROCESS OF LAW.

The United States Court of Appeals found that a former Nebraska state employee was denied due process because the Commissioner of Labor relied upon ex parte communications between Commissioner and employee's supervisor directly related to the stated reasons for employee's dismissal, which denied employee his right to be confronted with all adverse evidence and to have the right to cross-examine available witnesses. *Nevels v. Hanlon*, 656 F.2d 372 (1981).

In a case where notice mailed to employer clearly indicated that employee had filed only for partial unemployment benefits and the employer failed to provide disqualifying information, but where employee later changed her claim from partial to total benefits and no notice was given to the employer, the Nebraska Supreme Court determined that the Appeal Tribunal erred in refusing to address the notice issue. The Court found that due process of law requires notice and an opportunity to be heard when the rights, duties, or privileges of interested parties are involved by an exercise of quasi-judicial power pursuant to the terms of a statute. The Appeal Tribunal's improper refusal to consider whether employer had received notice of employee's claim for unemployment benefits did not deprive the District Court of jurisdiction to consider the issue. *Fauss v. Messerly*, 200 Neb. 326, 263 N.W.2d 668 (1978).

TP 275 JURISDICTION AND POWERS OF TRIBUNAL

APPLIES TO CASES WHICH DISCUSS THE RIGHT OF THE ADMINISTRATIVE TRIBUNAL TO PASS UPON A GIVEN CASE OR PARTICULAR ASPECTS OF THE CASE.

Where claimant had the burden of proving she left her employment for good cause, claimant failed to sustain her claim, by a preponderance of the evidence, that treatment by her superiors which made her feel tense, uncomfortable and frustrated constituted good cause for terminating her employment. *Neaman v. Northwestern Bell Telephone Company*, 202 Neb. 255, 275 N.W.2d 57 (1979).

The Department of Labor Appeal Tribunal exercises quasi-judicial power as distinguished from legislative power. *Strauss v. Square D Company*, 201 Neb. 571, 270 N.W.2d 917 (1978).

When a jurisdictional question does not involve a factual dispute, its determination is a matter of law, which requires the appellate court to reach conclusions independent from decisions made by lower courts. *Concordia Teachers College v. Department of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).

“Personal jurisdiction” is the power of the Appeal Tribunal to subject and bind a particular entity to Tribunal decisions. “Subject matter jurisdiction” is the power of the Appeal Tribunal to hear and determine a case of a general class or category to which proceedings in question belong, and to deal with the general subject matter involved. *Concordia Teachers College v. Department of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).

TP 300 SUBPOENA POWERS

APPLIES TO CASES WHICH DISCUSS THE RIGHT OF THE ADMINISTRATIVE TRIBUNAL TO ISSUE SUBPOENAS.

TP 380.05 REHEARING OR REVIEW – GENERAL

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF A REHEARING OR REVIEW, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 380, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

In a case where the claimant filed an appeal fifteen months after the statutory limitation of twenty days because he was awaiting the results of an FBI investigation into incidents leading to his termination from employment, and where the FBI determined claimant had not violated any federal laws, the Nebraska Supreme Court held that the Appeal Tribunal acted correctly when it dismissed the late appeal. According to the Court, Neb. Rev. Stat. §48-631 does not support the proposition that when good cause is shown, the Appeal Tribunal must have a hearing on a denial of unemployment compensation within two years, but instead merely permits the deputy to reconsider, within a period of no longer than two years, a determination when he or she finds an error in computation or identity, or that wages pertinent but not considered have been newly discovered, or that benefits have been allowed or denied or the amounts fixed on the basis of misrepresentations of fact. Further, the Court concluded the “newly discovered” evidence – that the claimant had violated no laws within the jurisdiction of the FBI – would not have produced a different result if presented in the original hearing, which centered around allegations that the claimant willingly gave an unfair advantage to certain city contractors. The claimant, duly notified of the statutory twenty-day deadline, was not able to demonstrate that his late appeal was the result of “unavoidable misfortune,” and therefore his appeal was dismissed and the determination of total disqualification for gross misconduct was upheld. *Nicholson v. City of Bellevue*, 215 Neb. 540, 339 N.W.2d 758 (1983).

TP 380.1 REHEARING OR REVIEW – ADDITIONAL PROOF

DISCUSSES THE NECESSITY OR EFFECT OF PRESENTING ADDITIONAL PROOF AT REHEARING OR REVIEW, OR WHETHER ADDITIONAL EVIDENCE IS ADMISSIBLE OR CONSTITUTES SUCH ADDITIONAL PROOF.

TP 380.15 REHEARING OR REVIEW – CREDIBILITY OF WITNESS

DISCUSSION OF THE EFFECT OF THE Demeanor, BEHAVIOR, ATTITUDE, OR RENDITION OF TESTIMONY OF WITNESSES AS AFFECTING HIS OR HER CREDIBILITY.

TP 380.2 REHEARING OR REVIEW – QUESTION OF FACT OR LAW

DISCUSSION OF WHETHER FACTS FOUND BY THE PRIOR TRIBUNAL ARE SUPPORTED BY THE EVIDENCE WHICH WAS BEFORE SUCH TRIBUNAL, AND DETERMINING AS TO WHETHER A PARTICULAR QUESTION IS ONE OF FACT OR OF LAW.

TP 380.25 REHEARING OR REVIEW – SCOPE AND EXTENT

DISCUSSION OF THE POWERS OF A TRIBUNAL TO GO INTO CERTAIN ASPECTS OF A CASE OR TO APPLY A PARTICULAR REMEDY.

TP 380.3 REHEARING OR REVIEW – TRIAL *DE NOVO*

TP 400 REPRESENTATION

APPLIES TO CASES WHICH CONSIDER (1) THE EFFECT OF A PARTY TO THE ACTION HAVING A REPRESENTATIVE FOR ASSERTION OF HIS OR HER RIGHTS BEFORE A COURT OR ADMINISTRATIVE TRIBUNAL, (2) THE RIGHT OF A PARTY TO A REPRESENTATIVE OF HIS OR HER OWN CHOOSING, OR (3) WHETHER A CERTAIN PARTICIPANT IS ACTUALLY A REPRESENTATIVE OR ONE OF THE PARTIES TO THE ACTION.

