

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

TABLE OF CONTENTS

- 5. General

- 40. Attendance at school or training course - students

- 90. Conscientious objection

- 150. Distance to work:
 - 150.05 General
 - 150.10 In transit
 - 150.15 Removal from locality
 - 150.20 Transportation and travel

- 155. Domestic circumstances:
 - 155.05 General
 - 155.10 Children, care of
 - 155.35 Illness or death of others
 - 155.45 Parent, care of

- 160. Effort to secure employment or willingness to work:
 - 160.05 General
 - 160.10 Application for work
 - 160.15 Attitude or behavior
 - 160.20 Employment
 - 160.30 Registration and reporting
 - 160.35 Voluntary leaving or suspension of work

- 165. Employer requirements:
 - 165.05 General

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

TABLE OF CONTENTS

- 190. Evidence:
 - 190.05 General
 - 190.10 Burden of proof and presumptions
 - 190.15 Weight and sufficiency

- 235. Health or physical condition:
 - 235.05 General
 - 235.25 Illness or injury
 - 235.30 Loss of limb (or use of)
 - 235.40 Pregnancy

- 250. Incarceration or other legal detention

- 295. Length of unemployment

- 315. New work

- 350. Period of ineligibility

- 360. Personal affairs

- 365. Prospects of work

- 370. Public service:
 - 370.10 Jury duty

- 375. Receipt of other payments:
 - 375.25 Old Age and Survivor's Insurance

- 415. Self-employment or other work:
 - 415.05 General

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

TABLE OF CONTENTS

450.	Time:	
450.10	Days of week	
450.15	Hours:	
450.151	General	
450.153	Long or short	
450.154	Night	
450.155	Prevailing standard, comparison with	
450.157	Customary	
450.20	Irregular employment	
450.40	Part time or full time	
450.50	Shift	
450.55	Temporary	
475.	Union relations:	
475.05	General	
500.	Wages	
510.	Work, nature of: (Restrictions)	
510.10	Customary	
510.40	Preferred employer or employment	
515.	Working conditions:	
515.55	Prevailing for similar work in locality	

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 5.00

GENERAL

AA 5.00 GENERAL.

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

Appeal No. 2209-CA-78. The fact that a claimant was not available for work on one day of a benefit period does not justify preventing the claimant from receiving benefits for the entire benefit period if evidence shows that the claimant was fully available during the rest of the benefit period. (In this case, the Commission reversed the one-day period of ineligibility by the Appeal Tribunal.)

Appeal No. 1412-CA-78. Although a claimant is unable to work during a weekend due to illness, the claimant will not be held ineligible under Section 207.021(a)(3) of the Act where weekend work has not normally been required of her in her customary occupation and where appropriate employer personnel offices would have been closed had the claimant been able to search for work. Further, where a claimant is sick on one regular work day during a benefit period but has been able to and available for work on all other days in the benefit period, the claimant will not be held ineligible. (Also digested under AA 235.05.)

Appeal No. 4341-CSUA-76. A claimant cannot be held ineligible under Section 207.021(a)(4) of the Act, due to restriction(s) on her availability for work, prior to the time she was advised that such restriction(s) unduly limit her availability for work within the meaning of Section 207.021(a)(4).

Appeal No. 3472-CA-76. A late appeal confers on the Appeal Tribunal no jurisdiction over a closed order of ineligibility. An appeal, from an order of ineligibility extending from one certain date through another certain date, if late, must be dismissed for want of jurisdiction.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 5.00 (2)

AA GENERAL

Appeal No. 1312-CA-76. The Insurance Department is without jurisdiction to issue a determination as to an order of ineligibility for a period of time which has already been ruled on by an Appeal Tribunal decision. Such a determination by the Benefits Department must be set aside.

Appeal No. 79-CA-74. While the Act requires certain determinations to be mailed to the parties, the Act does not require the mailing of call-in cards to claimants. The mailing of such a notice raises no presumption of receipt. An order of ineligibility established for failure to respond to a call-in card, which testimony shows was not received, cannot be sustained.

Appeal No. 343-CA-71. Where a claimant is initially determined to be eligible for benefits and no appeal is filed, an appeal from a subsequent determination on eligibility gives the Appeal Tribunal jurisdiction to consider eligibility only from the earliest date to which the subsequent determination on appeal relates.

Appeal No. 6315-CA-58. A claimant may be considered available for work if he is ready, willing, and able to accept any suitable work and if his employability is reasonably free from handicaps, conditions, or restrictions, self-imposed or otherwise, and there remains after considering such handicaps, conditions, or restrictions, a reasonable expectancy that he might secure and accept such suitable work.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 40.00

AA ATTENDANCE AT SCHOOL OR TRAINING COURSE-STUDENT
AA 40.00 ATTENDANCE AT SCHOOL OR TRAINING COURSE-STUDENTS.

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

Texas Employment Commission, et al vs. Hays (Tex. Sup. Ct., 1962) 360 S.W. 2d 525. A claimant, whether student or non-student, who puts such time or hour restrictions on his availability for work as to effectively detach himself from the labor market, is not available within the meaning of Section 207.021(a)(4) of the Act. The fact that the claimant earned all his wage credits in employment of the sort to which he is restricting his availability, or even that he has secured work within his restrictions, does not make him available under Section 207.021(a)(4).

The following points brought out in this case are considered important:

1. There is no logical basis for favoring those who have earned their Qualifying wage credits in part-time employment over those who have earned theirs in full-time employment.
2. The Act makes special provisions for benefits for partial unemployment but not for part-time workers.
3. It would be difficult to find a student in regular attendance in elementary or secondary schools available for work because of Sections 21.032 and 21.002-21.004 of the Texas Education Code which require that students between 7 and 17 years, inclusive, be in school and that such school be taught not less than seven hours per day, five days per week and twenty days per month.
4. It is the duty of the Commission to adjudicate each claim separately, weighing the time and hour restrictions imposed by the claimant against the demand for workers of claimant's general type.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 40.00 (2)

AA ATTENDANCE AT SCHOOL OR TRAINING COURSE-STUDENT

Appeal No. 1813-CA-77. A claimant who, since the date of his initial claim, has been willing and able to change his hours of school attendance or to quit school entirely in order to accept full-time work, is not unavailable for work Section 207.021(a)(4) of the Act due to his hours of school attendance.

Appeal No. 1319-CA-76. The claimant, attending school from 7:00 p.m. to 9:00 p.m., Tuesdays and Thursdays, would not quit school or change her hours of school attendance but was available for full-time work on two of the three shifts during which her type of work was performed. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act because the claimant's unwillingness to work on one of three possible shifts did not mean that she had no reasonable expectancy of securing work as a nurses' aide.

Appeal No. 3145-CA-75. A claimant who has been held ineligible under Section 207.021(a)(4) of the Act because he is attending school during the normal working hours in his occupation and who initially indicated that he would not change his hours of school attendance or quit school to accept employment will have his ineligibility closed as of the date he notifies a Commission representative that he will change his hours of school attendance or quit school to accept suitable work.

Appeal No. 1992-CA-73. The claimant was filing claims in another state and was attending a county vocational school which was fully accredited and which training was approved under the unemployment law of that state. Benefits should not be denied under Section 207.022 and Rule 26 of the Commission simply because the claimant was not residing in Texas and attending a training course specifically approved by the Commission. The Texas Workforce Commission relies on the other states to act as its agents in matters relating to claims filed by out-of-state claimants.

Appeal No. 1257-CA-73. Under Section 207.022 of the Act, benefits shall not be denied to an individual who is in a Commission-approved training program. In such a case, no ineligibility is in order under Section 207.021(a)(4).

APPEALS POLICY AND PRECEDENT MANUAL**ABLE AND AVAILABLE****AA 40.00 (3)****AA ATTENDANCE AT SCHOOL OR TRAINING COURSE-STUDENTS**

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

Appeal No. 387-CA-70. A student who is available only for shift work after 2:00 p.m. is not unduly limiting his availability for work if the majority of jobs for which he is qualified require shift work and most employees are hired on the second or third shifts.

Appeal No. 6020-CA-58. A claimant who is in school only two hours a day, three days a week, is not a full-time student and has a reasonable expectancy of finding work.

Appeal No. 605-J-57 (Affirmed by 17-CJ-57). A student who is available for work only during the three-week period between the end of the second summer semester and the beginning of the fall semester is not a bona fide member of the labor market.

APPEALS POLICY AND PRECEDENT MANUAL**ABLE AND AVAILABLE****AA 40.00 (4)****AA ATTENDANCE AT SCHOOL OR TRAINING COURSE-STUDENTS**

Appeal No. 54-CA-40. A student who did not quit work to enter school and who is willing to drop out of school to accept suitable work meets the eligibility requirements of the Act. Case sets out the following student availability rules:

1. As a general rule, a full-time student in an educational institution of any type is not available for work and not entitled to draw benefits while such student.
2. When it is established that the claimant was separated from his employment for the purpose of entering, and attending, any type of school requiring attendance during the day, he will be held to be unavailable and not entitled to benefits while so unavailable. (But consider Section 207.052 of the Act)
3. In any case where it is found that separation from employment was for some cause other than entering or attending school, availability must be established by the claimant.
4. To establish availability, the claimant must show that he is ready at once to accept any employment which may be deemed suitable by the Commission that is brought to his attention, regardless of his school duties; and when such proof has been made, claimant will be held to be available until he has failed without good cause to apply for available, suitable employment when so directed by the Workforce Office or the Commission, or to accept suitable work when offered to him.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 90.00

AA CONSCIENTIOUS OBJECTION

AA 90.00 CONSCIENTIOUS OBJECTION.

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

Sherbert vs. Verner, 374 U.S. 398 (U.S. Supreme Court, 1963). A claimant who, because of religious convictions, cannot accept a job requiring her to work on Saturdays, must be deemed available for work and eligible for benefits, notwithstanding such restriction and regardless of its effect on her actual chances of securing work. To hold otherwise would place an unconstitutional burden on her freedom of religion under the First and Fourteenth Amendments to the Constitution of the United States. (Also digested under AA 450.10.)

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 150.00 - 150.05

AA DISTANCE TO WORK

AA 150.00 DISTANCE TO WORK.**150.05 DISTANCE TO WORK: GENERAL.**

INCLUDES CASES CONTAINING (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.

Appeal No. 869-CA-77. The claimant was unable to make an effective search for work, or to accept suitable work when it was offered to him, because he depended for transportation upon a municipal bus line which was closed down by a strike from at least December 31, 1976 to January 17, 1977. **HELD:** Unavailable for work and ineligible for benefits during that time under Section 207.021(a)(4) of the Act as he did not have adequate transportation to work.

Appeal No. 4312-CA-76. A claimant who resides in Silsbee and is making an active search for work in the Silsbee area is not required to be available for work in Beaumont, some thirty-five miles distant, in order to be considered eligible for benefits under Section 207.021(a)(4) of the Act.

Appeal No. 675-CA-72. There is no basis for holding a claimant ineligible, who has placed certain restrictions on her availability for work, until such time as the Commission requirement is explained. A claimant who limits her availability to one section of a city will not be held ineligible until it has been explained to her that she must be available in other areas in order to meet Commission requirements.

Appeal No. 1293-CA-71. A claimant's lack of transportation does not unduly limit her availability when the claimant can and will walk to the downtown area where most of the jobs for which she is qualified are located.

Also see Appeal No. 2135-CA-77 under AA 160.05.

APPEALS POLICY AND PRECEDENT MANUAL**ABLE AND AVAILABLE****AA 150.10 - 150.15****AA DISTANCE TO WORK****AA 150.10 DISTANCE TO WORK: IN TRANSIT.**

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

Appeal No. 3607-CA-75. The claimant had been in transit from July 23 through July 26, 1975, as he was moving from New Mexico to California, had registered for work in California on July 28, 1975, and had been actively seeking work since that date. HELD: Unavailable for work and ineligible for benefits from July 20 through July 27, 1975, under Section 207.021(a)(4) of the Act, as he was in transit and not looking for work during that time.

Also see cases under AA 160.05 and AA 510.40.

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.

Case No. 1129075. The claimant had registered for work at a local Commission office on September 18, 2008. The claimant, however, relocated to Germany when her husband, an active military member, was transferred to Ramstein AFB in Germany on September 22, 2008. The claimant continuously made her required work searches after moving to Germany. The claimant had no legal restrictions on her work in Germany. The claimant searched for work on Ramstein AFB, with a population of approximately 50,000 Americans. The claimant also searched for work at another nearby military base with a total population of approximately 50,000 individuals, and she looked for work in the local area, which included Kaiserslautern, with a population of 99,000. The claimant found work at Ramstein AFB approximately 5 months later.

HELD: The claimant is available for work under Section 207.021(a)(4) of the Act. Although the claimant was residing outside the United States, the Commission concludes that it is important to consider the totality of the circumstances to determine if there is sufficient evidence of legitimate work opportunities in the area. The claimant continued to make her work searches after her relocation with her husband to a large military base. The claimant presented sufficient evidence of legitimate work

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 150.10 - 150.15 (2)

AA DISTANCE TO WORK

opportunities in the area. The claimant had a reasonable expectation of finding work in her local area.

NOTE: The Commission noted that Case 769877-2 (AA 150.15) was not consistent with its goal in encouraging claimants who are military spouses and otherwise have no restrictions in working to seek work in other locales, and directed that this precedent be removed from the precedent manual.

Appeal No. 86-CA-76. A claimant who, for a purpose other than seeking work, is out of the geographic area of the Commission local office where she is registered for work, is unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act during such time.

Appeal No. 610-CA-69. A claimant continues to be available for work even though she leaves the area where she is registered for work if her primary purpose is to seek work and she actively seeks work in the area to which she has gone.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 150.20

AA DISTANCE TO WORK

AA 150.20 DISTANCE TO WORK: TRANSPORTATION AND TRAVEL.