TP 405.05 RIGHT OF REVIEW – GENERAL

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF RIGHT OF REVIEW, (2) POINTS CONCERNING RIGHT OF REVIEW NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 405, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

TP 405.1 RIGHT OF REVIEW – AGREEMENT OR STIPULATION

DISCUSSES THE EFFECT OF AN AGREEMENT IN WRITING BETWEEN THE PARTIES THAT THE FACTS IN DISPUTE ARE AS SET FORTH, IN ORDER TO DISPENSE WITH THE NORMAL FORM OF TRIAL TO ASCERTAIN WHAT IS ALREADY KNOWN.

TP 405.15 RIGHT OF REVIEW – FINALITY OF DETERMINATION

DISCUSSION AS TO WHETHER A PARTICULAR DETERMINATION IS SUBJECT TO REVIEW, OR IS A FINAL DISPOSITION OF THE CASE OR OF THE POINT INVOLVED.

TP 405.2 RIGHT OF REVIEW – PERSON ENTITLED

WHERE DETERMINATION IS MADE AS TO WHETHER A PARTICULAR PARTY IS AN INTERESTED PARTY FOR THE PURPOSE OF APPEALING A DECISION.

Under Nebraska Employment Security Law, the Commissioner of Labor is an “interested party” in any action arising under the law, and may appeal the same as any other party to the litigation, regardless of whether any other party appeals. Benefits not chargeable to an employer’s account are necessarily charged to the pooled account, and as administrator of this fund, it is the Commissioner’s obligation to protect the pooled account against erroneous decisions. *Woodmen of the World Life Insurance Society v. Olsen*, 141 Neb. 12, 2 N.W.2d 353 (1942).

TP 430.05 TAKING AND PERFECTING PROCEEDINGS FOR REVIEW – GENERAL

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF TAKING AND PERFECTING PROCEEDINGS FOR REVIEW, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 430, AND (3) POINTS COVERED BY ALL OF THE SUBLINES.

TP 430.1 TAKING AND PERFECTING PROCEEDINGS FOR REVIEW – METHOD

DISCUSSES THE ADEQUACY OF METHOD OF APPEAL OR WHETHER CERTAIN ACTIONS OF AN INTERESTED PARTY CONSTITUTE AN APPEAL.

TP 430.15 TAKING AND PERFECTING PROCEEDINGS FOR REVIEW – NOTICE

DISCUSSION AS TO ADEQUACY OF NOTICE OF A DECISION TO AN INTERESTED PARTY, OR AS TO ADEQUACY OF NOTICE BY INTERESTED PARTY OF A DESIRE FOR REVIEW OF DECISION.

TP 430.2 TAKING AND PERFECTING PROCEEDINGS FOR REVIEW – TIMELINESS

DISCUSSION AS TO WHETHER AN APPEAL MAY BE ACCEPTED AFTER EXPIRATION OF APPEAL PERIOD AND UNDER WHAT CIRCUMSTANCES, OR AS TO WHETHER GOOD CAUSE FOR LATE FILING OF APPEAL HAS BEEN SHOWN, OR WHETHER THE FILING OF APPEAL WAS TIMELY.

In a case where the claimant filed an appeal fifteen months after the statutory limitation of twenty days because he was awaiting the results of an FBI investigation into incidents leading to his termination from employment, and where the FBI determined claimant had not violated any federal laws, the Nebraska Supreme Court held that the Appeal Tribunal acted correctly when it dismissed the late appeal. According to the Court, Neb. Rev. Stat. §48-631 does not support the proposition that when good cause is shown, the Appeal Tribunal must have a hearing on a denial of unemployment compensation within two years, but instead merely permits the deputy to reconsider, within a period of no longer than two years, a determination when he or she finds an error in computation or identity, or that wages pertinent but not considered have been newly discovered, or that benefits have been allowed or denied or the amounts fixed on the basis of misrepresentations of fact. Further, the Court concluded the “newly discovered” evidence – that the claimant had violated no laws within the jurisdiction of the FBI – would not have produced a different result if presented in the original hearing, which centered around allegations that the claimant willingly gave an unfair advantage to certain city contractors. The claimant, duly notified of the statutory twenty-day deadline, was not able to demonstrate that his late appeal was the result of “unavoidable misfortune,” and therefore his appeal was dismissed and the determination of total disqualification for gross misconduct was upheld. *Nicholson v. City of Bellevue*, 215 Neb. 540, 339 N.W.2d 758 (1983).

In a case where the Appeal Tribunal dismissed the claimant’s appeal for lack of jurisdiction when the appeal was filed thirty days after the statutory twenty-day appeal period ad expired, the District Court affirmed the Tribunal’s decision that the claimant failed to show good cause for the late appeal. *Graves v. May Telemarketing, Inc.*, District Court of Douglas County, Nebraska, Doc. 897 No. 034 (October 1, 1991). 91 Neb. App. Trib. 0942 (April 19, 1991).

IX. JUDICIAL REVIEW PROCEDURE

JRP 5 GENERAL

INCLUDES CASES INVOLVING (1) A GENERAL DISCUSSION OF ADMINISTRATIVE TRIBUNAL PROCEDURAL QUESTIONS, (2) PROCEDURAL POINTS NOT COVERED BY ANY SPECIFIC LINE IN THE PROCEDURAL DIVISION OF THE CODE.

The Nebraska Supreme Court recognizes that the State Legislature possesses the power to determine procedures to be followed in appealing actions arising under unemployment laws. *Smith v. Sorenson*, 222 Neb. 599, 386 N.W.2d 5 (1986).

JRP 400 REPRESENTATION

APPLIES TO CASES WHICH CONSIDER (1) THE EFFECT OF A PARTY TO THE ACTION HAVING A REPRESENTATIVE FOR ASSERTION OF HIS OR HER RIGHTS BEFORE A COURT OR ADMINISTRATIVE TRIBUNAL, (2) THE RIGHT OF A PARTY TO A REPRESENTATIVE OF HIS OR HER OWN CHOOSING, OR (3) WHETHER A CERTAIN PARTICIPANT IS ACTUALLY A REPRESENTATIVE OR ONE OF THE PARTIES TO THE ACTION.

JRP 405.05 RIGHT OF REVIEW – GENERAL

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF RIGHT OF REVIEW, (2) POINTS CONCERNING RIGHT OF REVIEW NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 405, AND (3) POINTS COVERED BY THREE OR MORE SUBLINES.

JRP 405.1 RIGHT OF REVIEW – AGREEMENT OR STIPULATION

DISCUSSES THE EFFECT OF AN AGREEMENT IN WRITING BETWEEN THE PARTIES THAT THE FACTS IN DISPUTE ARE AS SET FORTH, IN ORDER TO DISPENSE WITH THE NORMAL FORM OF TRIAL TO ASCERTAIN WHAT IS ALREADY KNOWN.

JRP 405.15 RIGHT OF REVIEW – FINALITY OF DETERMINATION

DISCUSSION AS TO WHETHER A PARTICULAR DETERMINATION IS SUBJECT TO REVIEW, OR IS A FINAL DISPOSITION OF THE CASE OR OF THE POINT INVOLVED.

JRP 405.2 RIGHT OF REVIEW – PERSON ENTITLED

WHERE DETERMINATION IS MADE AS TO WHETHER A PARTICULAR PARTY IS AN INTERESTED PARTY FOR THE PURPOSE OF APPEALING A DECISION.

Under Nebraska Employment Security Law, the Commissioner of Labor is an “interested party” in any action arising under the law, and may appeal the same as any other party to the litigation, regardless of whether any other party appeals. Benefits not chargeable to an employer’s account are necessarily charged to the pooled account, and as administrator of this fund, it is the Commissioner’s obligation to protect the pooled account against erroneous decisions. *Woodmen of the World Life Insurance Society v. Olsen*, 141 Neb. 12, 2 N.W.2d 353 (1942).

An employee who has established rights to benefits under the Unemployment Compensation Act before the deputy and Appeal Tribunal is a “necessary party” defendant in an action for a judicial review of the decision of the Appeal Tribunal. The rights of an employee to receive unemployment benefits cannot be redetermined in a proceeding for judicial review to which such employee is not a party. *Brown v. Haith*, 140 Neb. 717, 1 N.W.2d 825 (1942).

Where claimant died shortly after testifying at the district court proceeding of his unemployment benefits case, the claimant's heirs properly revived the action when they appealed the district court's decision, pursuant to Neb. Rev. Stat. § 25-1410. *Stackley v. State*, 222 Neb. 767, 386 N.W.2d 884 (1986).

JRP 430.05 TAKING AND PERFECTING PROCEEDINGS FOR REVIEW – GENERAL

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF TAKING AND PERFECTING PROCEEDINGS FOR REVIEW, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 430, AND (3) POINTS COVERED BY ALL OF THE SUBLINES.

JRP 430.1 TAKING AND PERFECTING PROCEEDINGS FOR REVIEW – METHOD

DISCUSSES THE ADEQUACY OF METHOD OF APPEAL OR WHETHER CERTAIN ACTIONS OF AN INTERESTED PARTY CONSTITUTE AN APPEAL.

Where claimant died shortly after testifying at the district court proceeding of his unemployment benefits case, the claimant's heirs properly revived the action when they appealed the district court's decision, pursuant to Neb. Rev. Stat. §25-1410. *Karnes v. Wilkinson manufacturing Company*, 220 Neb. 150, 368 N.W.2d 788 (1985).

JRP 430.15 TAKING AND PERFECTING PROCEEDINGS FOR REVIEW – NOTICE

DISCUSSION AS TO ADEQUACY OF NOTICE OF A DECISION TO AN INTERESTED PARTY, OR AS TO ADEQUACY OF NOTICE BY INTERESTED PARTY OF A DESIRE FOR REVIEW OF DECISION.

JRP 430.2 TAKING AND PERFECTING PROCEEDINGS FOR REVIEW – TIMELINESS

DISCUSSION AS TO WHETHER AN APPEAL MAY BE ACCEPTED AFTER EXPIRATION OF APPEAL PERIOD AND UNDER WHAT CIRCUMSTANCES, OR AS TO WHETHER GOOD CAUSE FOR LATE FILING OF APPEAL HAS BEEN SHOWN, OR WHETHER THE FILING OF APPEAL WAS TIMELY.

In a case where the claimant argued that the period for appeal of a Tribunal decision was extended by a motion for reconsideration, the District Court found that the petition for review was untimely. *Bussey v. Dean Witter Reynolds, Inc., et al.*, District Court of Douglas County, Nebraska, Doc. 887 No. 69 (June 11, 1984).

JRP 500.05 JUDICIAL REVIEW – GENERAL

In resolving a question concerning claimant's right to unemployment compensation, the district court acquired jurisdiction to review all aspects of the case, including ancillary award of attorney fee authorized by Employment Security Law. Further, for purposes of the Nebraska Employment Security Law, which states that the Commissioner of Labor may, in special cases, pay reasonable counsel fees of unemployment compensation claimant, it was duty of Supreme Court to ascertain meaning of "special cases" where Commissioner had declined or neglected to adopt any rule or regulation applicable to the allowance of an attorney fee. *First Data Resources, Inc. v. Sorensen*, 220 Neb. 645, 371 N.W.2d 306 (1985).

In a case where the claimant needed pro bono legal assistance to answer her former employer's appeal to district court in the matter of her eligibility for unemployment insurance benefits, her family's only source of income, the Nebraska Supreme Court found the claimant's situation to be a "special case" and ordered the Commissioner of Labor to pay the claimant's attorney fees. *First Data Resources, Inc. v. Sorensen*, 220 Neb. 645, 371 N.W.2d 306 (1985).