INVOLVES TRANSPORTATION COST, CONVENIENCE, FACILITIES, AND TIME.

Appeal No. 1719-CA-77. The claimant had no private transportation and no public transportation available in her area, except for taxi cabs which were extremely expensive, and had to walk to the employment office. There were few businesses within walking distance of her home and she could accept work only within walking distance of her home except for the possibility that, if she found a job outside of walking distance, she might be able to arrange transportation. HELD: Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act as her lack of transportation substantially diminished the labor market area in which she was able to look for work.

Appeal No. 978-CA-77. A claimant, whose work search has been conducted solely by bicycle will not be deemed unavailable for work under Section 207.021(a)(4) of the Act if his work contacts reflect a continuous, diligent search for work by him.

Appeal No. 3918-CA-76. The claimant did not have his own car available for transportation but was able to make arrangements with relatives for transportation to local communities to look for work. He contacted a number of prospective employers in his search for work and had arrangements for transportation to work in the event he found a job. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act.

Appeal No. 1134-CA-76. A claimant whose relatives provide her with transportation to look for work, and who can and will use public transportation to and from work when she finds a job, is available for work and eligible for benefits under Section 207.021(a)(4) of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 150.20 (2)

AA DISTANCE TO WORK

Appeal No. 8091-AT-68 (Affirmed by 49-CA-69). A claimant who worked in Vernon while living in Electra but was no longer willing to commute the twenty-five miles to work in Vernon, and had very little chance of securing work in Electra, was unduly limiting her availability for work.

Appeal No. 519-CA-68. A claimant who is available for work only in Canyon because of lack of transportation to other areas is not unduly limiting her availability if she is actively seeking work for which she is qualified and such work exists in the area.

Appeal No. 477-CA-68. Because of transportation difficulties, the claimant is not available for work in Garland where she files her claims or in Dallas, but is available in Farmers Branch where she lives or in Carrollton where she had previously worked, meets the availability requirements when it is shown she is seeking work in those areas.

Appeal No. 1294-AT-67 (Affirmed by 1318-CA-67). A claimant who lives in a rural area, has no transportation, and will work only if he can walk to work or if the employer will furnish transportation, is not available to a large enough labor market to be considered available for work within the meaning of Section 207.021(a)(4) of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 155.00 - 155.10

AA DOMESTIC CIRCUMSTANCES

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

INCLUDES CASES CONTAINING (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.

Appeal No. 283-CA-77. From August 31 through September 21, 1976, the claimant was involved with family problems and, in preparation for moving to Louisiana, was attempting to sell his home. For those reasons, the claimant was neither actively seeking work, nor ready to accept it. HELD: Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act during that time.

155.10 DOMESTIC CIRCUMSTANCES: CHILDREN, CARE OF.

WHERE CLAIMANT PLACES RESTRICTIONS ON ACCEPTANCE OF WORK BECAUSE OF HIS NEED TO CARE FOR CHILDREN. CASES INVOLVING ILLNESS OF CHILDREN ARE FOUND UNDER THE SUBLINE "ILLNESS OR DEATH OF OTHER," BELOW.

Appeal No. 1894-CA-77. Due to the necessity of caring for her young child, the claimant had not been actively seeking work since March 15, 1977, was held ineligible for benefits from that date, forward, under Section 207.021(a)(4) of the Act.

Appeal No. 672-CF-77. The claimant brought her small children with her on a visit to a Commission office. However, she did have child care arranged for them and could have left the children with a neighbor living within one mile of the Commission office and then returned to the office to go out on any referral she might have been given on that day. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 155.10 (2)

AA DOMESTIC CIRCUMSTANCES

Appeal No. 4365-CSUA-76. From the time she filed her initial claim through the date she returned to work, the claimant could work only four hours per day because she needed to care for her children. HELD: Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act from the initial claim date forward.

Appeal No. 458-CSUA-76. Prior to filing her initial claim, the claimant had contacted a day-care center concerning arrangements for the care of her two small children and could have actually placed the children in the day-care center upon one day's notice. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act in view of the fact that she had a child care arrangement which she could make effective within one day if she found a job.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 155.35

AA DOMESTIC CIRCUMSTANCES

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.

Appeal No. 3984-CA-76. Due to a death in his family, the claimant had not been available for work from August 30 through September 3, 1976. HELD: Ineligible for benefits under Section 207.021(a)(4) of the Act during that time.

Appeal No. 378-CSUA-76. A claimant who, by reason of the necessity of caring for her sick mother, could accept only part-time work, was held ineligible for benefits under Section 207.021(a)(4) of the Act as being unavailable for work until such time as the claimant indicated to a Commission representative that she was available for full-time work.

Appeal No. 6003-AT-63 (Affirmed by 9770-CA-63). A claimant who leaves the state to attend the funeral of a relative is not available for work during the period of his absence from his locality.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 155.45

AA DOMESTIC CIRCUMSTANCES

AA 155.45 DOMESTIC CIRCUMSTANCES: PARENT, CARE OF.

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

Appeal No. 8791-CA-62. A claimant who is devoting her time to caring for her aged mother is not available for work.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 160.00 - 160.05

AA EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK
--

AA 160.00 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK.

**160.05 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK:
GENERAL.**

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 160.05 (2)

AA EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK

Appeal No. 86-07928-10-050787. The claimant was temporarily laid off for two weeks with a definite recall date. He went to Arkansas on family business for three days during the lay off. HELD: A claimant who has been laid off for a temporary period of time, and is awaiting a return to his previous job after a specific amount of time, need not search for work during his temporary unemployment. In the present case, since the claimant was laid off for a two week period, after which he could return to his previous job, he was available for work during the period in question. (Also digested under AA 510.40.)

Appeal No. 1039-CF-79. Following her separation from work with the U.S. Postal Service, the claimant had secured two successive, temporary jobs through her husband's union. Although she was not a union member, the claimant had been issued a union permit and had secured and performed work on the basis of that permit. Her application for full union membership was to be voted on six days after the Appeal Tribunal hearing. Although the claimant had made use of the Commission's placement service and had made a few individual contacts seeking work, she had focused most of her activities in gaining employment on checking with the union's hiring hall on a weekly basis. HELD: The claimant's personal contacts seeking work did not establish an active, independent search for work. Accordingly, the Commission was compelled to decide whether the claimant fit into the union member exception to the general requirement of an active, independent search for work set out in the policy statement on work search under AA 160.05. The Commission held that, although the claimant had obtained work through the union on a permit basis, because she was not a union member in good standing and thus was not entitled to all the opportunities afforded by full union membership, she did not come within the exception to the general work search requirement. Accordingly, she was held ineligible under Section 207.021(a)(4) of the Act. (Also digested under AA 475.05.)