A proper judgment will not be reversed because the trial court gave an erroneous reason for its decision. *Strauss v. Square D Company*, 201 Neb. 571, 270 N.W.2d 917 (1978).

JRP 500.1 JUDICIAL REVIEW – JURISDICTION

In a case where Commissioner of Labor and employer appellee proceeded in district court under presumption that hearing officer's findings were correct as to certain portions of relevant statute, Commissioner could not complain on appeal that district court erred in applying wrong standard of review on those points. *Metro Renovation, Inc. v. Department of Labor*, 249 Neb. 337, 543 N.W.2d 715 (1996).

Where claimant died shortly after testifying at the district court proceeding of his unemployment benefits case, the claimant's heirs properly revived the action when they appealed the district court's decision, pursuant to Neb. Rev. Stat. §25-1410. *Karnes v. Wilkinson manufacturing Company*, 220 Neb. 150, 368 N.W.2d 788 (1985).

JRP 500.15 JUDICIAL REVIEW – STANDARD OF REVIEW

In a case where Commissioner of Labor and employer appellee proceeded in district court under presumption that hearing officer's findings were correct as to certain portions of relevant statute, Commissioner could not complain on appeal that district court erred in applying wrong standard of review on those points. *Metro Renovation, Inc. v. Department of Labor*, 249 Neb. 337, 543 N.W.2d 715 (1996).

JRP 500.2 JUDICIAL REVIEW – EVIDENCE

In the absence of a bill of exceptions, the judgment of the trial court will be affirmed if the pleadings support the judgment. *Groene v. Commissioner of Labor*, 228 Neb. 53, 421 N.W.2d 31 (1988).

Where claimant had the burden of proving she left her employment for good cause, claimant failed to sustain her claim, by a preponderance of the evidence, that treatment by her superiors which made her feel tense, uncomfortable and frustrated constituted good cause for terminating her employment. *Neaman v. Northwestern Bell Telephone Company*, 202 Neb. 255, 275 N.W.2d 57 (1979).

JRP 500.25 JUDICIAL REVIEW – ADDITIONAL PROOF

In an appeal to District Court after the Appeal Tribunal refused to reopen the case in order for claimant to present additional evidence, it was held that the claimant was adequately notified of the fact that the case would be decided solely on the basis of evidence presented at the Appeal Tribunal hearing, and that by indicating only that he was unprepared to present the evidence at the time of the hearing, he failed to show any good cause of just and sufficient reason to allow a reopening of the case. The Appeal Tribunal decision was therefore affirmed and the claimant's disqualification from benefits was upheld. *Whitmore v. Regal Printing Company, et al.*, District Court of Cass County, Nebraska, Doc. 38 Page 73 (December 19, 1991). 91 Neb. App. Trib. 1727 (July 18, 1991).

JRP 500.3 JUDICIAL REVIEW – CREDIBILITY OF WITNESS

JRP 500.35 JUDICIAL REVIEW – QUESTION OF FACT OR LAW

When a jurisdictional question does not involve a factual dispute, its determination is a matter of law, which requires the appellate court to reach conclusions independent from decisions made by lower courts. *Concordia Teachers College v. Department of Labor*, 252 Neb. 504, 563 N.W.2d 345 (1997).

JRP 500.4 JUDICIAL REVIEW – SCOPE AND EXTENT

JRP 500.45 JUDICIAL REVIEW – TRIAL DE NOVO

In proceedings de novo on the record, the court retries the factual question and reaches conclusions independent of those reached by the tribunal. *Great Plains Container Company v. Hiatt*, 225 Neb. 558, 407 N.W.2d 166 (1987). See also: *Tuma v. Omaha Public Power District*, 226 Neb. 19, 409 N.W.2d 306 (1987), *Jensen v. Mary Lanning Memorial Hospital*, 233 Neb. 66, 443 N.W.2d 891 (1989), *Perkins v. Equal Opportunity Commission*, 234 Neb. 359, 451 N.W.2d 91 (1990).

A “trial de novo” in district court means a trial conducted in the same manner as if the action had originated in district court. *Deshler Broom Factory v. Kinney*, 140 Neb. 889, 2 N.W.2d 332 (1942).

It is the duty of the Supreme Court to retry issues of fact involved in findings of fact complained of in an unemployment compensation case and to reach an independent conclusion thereon. *A. Borchman Sons v. Carpenter, et al.*, 166 Neb. 322, 89 N.W.2d 123 (1958).

JRP 500.5 JUDICIAL REVIEW – ORDER NUNC PRO TUNC

The purpose of an order nunc pro tunc is to correct a record which has been made so that it will truly record the correct action, which through inadvertence or mistake was not truly recorded. It is not the function of an order nunc pro tunc to change or revise a judgment or order, or to set aside a judgment actually rendered, or to render an order different from the one actually rendered, even though such an order was not the order intended. *Continental Oil Company v. Harris*, 214 Neb. 422, 333 N.W.2d 921 (1983).

X. MISCELLANEOUS

MS 5 GENERAL

INCLUDES CASES WHICH CONTAIN POINTS NOT COVERED BY ANY OTHER LINE IN THE MISCELLANEOUS DIVISION OF THE CODE.

MS 60.05 BENEFIT COMPUTATION FACTORS – GENERAL

INCLUDES CASES INVOLVING (1) A GENERAL DISCUSSION OF BENEFIT COMPUTATION FACTORS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 60, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

MS 60.1 BENEFIT COMPUTATION FACTORS – BASE PERIOD

MS 60.15 BENEFIT COMPUTATION FACTORS – BENEFIT YEAR

MS 60.2 BENEFIT COMPUTATION FACTORS – DISQUALIFICATION PERIOD

MS 60.25 BENEFIT COMPUTATION FACTORS – DURATION OF BENEFITS

MS 60.3 BENEFIT COMPUTATION FACTORS – DURATION OF UNEMPLOYMENT

MS 60.35 BENEFIT COMPUTATION FACTORS – WAITING PERIOD

MS 70 CITIZENSHIP OR RESIDENCE REQUIREMENTS

INCLUDES CASES IN WHICH CITIZENSHIP OR RESIDENCE REQUIREMENTS AFFECT THE RIGHT TO BENEFITS.

MS 75 CLAIM AND REGISTRATION

INCLUDES CASES IN WHICH REQUISITES PERTAINING TO CLAIM AND REGISTRATION ARE DISCUSSED.

MS 95.05 CONSTRUCTION OF STATUTES – GENERAL

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF THE CONSTRUCTION OF STATUTES, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 95, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

It is not within province of a court to read a meaning into a statute that is not warranted by legislative language. Further, where statutory language should be given its plain and ordinary meaning and, where words of a statute are plain, direct, and unambiguous, no interpretation is necessary to ascertain their meaning. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).

In determining legislative intent, it is necessary to examine statute as a whole, in light of its objects and purposes. *Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985).

An enforceable contract regarding payment of a wage bonus may be created without a written document. The term “contract of employment” within the meaning of the Nebraska Employment Security Law does not mean the agreement must be reduced to writing although it does require the agreement be understood and agreed upon by the parties.

Under the terms of the agreement, the claimant received a \$.25 per hour *bonus* at the end of the construction season if he worked throughout the entire season. The lump sum bonus was legally enforceable and thus attributable to the week in which the season ended and the bonus was determinable rather than to the later week in which the bonus was actually received. *In re Wiley*, 91 Neb. App. Trib. 0100 (January 28, 1991).

MS 95.1 CONSTRUCTION OF STATUTES – COMMON MEANING

CONSIDERS THE GENERALLY ACCEPTED MEANING OF A TERM.

MS 95.15 CONSTRUCTION OF STATUTES – CONSTRUCTION WITH REFERENCE TO OTHER STATUTES

WHERE A STATUTE IS INTERPRETED WITH REFERENCE TO ANOTHER STATUTE.

MS 95.2 CONSTRUCTION OF STATUTES – LEGISLATIVE INTENT

WHERE THE INTENT OF THE LEGISLATURE IS DISCUSSED.

MS 95.25 CONSTRUCTION OF STATUTES – RETROACTIVE OPERATION

WHERE THE RETROACTIVE EFFECT OF A PROVISION IS CONSIDERED.

MS 95.3 CONSTRUCTION OF STATUTES – STATUTE AS A WHOLE AS AN AID TO CONSTRUCTION

CONSIDERATION OF THE ENTIRE STATUTE OR PARTS THEREOF AS A GUIDE IN THE INTERPRETATION OF A PARTICULAR PROVISION.

MS 95.35 CONSTRUCTION OF STATUTES – STRICT OR LIBERAL CONSTRUCTION

CONTAINS A DISCUSSION OF WHETHER A STATUTE SHOULD BE GIVEN STRICT OR LIBERAL INTERPRETATION.

MS 115 DECEASED CLAIMANTS, DISPOSITION OF UNPAID BENEFITS OF

INCLUDES CASES WHICH DISCUSS THE DISPOSITION OF THE UNPAID BENEFIT AMOUNT OF DECEASED CLAIMANT.

MS 120 DEPENDENTS' ALLOWANCES

INCLUDES CASES WHICH RELATE TO A CLAIMANT'S RIGHTS TO DEPENDENT ALLOWANCE.

MS 139 DISCRIMINATION

CASES WHICH INCLUDE A GENERAL DISCUSSION OF DISCRIMINATION – FOR EXAMPLE, ON THE BASIS OF AGE, RACE, OR SEX – OR OF CIVIL RIGHTS LEGISLATION, IN RELATION TO UNEMPLOYMENT INSURANCE MATTERS.

MS 235 HEALTH OR PHYSICAL CONDITION

MS 250 INCARCERATION OR OTHER LEGAL DETENTION

APPLIES TO CASES WHICH INVOLVE BENEFIT RIGHTS OF CLAIMANTS WHO HAVE BEEN IMPRISONED OR OTHERWISE LEGALLY DETAINED, DECIDED UNDER SPECIAL PROVISIONS FOR DENIAL OF BENEFITS UNDER THOSE CONDITIONS, OTHER THAN SPECIAL ABLE AND AVAILABLE, MISCONDUCT, AND VOLUNTARY LEAVING PROVISIONS. (NOTE – FOR POINTS RELATING TO IMPRISONMENT OR OTHER LEGAL DETENTION DECIDED UNDER ABLE AND AVAILABLE, MISCONDUCT, AND VOLUNTARY LEAVING PROVISIONS, SEE CODE LINES AA-250, MC-15, MC-85, MC-490, VL-135, VL-290, AND VL-495.)

MS 260 INTERSTATE RELATIONS

INCLUDES CASES WHICH INVOLVE RECIPROCAL AGREEMENTS OR OTHER UNEMPLOYMENT INSURANCE FACTORS PERTAINING TO TWO OR MORE STATES.

MS 340.05 BENEFIT OVERPAYMENTS – GENERAL

INCLUDES CASES CONTAINING (1) A GENERAL DISCUSSION OF BENEFIT OVERPAYMENTS, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 340, OR (3) POINTS COVERED BY THREE OR MORE SUBLINES.

MS 340.1 BENEFIT OVERPAYMENTS – FRAUD OR MISREPRESENTATION

INVOLVES A DISCUSSION OF THE QUESTION OF WHETHER THE CLAIMANT OR ANOTHER HAS WILLFULLY OR KNOWINGLY MISREPRESENTED OR FAILED TO DISCLOSE A MATERIAL FACT FOR THE PURPOSE OF OBTAINING BENEFITS.

MS 340.15 BENEFIT OVERPAYMENTS – NON-FRAUDULENT

INVOLVES BENEFIT OVERPAYMENTS WHERE THE QUESTION OF FRAUD IS NOT AN ISSUE.