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 160.05 - 160.10

AA EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK

Appeal No. 1023-CA-79. The claimant had been a bus driver with an interurban passenger carrier and was laid off. He was awaiting recall by that employer and thus had conducted no search for work. The claimant was a union member in good standing; however, his union did not operate a hiring hall and had been of no assistance to the claimant in finding work during past periods of temporary layoff. HELD: Because the claimant's union did not operate a hiring hall, he did not come within the union member exception to the general requirement of an active, independent search under AA 160.05. Accordingly, the claimant's failure to engage in an active, independent search for work rendered him ineligible under Section 207.021(a)(4) of the Act. (Also digested under AA 475.05.)

Appeal No. 2135-CA-77. The claimant at no time personally contacted any representatives of prospective employers limiting her work search to telephone calls and to inquiries of friends. She wanted work only in a museum and would have worked only in a fairly restricted part of Houston, excluding the downtown area. HELD: Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act from the initial claim date, forward, as not having made a personal search for work when, in view of her geographical and occupational limitations, an intensive personal search for work might reasonably be expected of her.

Also see cases digested under AA 510.40.

**160.10 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 AVAILABILITY FOR WORK.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 160.10 (2)

AA EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK

Case No. 693452-2. The claimant had been advised by the Commission that she was required to make a minimum of three work search contacts each week in order to maintain eligibility to receive benefits. During the week in question, she applied for work at two businesses and visited a workforce center, where she performed a computerized job search.

HELD: Available for work. Rule 28 does not limit work search contacts to in-person interviews or physical visits to job locations. Instead, the rule provides a non-exhaustive list of examples of activities that will suffice. Specifically provided in that list is the utilization of the resources available at workforce centers.

Stella M. Redd vs. Texas Employment Commission, 431 S.W. 2d 16 (Tex. Civ. App.-Corpus Christi, 1968, writ ref'd n.r.e.). The court held there was substantial evidence before the Commission to justify its conclusion that the claimant did not meet the availability requirement of the Act. The claimant had been held ineligible because she had made only four applications for work in the three-month period following her retiring on June 1, 1965.

Texas Employment Commission vs. Anton F. Holberg, et al, 440 S.W. 2d 38 (1969). A claimant who does not make a reasonably diligent search for work is not available for work.

Appeal No. 2494-CA-77. A claimant who, from June 15 to July 23, 1977, had made no active personal search for work was held unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act during that time.

Appeal No. 142-CA-67. A claimant must be specific as to employers contacted in his search for work in order to establish that he is making an active search for work.

Also see Appeal No. 978-CA-77 under AA 150.20.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 160.15 - 160.20

AA EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK

**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.

Appeal No. 15-CA-64. A claimant who dresses improperly for a job interview, smokes, chews gum, and understates her qualifications, takes affirmative action to ensure she will not be accepted for the job to which she was referred. HELD: The claimant is ineligible to receive benefits. (Also digested under SW 265.25.)

**160.20 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK:
EMPLOYMENT.**

WHERE PERFORMANCE OR ACCEPTANCE OF WORK IS DISCUSSED AS EVIDENCE OF ABILITY AND AVAILABILITY FOR WORK, AS WHERE CLAIMANT OBTAINED WORK SUBSEQUENT TO FILING.

Appeal No. 4267-CA-76. The fact that a claimant, through her own efforts, is able to secure work within her restrictions, is evidence that such restrictions did not constitute an undue limitation on the claimant's availability for work. (Cross-referenced under AA 510.10.)

Appeal No. 2963-CA-75. A claimant who is employed part time but who seeks, and ultimately finds and accepts, full-time work thereby demonstrates her attachment to the labor market and meets the active search for work requirement of Section 207.021(a)(4) of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 160.30

AA EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK

**AA 160.30 EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK:
REGISTRATION AND REPORTING.**

REGISTRATION AND REPORTING, FAILURE TO REGISTER AND REPORT, OR FAILURE TO REGISTER OR REPORT IN THE PROPER LOCALITY, OR IN THE PROPER FORM.

Appeal No. 681-CA-77. On December 30, 1976, the claimant had been instructed to report to the placement section of her Commission local office; however, she did not do so until January 20, 1977, because she did not consider it necessary to report. HELD: Ineligible for benefits under Section 207.021(a)(1) of the Act from December 30, 1976, through January 19, 1977, as she had not, after registering for work, continued to report at an unemployment office in accordance with such regulations as the Commission may prescribe.

Appeal No. 3027-CF-76. The claimant was scheduled to report to file a claim at 8:30 a.m. on a Monday but did not report until about 11:00 a.m. on that day, due to his having had a flat tire on his automobile. HELD: Eligible for benefits Section 207.021(a)(1) of the Act, in view of the fact that the claimant had a reasonable excuse for not having reported on time.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 160.30 (2)

AA EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK

Appeal No. 371-CA-76. The claimant had failed to register for work with the office of an agent state's employment service due to her having been told that work registration was not necessary in her case because she was sixty-five years old. An agent state claims representative certified that the claimant met the agent state's registration requirements. HELD: The claimant could not be held ineligible under Section 207.021(a)(1) of the Act for failing to register for work with the agent state's local office because Section 2(a) of Rule 21 of the Texas Workforce Commission provides that a claimant's registration for work in the agent state shall be accepted as meeting Texas work registration requirements.

Appeal No. 257-CF-76. On August 28, 1975, the claimant had been mailed a notice directing him to report to a specific Commission local office but he did not so report until September 23, 1975, following the mailing of a second call-in notice. He did not report more promptly because he had been attempting to arrange a particular self-employment venture. HELD: Ineligible to receive benefits under Section 207.021(a)(1) of the Act, from August 28 through September 22, 1975, for not having reported to an employment office in accordance with such regulations as the Commission may prescribe. Such regulation, Rule 20 of the Texas Workforce Commission Rules, provides that a claimant shall do those things requested by a Commission representative that are reasonably designed to inform the claimant of his rights and responsibilities in filing a claim for benefits.

Appeal No. 47540-AT-67 (Affirmed by Appeal No. 998-CA-67). A claimant who lives in Mexico and has a correspondence address in Texas must check his mail daily in person or have someone check in his behalf in order to meet the availability requirements of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 160.30 - 160.35

AA EFFORT TO SECURE EMPLOYMENT OR WILLINGNESS TO WORK
--

Appeal No. 9900-CA-63. A claimant who lives in suburban Dallas but registers and files claims in Garland and demands a wage she can expect to receive only in Dallas, is not unduly limiting her availability where it is shown that she is actively seeking work in Dallas and that the Dallas office occasionally fills job orders with registrants from the Garland office.

Also see Appeal No. 79-CA-74 under AA 5.00.

**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 REASONS FOR DOING SO, ARE CONSIDERED IN DETERMINING HIS AVAILABILITY FOR WORK.

Appeal No. 3729-CA-76. At the time she filed her initial claim, the claimant had been unable to continue working for her last employer, and since that date, had not established what work, if any, she was able to do and had not engaged in an active work search. HELD: Ineligible for benefits Sections 207.021(a)(3) and 207.021(a)(4) of the Act.

Appeal No. 1154-CA-76. A claimant who left her last work on the advice of a doctor, having been advised to cease working for medical reasons, and who filed her initial claim immediately thereafter, was held unable to work and ineligible for benefits under Section 207.021(a)(3) of the Act from the initial claim date, forward.

Also see Appeal No. 2431-CA-77 under AA 235.05.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 165.00 - 165.05

AA EMPLOYER REQUIREMENTS

AA 165.00 EMPLOYER REQUIREMENTS.**165.05 EMPLOYER REQUIREMENTS: GENERAL.**

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

Appeal No. 3225-CA-77. The claimant had last worked for seven years as a bus driver and dispatcher/starter for an airport transportation company but could no longer do heavy lifting because of arthritis and mild heart trouble. Since filing his initial claim, he had made numerous telephone contacts for work but very few personal contacts. Most of his contacts had been for work as a security guard although he had also been interested in work as a dispatcher. He had not wanted to accept security work which involved the use of a weapon, and he had no clerical skills. HELD: Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act from the initial claim date, forward, since the testimony of a Commission placement representative established that eighty percent of the dispatcher jobs in the claimant's area required clerical skills and ninety percent of the security jobs in the area required the employee to handle some sort of weapon.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 190.00 - 190.05

AA EVIDENCE

AA 190.00 EVIDENCE.**190.05 EVIDENCE: GENERAL.**

DISCUSSION OF EVIDENCE, OR OF SPECIFIC POINTS OF EVIDENCE, NOT COVERED BY EITHER OF THE OTHER SUBLINES UNDER LINE 190.

Appeal No. 87-1400-10-081087. Two of the three required work search contacts listed on the claimant's continued claim form fell outside the claim period. At the Appeal Tribunal hearing, the claimant presented testimony and other evidence of five additional contacts made during the claim period but omitted from the continued claim form. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act because the claimant established, by competent evidence of a diligent work search, a genuine attachment to the labor force. The issue was not whether the claimant had properly completed his claim form but, rather, whether he established his availability for work during the period in question.

Also see Appeal No. 87-06792-10-042287 under AA 190.15.

Appeal No. 2568-CA-76. A claimant who was physically unable to perform her usual work of inspector in a garment factory and who presented no evidence that she was able to do any other type of work, was held unable to work and ineligible for benefits under Section 207.021(a)(3) of the Act from the initial claim date, forward.

Appeal No. 2098-CA-76. The only medical evidence available indicated that the claimant was to have been placed on a medical leave of absence on March 3, 1976. The claimant made no attempt to continue in employment with her last employer after that date and presented no medical statement affirmatively establishing her ability to work since March 3, 1976. HELD: Unable to work and ineligible for benefits from March 18, 1976, the initial claim date, forward, under Section 207.021(a)(3) of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 190.05 - 190.10

AA EVIDENCE

Appeal No. 371-CA-76. The claimant had inadvertently stated that she was not available for full-time work because her husband was disabled. The claimant's husband had had a stroke in 1967 but could adequately care for himself. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act, since her claims for the weeks with respect to which she had said she was not available for work reflected seven work contacts in the two-week period in question in an occupation in which she had ten years' work experience.

Appeal No. 330-CUCX-76. The claimant contended that, during the period of time in question, she had actually made more work contacts than she had listed on her eligibility questionnaire; however, she was unable to name any specific work contacts other than those listed on the form. HELD: Ineligible as not available for work under Section 207.021(a)(4) of the Act during the period in question because she failed to establish that she had made an adequate search for work during that period.

Appeal No. 183-CA-76. A claimant who left her last work because of an uncontrollable diabetic condition and who presented no evidence to show that she has been or is presently able to control her diabetic condition, is unable to work and ineligible for benefits under Section 207.021(a)(3) of the Act.

Also see Appeal No. 4267-CA-76 under AA 160.20.

190.10 EVIDENCE: BURDEN OF PROOF AND PRESUMPTIONS.

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

APPEALS POLICY AND PRECEDENT MANUAL**ABLE AND AVAILABLE****AA 190.10 - 190.15****AA EVIDENCE**

Appeal No. 2011-CUCX-76. The claimant, a former student, asserted that he had been able and available for work since the end of the school term. However, he did not describe the extent of his work search since school ended. HELD: Ineligibility under Section 207.021(a)(4) continued despite the fact that the claimant had ceased attending school. To be considered available for work and eligible for benefits the Act requires that a claimant must not only be available for work during the normal working hours in his customary occupation but also that he be engaged in an active, independent search for work for each week for which he is claiming benefits.

Appeal No. 1721-CA-76. A claimant who offered no evidence that he had made an active search for work was held unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act. To establish availability for work under Section 207.021(a)(4), a claimant must give specific proof of the contacts he has made for employment. The claimant in this case had not met that burden of proof.

Appeal No. 886-CA-76. Where a claimant introduced in evidence at the Appeal Tribunal hearing a statement from his physician certifying that the claimant was able to return to work as of October 1, 1975, the previously imposed order of ineligibility Section 207.021(a)(3) of the Act was lifted as of October 1, 1975.

Also see Appeal No. 2336-CA-77 under AA 235.05.

190.15 EVIDENCE: WEIGHT AND SUFFICIENCY.

DISCUSSION OF THE WEIGHT AND SUFFICIENCY OF THE EVIDENCE CONCERNING A CLAIMANT'S ABILITY TO WORK OR HIS AVAILABILITY FOR WORK.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 190.15 (2)

AA EVIDENCE

Appeal No. 87-06792-10-042287. On her continued claim form, the claimant listed two work search contacts during the claim period and three falling outside the claim period. At the Appeal Tribunal hearing, the claimant merely testified that she had listed in error the date of the contacts outside the claim period. With her appeal to the Commission, the claimant submitted copies of two applications indicating the corresponding contacts actually were made within the claim period and not as listed on the claim form. The claimant was required to make three contacts each week. **HELD:** Available for work and eligible for benefits under Section 207.021(a)(4) of the Act because the sworn testimony and physical evidence were sufficient to establish a reasonable work search during the claim week in question.

Also see Appeal No. 87-1400-10-081087 under AA 190.05.

Appeal No. 532-CF-78. The failure of a claimant to appear and offer evidence to show that he has been available for work or to rebut a theory or allegation of unavailability put forth by his former employer, is not a basis for holding the claimant ineligible, in the absence of specific evidence presented by the employer.

Appeal No. 1917-CA-77. A claimant who presents as evidence, in conjunction with her Commission appeal, a statement from her physician certifying that she has been able to work at all times material to the appeal is eligible for benefits Section 207.021(a)(3) of the Act.

Appeal No. 1485-CA-76. On March 4, 1976, the claimant stated that he was limiting his availability for work to the day shift because his chronically ill daughter had to be taken to the hospital three nights a week for continuing treatment. The claimant's daughter had to be at the hospital from 2:00 p.m. to 8:00 p.m. or 9:00 p.m. When the claimant made these statements, he was confused and upset because he had recently lost a job he had held for 19 years. He actually meant only that he preferred day-shift work. He was

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 190.15 (3)

AA EVIDENCE

Appeal No. 1485-CA-76.