MS 340.2 BENEFIT OVERPAYMENTS – RESTITUTION

RELATES TO A DISCUSSION OF RESTITUTION OF BENEFITS TO WHICH THE CLAIMANT WAS NOT ENTITLED.

MS 410 SEASONAL EMPLOYMENT

INCLUDES CASES WHICH CONTAIN A DISCUSSION OF THE RIGHTS TO BENEFITS UNDER THE PROVISIONS RELATING TO SEASONAL WORKERS AND SEASONAL EMPLOYMENT.

Symphony musician, who was employed under contract for nine-month season requiring that payment be made in 16 equal installments on 15th and final day of each month during season, was unemployed for purposes of Nebraska Employment Security Law after season had ended. Disqualification of employees of educational institutions and professional athletes for unemployment benefits did not include professional symphony musicians. *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

MS 440 STATUTORY DISQUALIFICATION

The phrase “regular terms,” within the statute disqualifying an individual from receiving benefits for a week of unemployment if claim is based on services performed in an instructional capacity for an educational institution and week of unemployment begins during period between two successive years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave, refers to a definite period representing a regular division of an academic year during which instruction is regularly given to students of a particular school college, or university. *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

Teacher, who gave notice to the school district in the spring of 1982 that she would not return to her teaching position the following fall, was not engaged in seasonal employment when she worked for a six-week period during the summer of 1982 in the migrant program and, hence, was not ineligible for unemployment benefits since her summer employment did not fall between two years or terms in which she had contracts or a reasonable assurance of employment. *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

Special education program in which student was involved during employment with employer doing general maintenance work at an apartment complex was an “integral part” of program of academic instruction, and thus student’s services were exempt from unemployment benefits, where student had to be verified as learning disabled, emotionally disturbed, or educably mentally handicapped to qualify for program, program was intended to teach student how to interview for a job and how to work in the community, students received credit for outside job but were not allowed to receive such credit unless they had first taken classroom semester and employer had been certified by school. *Seldin Development & Management Company v. Chizek*, 208 Neb. 315, 303 N.W.2d 300 (1981).

Symphony musician, who was employed under contract for nine-month season requiring that payment be made in 16 equal installments on 15th and final day of each month during season, was unemployed for purposes of Nebraska Employment Security Law after season had ended. Disqualification of employees of educational institutions and professional athletes for unemployment benefits did not include professional symphony musicians. *Hanlon v. Boden*, 209 Neb. 169, 306 N.W.2d 858 (1981).

XI. WAGES

WGS 10.05 GENERAL

INCLUDES CASES WHICH CONTAIN (1) A GENERAL DISCUSSION OF WAGES, (2) POINTS NOT COVERED BY ANY OTHER SUBLINE UNDER LINE 10, (3) POINTS COVERED BY THREE OR MORE SUBLINES, AND (4) CASES DEFINING THE NATURE OF WAGES VERSUS OTHER COMPENSATION.

If employer and employee agree upon bonus to be paid upon certain conditions and conditions are fulfilled, bonus is “wages.” According to Nebraska Wage Payment and Collection Act, “wages” shall mean “compensation for labor or services rendered by an employee, including fringe benefits, when previously agreed to and conditions stipulated have been met by the employee, whether the amount is determined on a time, task, fee, commission, or other basis.” *Knutson v. Snyder Industries, Inc.*, 231 Neb. 374, 436 N.W.2d 496 (1989).

The claimant received a bonus in the form of a computer modem having a cash equivalent value of \$635.00. The cash equivalent value of the item was considered a wages (rather than disqualifying separation pay) and was applied to the week in which the bonus was determinable, in this case the week in which it was received, six months prior to the claimant’s separation. The bonus was not disqualifying. *In re Britson*, 91 Neb. App. Trib. 0076 (January 28, 1991).

WGS 10.1 STAY UNTIL CLOSURE/COMPLETION

INCLUDES CASES WHERE A CLAIMANT RECEIVES A LUMP SUM PAYMENT FOR WORKING THROUGH COMPLETION OF A PROJECT/SEASON OR UNTIL A PLANT CLOSURE.

Where claimant maintained a satisfactory work performance and worked to the end of his employer’s construction season, the two requirements established by the employer for the claimant to qualify for an incentive payment upon his layoff from employment, it was held that the incentive payment should be considered wages earned when the conditions for the payment were satisfied. The claimant satisfied these conditions when the construction season was completed, at which point the incentive payment was earned, and the Tribunal held that the payment must be treated as wages for the week during which the season ended and the claimant left employment. *In re Kumm*, 95 Neb. App. Trib. 1955 (August 1, 1995).

Where claimant entered into an agreement with her employer to work until the date of the employer’s plant closure in exchange for an additional lump sum payment, calculated based on years of service and weekly pay and to be made one week prior to the claimant’s termination, it was held that the additional payment was wages received for the week prior to the claimant’s leaving employment. Although the claims deputy characterized the sum as severance pay according to information from the employer’s accountant, the Appeal Tribunal found this determination to be incorrect based on testimony that the payment was clearly in exchange for working until the plant closure, and the claimant was found to be entitled to receive benefits after leaving her employment if otherwise eligible. *In re Neal*, 99 Neb. App. Trib. 1035 (June 22, 1999).

WGS 10.15 ACCRUED LEAVE TIME

INCLUDES CASES WHERE A CLAIMANT RECEIVES A LUMP SUM PAYMENT FOR ACCRUED LEAVE TIME.

Where claimant had accrued 29 hours of vacation at the time of separation from employment, and elected to receive the vacation pay in monthly installments for the purpose of maintaining her health insurance coverage, it was held that the claimant’s vacation time payment became payable to the claimant at the time of separation and should thus be considered in its entirety for that week. Because the amount of vacation pay exceeded the claimant’s weekly benefit amount, the claimant was found to be ineligible for benefits received for the week of separation. *In re Hasbrouck*, 00 Neb. App. Trib. 1981 (November 3, 2000).