(Cont'd)

willing to accept work on any shift. In fact, the claimant was not the only one who could take his daughter to the hospital. The claimant's wife or some other person could take the child to the hospital if claimant was unable. The claimant never indicated to the Placement Department of the Commission any limitation on his availability for work and had accepted a number of referrals to jobs requiring availability for work at all hours, two of such referrals shortly before he made the statement of March 4, 1976. HELD: Claimant was available for work, and eligible for benefits under Section 207.021(a)(4) of the Act. The claimant's statement of March 4, 1976, was made while he was under stress about having lost his job, and did not, under the circumstances shown by the evidence in the record, actually establish that the claimant was unduly limiting the hours he was willing to work.

Appeal No. 19-CA-77. The claimant, a clerk-typist, first presented a doctor's statement advising her to avoid any lifting, stooping or squatting. Because it appeared to the Appeal Tribunal unlikely that the claimant could obtain employment requiring none of the activities prohibited by her physician, she was held unable to work from the initial claim date, forward. On appeal to the Commission, the claimant presented a doctor's statement to the effect that she had been told to avoid only excessive stooping, bending, squatting or standing. There were numerous jobs available for which the claimant was qualified, which she was seeking, and which she could perform within the physical limitations described in conjunction with her appeal to the Commission. HELD: The claimant presented evidence that she had at all times been able to perform work which was available to her in her area and which she was actively seeking. (Also digested under AA 235.05.)

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 235.00 - 235.05

AA HEALTH OR PHYSICAL CONDITION

AA 235.00 HEALTH OR PHYSICAL CONDITION.

235.05 HEALTH OR PHYSICAL CONDITION: GENERAL.

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

Appeal No. 1412-CA-78. A claimant who is unable to work during a weekend due to illness will not be held ineligible Section 207.021(a)(3) of the Act where weekend work has not normally been required of her in her customary occupation and where appropriate employer personnel offices would have been closed had the claimant been able to search for work. Further, a claimant who is sick on one regular work day during a benefit period but is able to and available for work on all other days in the benefit period, will not be held ineligible. (Also digested under AA 5.00.)

Appeal No. 2452-CA-77. Due to the medical condition of her feet and ankles, the claimant was required to wear either "slaps" or "thongs." HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act, in the absence of evidence that prospective employers would be reluctant to hire her because of the type of footwear that she has to wear. Furthermore, even if there were evidence of such employer reluctance, the claimant would be held available for work and eligible for benefits because her restrictions on the type of footgear that she could wear were, in the light of her medical condition, reasonable.

Appeal No. 2431-CA-77. The claimant was medically retired from his last work and since then has been under a doctor's care. His work search efforts were unsuccessful because he had been rejected for medical reasons. HELD: Unable to work and ineligible for benefits under Section 207.021(a)(3) of the Act, from the initial claim date, forward.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 235.05 (2)

AA HEALTH OR PHYSICAL CONDITION
--

Appeal No. 2336-CA-77. The claimant testified at the hearing that she had not been able to work since filing her initial claim. She furnished no medical evidence tending to establish the contrary. HELD: Unable to work and ineligible for benefits from the initial claim date, forward, under Section 207.021(a)(3) of the Act.

Appeal No. 1846-CA-77. The claimant was able to do only light work and was precluded by her physical condition from accepting work in any of the occupations in which she had prior work experience. Her work search had been almost exclusively in occupations in which she was precluded by her physical condition from accepting work, and she was too ill to work from March 8, to March 22, 1977. HELD: Unable to work from March 8, to March 22, 1977, under Section 207.021(a)(3) of the Act. Further, she was unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act, as, under the circumstances, the claimant's work search did not reflect a genuine attachment to the labor market.

Appeal No. 1687-CA-77. The claimant, unable to do the type of work which he last did, was seeking other types of work which he could do. HELD: Able to work and eligible for benefits under Section 207.021(a)(3) of the Act.

Appeal No. 19-CA-77. A claimant who has been told by her doctor to avoid excessive stooping, bending, squatting, or standing but who has been actively seeking the numerous available jobs for which she is qualified and which she is capable of performing, is able to work and available for work within the meaning Sections 207.021(a)(3) and 207.021(a)(4) of the Act. (Also digested under AA 190.15.)

Appeal No. 4184-CA-76. A claimant who is not physically able to work full-time is ineligible for benefits Section 207.021(a)(3) of the Act.

Appeal No. 1772-CA-76. A claimant who for medical reasons can no longer perform work requiring heavy lifting but who can perform other work for which he is qualified, is able to work and eligible for benefits under Section 207.021(a)(4) of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 235.05 - 235.30

AA HEALTH OR PHYSICAL CONDITION
--

Appeal No. 858-CA-76. A claimant who, prior to the date of her initial claim, has been released by her physician as being able to work, meets the ability to work requirements Section 207.021(a)(3) of the Act.

Also see Appeal No. 1154-CA-76 under AA 160.35.

235.25 HEALTH OF PHYSICAL CONDITION: ILLNESS OR INJURY.

TYPES OF ILLNESS OR INJURY NOT COVERED BY THE SPECIFIC SUBLINES UNDER LINE 235.

Appeal No. 87-12632-10-071787. The claimant suffered a broken leg and was not able to run, lift, or put pressure on it. While unable to return to his usual work as a machine operator, the claimant was able to work and was actively seeking work in dispatching, bookkeeping, and sales, areas in which he had experience. HELD: Able to work and eligible for benefits under Section 207.021(a)(3) of the Act despite the temporary disability of his broken leg because the claimant was able and qualified to do work outside his usual occupation and was, in fact, actively seeking such work. Hence, the claimant had a reasonable expectancy of securing suitable work.

235.30 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.

Appeal No. 2111-CA-77. A claimant who, in spite of certain physical limitations on the use of her hands, has a sincere interest in obtaining work, has applied for numerous jobs, and is able to work as a hostess or receptionist, is not ineligible as unable to work or unavailable for work.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 235.40

AA HEALTH OR PHYSICAL CONDITION

235.40 HEALTH OR PHYSICAL CONDITION: PREGNANCY.

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

Appeal No. 426-CA-75. The claimant had presented evidence from her doctor that she was physically able to work and that the doctor had recommended that claimant continue to work. The claimant had also presented evidence to establish a diligent effort to find work. Claimant had become unemployed for reasons unrelated to her pregnancy. HELD: The Commission's duty in determining a claimant's eligibility for benefits, whether pregnant or not, is to decide whether the claimant is physically able to work, ready and willing to accept suitable work, and genuinely attached to the local labor market. In determining whether a claimant is genuinely attached to the local labor market, the Commission necessarily must consider, along with other factors, the job applications made by the claimant relative to her previous employment and should consider whether the claimant's efforts to secure work are in the same general area of experience as her former employment. Applying these criteria to the present case, the Commission found that the claimant met the requirements of Sections 207.021(a)(3) and 207.021(a)(4) of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 250.00

AA INCARCERATION OR OTHER LEGAL DETENTION

AA 250.00 INCARCERATION OR OTHER LEGAL DETENTION.

APPLIES TO CASES INVOLVING IMPRISONMENT OR DETENTION OF A WORKER.

Appeal No. 869-CA-77. A claimant who is confined in jail or in a penitentiary is unavailable for work under Section 207.021(a)(4) of the Act during the period of such confinement.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 295.00

AA LENGTH OF UNEMPLOYMENT

AA 295.00 LENGTH OF UNEMPLOYMENT.

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

Appeal No. 2190-CF-77. The claimant voluntarily quit his last work without good cause when continued work was available to him. Three weeks thereafter, he filed his initial claim. During the four-month period from the date of his initial claim until the claimant's motion for rehearing and the Commission's final decision, the claimant demanded a wage in excess of the wage most commonly paid in his locality for the work he was seeking. However, the wage demanded by the claimant was only slightly more than 76% of the wage earned in his last employment. HELD: The Commission recited the policy first established in Appeal No. 2282-CA-77 (see above and under AA 500.00) and held the claimant eligible under Section 207.021(a)(4) of the Act. It also advised the claimant that, if his unemployment continued, he would be required to lower his wage demand or be held ineligible for an excessive wage demand. (Cross-referenced under AA 500.00.)

NOTE: For a complete description of the Commission's policy regarding wage demand and the effect thereon of, the length of unemployment, among other things, see Appeal No. 2282-CA-77 under AA 500.00.

Appeal No. 1865-CA-76. During the five-month period from the date of her initial claim until the AT hearing, the claimant sought work only in an occupation in which the employment prospects were extremely limited. HELD: Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act. A claimant who has been unemployed and filing claims for a substantial period of time must modify her job and wage demands to realistically conform to the job market. The claimant's continued unemployment and failure to find work of the type she desired indicated that the limitations on her availability and her negligible work search precluded her from having a reasonable expectancy of securing employment. (Cross-referenced under AA 510.10.)

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 315.00

AA NEW WORK

AA 315.00 NEW WORK.

ONLY USED IN CASES WHICH DISCUSS WHETHER A GIVEN EMPLOYMENT CONSTITUTES NEW WORK WITHIN THE MEANING OF THAT TERM AS USED IN SECTION 1603(a)(5) OF THE INTERNAL REVENUE CODE, AS AMENDED (EFFECTIVE AUGUST 5, 1954, SECTION 3304(a)(5) OF THE FEDERAL UNEMPLOYMENT TAX ACT).

See Unemployment Insurance Program Letter No. 9-84 under VL 315.00.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 350.00

AA PERIOD OF INELIGIBILITY

AA 350.00 PERIOD OF INELIGIBILITY.

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

Appeal No. 3812-CSUA-76. A claimant who places a restriction on her availability for work is not to be held unavailable for work and ineligible for benefits prior to the time that she is informed that her availability for work is deemed to be unduly restricted and that such undue restriction might render her ineligible for benefits.

Appeal No. 3626-CA-76. An order of ineligibility is to be removed as of the date the claimant first notified the Commission (i.e. a Commission representative) that the claimant's availability for work is no longer unduly restricted.

Appeal No. 3291-CA-75. The claimant was out of the area where he was seeking work for one day, a Sunday. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act for the benefit period in which that day occurred, because most employers do not have offices open to take applications for work on Sundays. Thus, the claimant's absence from the area where he was seeking work did not materially affect his availability for work.

Also see Appeal No. 1412-CA-78 under AA 5.00.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 360.00

AA PERSONAL AFFAIRS

AA 360.00 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 OR OTHER WORK (LINE 415).

Appeal No. 2715-CSUA-77. A claimant who makes no contacts for work because of personal responsibilities, is unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act.

Appeal No. 650-CA-67. A claimant who is under indictment on a criminal charge, but whose trial date is indefinite and who is making a concerted effort to find work, meets the availability requirement of Section 207.021(a)(4) of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 365.00

AA PROSPECTS OF WORK

AA 365.00 PROSPECTS OF WORK.

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

See Appeal No. 1865-CA-76 under AA 295.00.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 370.00 - 370.10

AA PUBLIC SERVICE

AA 370.00 PUBLIC SERVICE

370.10 PUBLIC SERVICE: JURY DUTY.

AVAILABILITY OF A CLAIMANT WHILE SERVING AS A JUROR.

No precedent cases.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 375.00 - 375.25

AA RECEIPT OF OTHER PAYMENTS

AA 375.00 RECEIPT OF OTHER PAYMENTS.

375.25 RECEIPT OF OTHER PAYMENTS: OLD AGE AND SURVIVOR'S INSURANCE

WHERE THE FILING FOR, OR RECEIPT OF, SUCH BENEFITS IS CONSIDERED IN DETERMINING CLAIMANT'S AVAILABILITY. (NOTE: CASES DISCUSSING THE REDUCTION OR CANCELLATION OF UNEMPLOYMENT INSURANCE BENEFITS BECAUSE OF RECEIPT OF OLD AGE OR RETIREMENT PAYMENTS ARE COVERED IN THE MISCELLANEOUS DIVISION OF THE CODE.)

Appeal No. 1769-CF-77. A claimant who is unwilling to accept full-time work because of the adverse effect the earnings from such work would have on his entitlement to Social Security benefits will be held ineligible under Section 207.021(a)(4) until he is willing to make himself available for full-time work.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 415.00 - 415.05

AA SELF-EMPLOYMENT OR OTHER WORK

AA 415.00 SELF-EMPLOYMENT OR OTHER WORK.

415.05 SELF-EMPLOYMENT OR OTHER WORK: GENERAL.

INCLUDES CASES CONTAINING (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.

Appeal No. 3673-CA-75. The claimant worked only eight and one-half hours during the benefit period as an independent contractor painting a house. HELD: Eligible for benefits under Section 207.021(a)(4) of the Act since his self-employment was not so substantial as to preclude his being available for work.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 450.00 - 450.151

AA TIME

AA 450.00 TIME.

450.10 TIME: DAYS OF WEEK.

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

Sherbert vs. Verner, 374 U.S. 398 (Supreme Court, 1963). A claimant who, because of religious convictions, cannot accept a job requiring her to work on Saturdays, must be deemed available for work and eligible for benefits, notwithstanding such restriction and regardless of its effect on her actual chances of securing work. To hold otherwise would place an unconstitutional burden on her freedom of religion under the First and Fourteenth Amendments to the Constitution of the United States. (Also digested under AA 90.00.)

450.15 TIME: HOURS.

450.151 TIME: HOURS: GENERAL.

Appeal No. 1021-CA-77. On her previous job as a cook, the claimant had worked from 8:00 a.m. to 5:00 p.m., Monday through Friday. She had child care arranged for her minor children from 8:00 a.m. to 6:00 p.m. By limiting her availability for work to the hours of 8:00 a.m. to 6:00 p.m., she eliminated approximately 35% of the potential jobs for which she was qualified. HELD: Available for work and eligible

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 450.151 - 450.154

AA TIME

Appeal No. 1021-CA-77. (Cont'd)

for benefits under Section 207.021(a)(4) of the Act. In light of the claimant's previous work experience, her restrictions on her hours of work were reasonable.