Vacation pay constitutes wages and is applied prospectively from the date of separation. The claimant's refusal to accept delivery of proffered vacation pay does not affect disqualification. *In re Hutton*, 92 Neb. App. Trib. 2007 (July 6, 1992).

An employee who is forced to use paid vacation leave during two-week plant shut-down was not unemployed during that period and was ineligible to receive benefits. *In re Cervantez*, 85 Neb. App. Trib. 2532 (August 2, 1985).

Vacation pay earned and payable prior to separation is not disqualifying. Payment of accrued paid leave time although paid only after separation is not disqualifying for the week in which it is received because the value of the paid leave was earned and payable, in the sense it could have been used by the claimant, prior to the separation. The Tribunal applied the doctrine of *Board of Regents v. Pinzon*, 254 Neb. 145 (1998) to find the compensation was payable when earned rather than when received. *In re Hubenka*, 98 Neb. App. Trib. 0984 (July 1, 1998).

The claimant had accrued paid leave time when the union contract under which he worked expired and a labor stoppage occurred and the claimant's employment was suspended. Since the claimant was not entitled to use or receive the value of his accumulated vacation time until the labor dispute was resolved and he returned to work, the payment was attributable to that week. *In re Dunn*, 91 Neb. App. Trib. 2479 (October 8, 1991).

WGS 10.2 RETIREMENT OR 401K PAY OUTS

INCLUDES CASES WHERE A CLAIMANT RECEIVES A LUMP SUM UPON SEPARATION FROM A RETIREMENT ACCOUNT MAINTAINED BY OR THROUGH THE EMPLOYER.

After separation, the claimant received lump sum payouts from the employer's 401K program, a portion of which had been contributed by the claimant, the remainder of which had been contributed by the employer. Several weeks later, the claimant rolled over those amounts into another IRS-approved retirement account. The Tribunal held that lump sum distributions from an employer's retirement plan are disqualifying to the extent of the employer's contribution thereto, until such time as they are actually rolled over into an approved plan. *In re Cooper*, 90 Neb. App. Trib. 2503 (December 5, 1990).

WGS 10.25 FLEXIBLE BENEFIT ACCOUNTS

INCLUDES CASES WHERE A CLAIMANT RECEIVED A LUMP SUM UPON SEPARATION WHICH REPRESENTS A PAYOUT OF ACCRUED BENEFIT DOLLARS OR THE BALANCE IN A FLEXIBLE SPENDING ACCOUNT.

Where in addition to receiving wages, the claimant earned "benefit dollars" from her employer that were deposited into a flexible spending account every pay period and could be exchanged for various benefits offered by the employer, the Appeal Tribunal held that such earnings were to be considered lump sum payments due pursuant to an employment agreement and applied to the week in which the payment was determinable. The balance in the claimant's flexible spending account was determinable, and therefore payable, at any given point in time. As a result, the funds were payable during the claimant's employment and did not serve as a disqualification. *In re Schroeder*, 03 Neb. App. Trib. 4486 (December 17, 2003).

WGS 10.3 BACK PAY

INCLUDES CASES WHERE A CLAIMANT RECEIVED A LUMP SUM WHICH CONSTITUTES BACK PAY.

The claimant received a payment of approximately \$3,000 in back wages from her former employer in response to the settlement in a class action lawsuit concerning the treatment of employees with respect to maternity leave, and several months thereafter the claimant applied for unemployment insurance. Although the payment in question related to a period of time 25 years prior to the claimant's seeking of unemployment benefits, the Appeal Tribunal held that the statute and case precedent requiring that wages be considered when paid was controlling, and found that the payment should be included in wages earned during the claimant's base period when calculating benefits. *In re Stevenson*, 95 Neb. App. Trib. 0922 (April 18, 1995).

For the purposes of determining monetary eligibility to receive UI benefits, a lump sum back pay settlement award to the claimant was held to be properly allocated to the periods of time when the claimant would have earned those wages but for his improper discharge. The Tribunal found the claimant was constructively paid the later received wages at the time he would have earned them. The tribunal cited the purposes of the Employment Security Act and the mandate that it be construed liberally to accomplish the beneficial purposes for which it was intended. *In re Turner*, 84 Neb. App. Trib. 3642 (June 6, 1985).

The claimant was discharged, appealed her discharge and threatened to bring a civil rights suit against the employer. The claimant's separation was found to be non-disqualifying and she received unemployment insurance benefits. Subsequently, the claimant was reinstated pursuant to a settlement agreement. The claimant also received a lump sum payment which was characterized by the parties in their agreement as "back pay" and represented the amount of gross wages the claimant would have received had she not been discharged but remained continuously employed. The claimant also agreed to waive all claims against the employer in the settlement agreement. The Department found the lump sum received by the claimant represented wages for the weeks in which she had previously received benefits and ordered the claimant to repay those benefits.

The Tribunal found the lump sum payment constituted back pay and disqualifying wages properly attributable to the weeks in which the claimant received benefits after her discharge and prior to her reinstatement. The fact that the back pay was received as part of a settlement of a legal dispute does not render the payment non-disqualifying. *In re Bellamy*, 2003 Neb. App. Trib. 3260 (September 15, 2003). Appeal dismissed for lack of jurisdiction in *Bellamy v. Commissioner*, CI 03-4017 Lancaster District Court (February 24, 2004).

WGS 10.35 BONUS WAGES

INCLUDES CASES WHERE A CLAIMANT RECEIVES A LUMP SUM BONUS WAGE PAYMENT.

Where claimant voluntarily accepted a temporary lay-off in exchange for a wage bonus that would be paid in the claimant's next paycheck after returning to work, the Appeal Tribunal found that the wage bonus became payable when the claimant resumed employment, and not the following week when the claimant received the bonus in her paycheck. The Tribunal therefore held that the claimant was required to repay a benefit overpayment for the week of her return to work. *In re Bredenkamp*, 96 Neb. App. Trib. 0940 (May 10, 1996).

Where claimant received a year-end bonus based on performance, it was held that the bonus should be considered wages for the week that it became available, and not the following week when the claimant picked up the bonus check from the employer. Although the claimant argued that her employer's company policy provided that the year-end bonus should be payable on December 25th of each year, the bonus was in fact determined and available to be picked up on December 21st, and should thus be applied to the week ending December 22nd. *In re Shannon*, 91 Neb. App. Trib. 0095 (January 29, 1991).

Where claimant received a portion of the employee's profit-sharing plan while on layoff status, due to a delay in the employer's year-end bookkeeping, it was held that the payment was wages within the meaning of Nebraska Employment Security Law and should be attributed to the week when the amount became payable. In this case, the profit-sharing payment became payable several weeks prior to the date when the claimant received it, and the claimant was not found to have received an overpayment of unemployment insurance benefits for the week in question. *In re Zoucha*, 90 Neb. App. Trib. 0686 (April 13, 1990).

Although the lump sum bonus was determinable, it was not enforceable until ratification and execution of a union contract. Because the claimant's right to receive the wage bonus was not legally enforceable until after the contract was executed by the union, the payment was not applied to the week it became determinable. The payment was disqualifying for the week in which it was actually received rather than the week it became determinable. *In re Croghan*, 95 Neb. App. Trib. 0138 (February 8, 1995).

An enforceable contract regarding payment of a wage bonus may be created without a written document. The term "contract of employment" within the meaning of the Nebraska Employment Security Law does not mean the

agreement must be reduced to writing although it does require the agreement be understood and agreed upon by the parties.

Under the terms of the agreement, the claimant received a \$.25 per hour *bonus* at the end of the construction season if he worked throughout the entire season. The lump sum bonus was legally enforceable and thus attributable to the week in which the season ended and the bonus was determinable rather than to the later week in which the bonus was actually received. *In re Wiley*, 91 Neb. App. Trib. 0100 (January 28, 1991).

A lump sum bonus payment is applied to the week in which the payment is determinable, and thus becomes payable pursuant to the employment agreement. The entire lump sum payment is applied to the week in which it becomes payable and not prorated over the period of the claimant's performance. *In re Maguire*, 90 Neb. App. Trib. 1581 (August 1, 1990).

The lump sum payment the claimant received upon separation was not a wage bonus for the claimant's work prior to her separation. It was found to be a dismissal or separation allowance because it was paid to the claimant after her separation and there was no agreement between the parties with respect to a wage bonus. The lump sum payment properly prorated over a period of time and was disqualifying for those weeks. *In re Yost*, 90 Neb. App. Trib. 2097 (September 27, 1990).

A production bonus is attributable to the week in which it becomes determinable rather than when it is actually determined or paid. A bonus is determinable when all the prerequisites for entitlement to the bonus have been completed and the claimant's entitlement to the bonus is legally enforceable. *In re Baker*, 90 Neb. App. Trib. 2706 (August 27, 1992).

WGS 10.4 HOLIDAY PAY

INCLUDES CASES WHERE A CLAIMANT RECEIVES HOLIDAY PAY AND A DETERMINATION IS MADE REGARDING WHEN THAT PAY WAS EARNED.

Where claimants entered into the employer's Voluntary Termination Plan (VTP) and was subsequently placed on layoff status the week before Thanksgiving, the District Court affirmed an Appeal Tribunal decision that Thanksgiving holiday pay was earned by the claimants the week they entered into the VTP and not the week of Thanksgiving. According to the VTP agreement, no further consideration from the claimants was required in order to receive holiday pay for Thanksgiving, and the claimants therefore earned such holiday pay wages when they entered into the VTP the week before Thanksgiving. The Thanksgiving holiday pay earned by the claimants was attributable to the date earned rather than the date paid, and claimants were entitled to receive benefits for the week of Thanksgiving if otherwise eligible. *Lecuona v. Saylor, et al.*, District Court of Hall County, Nebraska, Case No. 134-023, (June 11, 1999).

Where the claimant's employer closed its plant during the week of Thanksgiving and the claimant received holiday pay for Thanksgiving and the day after Thanksgiving, it was held that the holiday pay was wages for the week of the holiday and properly considered in a determination of the claimant's eligibility for unemployment insurance benefits. Although the employer typically requires that employees work the day prior to a shutdown and the day following a shutdown in order to be eligible for holiday pay, the requirement was excused in this instance and the holiday pay was thus earned during the week in question and not the following week, as it would have been if the claimant was required to work the Monday after the shutdown in order to receive holiday pay. *In re Benkusky*, 02 Neb. App. Trib. 4489 (January 7, 2003).

According to a union contract with the claimant's employer, employees are entitled to holiday pay while on lay off as long as the employee works at least one day during the month of the holiday. Where the claimant was on layoff status during the week of July 4th but returned to work the following week, and where claimant had already worked at least one day in July prior to the layoff, it was held that the holiday pay became payable to the claimant upon his return to work and should thus not be considered when determining benefit eligibility for the week of the holiday. Although in cases where the claimant is required to satisfy a condition of the employment agreement prior to the week of the holiday in order to become entitled to holiday pay the holiday pay is typically attributed to the week of

the holiday, in this case the claimant did not become entitled to receive such pay until he returned to his employment and the claimant was entitled to benefits for the week of the holiday if otherwise eligible. *In re Warner*, 91 Neb. App. Trib. 0846 (April 16, 1991).

Although the claimant received holiday pay in advance of the holiday, the employer's policies required her to return to work after the holiday in order to be entitled to receive the holiday pay. The holiday pay was attributable to the week in which the claimant returned to work after the holiday and fulfilled the final condition necessary for the holiday pay to be considered "payable." *In re Rachow*, 2001 Neb. App. Trib. 2315 (October 13, 2001).

WGS 10.5 LUMP SUM PAYMENTS

A lump sum payment is properly attributed to the week in which it became determinable under the terms of the employment agreement. It was not subject to being prorated over the period of time in which the claimant performed the conditions necessary to receive the bonus since it was not finally determinable until the end of that period. *In re Weinmaster*, 90 Neb. App. Trib. 0516, (April 5, 1990).