450.153 TIME: HOURS: LONG OR SHORT.

The Texas Supreme Court held in TEC, et al, vs. Hays, 360 S.W. 2d 525 that it would be difficult to find a student in regular attendance in elementary or secondary schools available for work because of Arts. 2906 and 2892, Vernon's Texas Civil Statutes, which require that students between seven and sixteen years be in school and that such schools be taught not less than seven hours per day.

450.154 TIME: HOURS: NIGHT.

Appeal No. 3877-CA-76. The claimant limited her availability to daytime jobs in a labor market area in which about two-thirds of the jobs in the claimant's occupation required only daytime hours. HELD: The claimant's limitation did not unduly limit her availability for work since most of the jobs in her field were available during daytime hours and she had actually obtained some work within her limitation.

Appeal No. 2210-CA-76. A claimant who is looking for full-time work as a receptionist or a PBX operator, but who is not willing to work nights, is available for work within the meaning of Section 207.021(a)(4) of the Act in the absence of evidence that the usual hours of work for a receptionist or a PBX operator include night hours.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 450.154 (2)

AA TIME

Appeal No. 1480-CA-76. A claimant who will not work nights, but is available for work during the customary (daytime) hours in two of the three occupations in which she is registered for and seeking work (including her primary registered occupation of receptionist), is not unduly restricting her availability for work.

Appeal No. 1006-CA-77. By limiting her availability to work on the day shift, the claimant eliminated 50% to 60% of the available jobs in her occupation in her labor market area. HELD: Unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act. The claimant's hourly restrictions, which eliminated 50% to 60% of the available jobs in her occupation in her area, unduly limited her availability for work.

Appeal No. 2697-CA-76. The claimant was registered for work as a nurse's aide, in which work she had only a few months' experience, and as a general office clerk, in which work she had several years' experience. She was actively seeking work as a general office clerk, the normal hours for which work were 8:00 a.m. to 5:00 p.m. She could not work evening hours, which restricted her availability for work as a nurse's aide. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act as the claimant's unwillingness to work night hours did not restrict her availability for work in the occupation in which she had her primary work experience and in which she was actively seeking work.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 450.155 - 450.157

AA TIME

450.155 TIME: HOURS: PREVAILING STANDARD, COMPARISON WITH.

Appeal No. 766-CA-77. A claimant who is not available for work during the normal working hours in her occupation and who wants to be paid time and one-half for overtime work (such overtime pay most commonly being paid by only the largest employers in her occupational field), is not to be held unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act unless the evidence shows that she knows, or should know, that the conditions which she is imposing constitute an undue limitation on her availability for work. (Cross-referenced under AA 500.00.)

Also see Unemployment Insurance Program Letter No. 9-84 under VL 315.00

450.157 TIME: HOURS: CUSTOMARY.

Appeal No. 4366-CSUA-76. A claimant who restricts her availability to certain daytime hours is not unavailable for work and ineligible for benefits under Section 207.021(a)(4) of the Act where the claimant's restriction is not out of line with the working hours on similar jobs she has previously held in the same labor market area and where she has not been advised that such restriction constitutes an undue limitation on her availability for work.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 450.157 - 450.40

AA TIME

Appeal No. 1263-CA-76. The claimant would not accept work if the required hours of work began before 7:00 a.m. or ended after 5:00 p.m. HELD: Ineligible for benefits under Section 207.021(a)(4) of the Act as being unavailable for work where the evidence showed that the majority of the positions for which the claimant was qualified had either a starting time earlier than 6:00 a.m. or a quitting time later than 5:00 p.m. A claimant who limits the hours that he will work to the extent that he is not available for most jobs in his usual occupation is not available for work.

450.20 TIME: IRREGULAR EMPLOYMENT.

INVOLVES RESTRICTIONS TO, OR UNWILLINGNESS TO ACCEPT, IRREGULAR WORK.

Appeal No. 866-CA-77. A claimant who restricts her availability for work to permanent full-time employment, and who is unwilling to accept part-time or temporary work, is ineligible for benefits under Section 207.021(a)(4) of the Act as such a restriction constitutes an undue limitation on her availability for work.

450.40 TIME: PART-TIME OR FULL-TIME.

WHERE CLAIMANT'S AVAILABILITY IS IN ISSUE BECAUSE HE EITHER WANTS, OR DOES NOT WANT, PART-TIME OR FULL-TIME WORK.

Appeal No. 4147-CA-76. Although the claimant desired part-time work so that she could spend more time with her retired husband, she had been willing at all times to accept full-time work and had never advised any potential employers that she was available only for part-time work. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) of the Act as the claimant had been available for full-time work.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 450.40 - 450.50

AA TIME

Appeal No. 4009-CSUA-76. A claimant who was originally willing to work only six and one-half hours a day but who later notified the Commission of her willingness to work eight hours a day, was held not available for work under Section 207.021(a)(4) of the Act prior to the date she so notified the Commission, as she was not available for full time work prior to that date.

Also see Appeal No. 1769-CF-77 under AA 375.25; Appeal No. 866-CA-77 under AA 450.20; and Appeal No. 378-CSUS-76 under AA 155.35.

450.50 TIME: SHIFT.

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

Appeal No. 1666-CA-77. The claimant was working part-time, had expectations that such work would become full-time work, was actively seeking other, full-time work, and her hours restriction was consistent with the usual shift starting times in the type of work she was seeking. HELD: Available for work and eligible for benefits under Section 207.021(a)(4) as her availability for work was not unduly restricted.

Also see cases under AA 450.154.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 450.55

AA TIME

AA 450.55 TIME: TEMPORARY.

CLAIMANT'S RESTRICTIONS TO, OR UNWILLINGNESS TO ACCEPT, TEMPORARY WORK.

In the case of Texas Employment Commission vs. Kirkland, 445 S.W. 2d 777 (El Paso Civ. App, 1969) the court held that a claimant who was available for work for only one week in effect detached himself from the labor market and that he was not available for work.

Appeal No. 1878-CA-78. The claimant was separated by her last employer on May 19 due to lack of work and agreed to return to work for that employer on July 3. She filed her initial claim on May 26 and made an active search for temporary, full-time work during the ensuing five weeks, informing each prospective employer of her plan to return to work for her former employer. HELD: Since the claimant made an active search for temporary, full-time work and truthfully informed prospective employers that she planned to return to her former employment, the claimant was available for work within the meaning of Section 207.021(a)(4) of the Act.

Appeal No. 2480-CA-77. A claimant who is available only for temporary, full-time work, pending recall to work by his last employer, and who is making an active search for work until such recall, is available for work and eligible for benefits under Section 207.021(a)(4) of the Act. (Cross-referenced under AA 510.40.)

Appeal No. 3111-CSUA-75. A claimant, who was available for full-time work only from June 1 until September 1 because he had a firm job commitment to begin in September, was held available for work under Section 207.021(a)(4) of the Act.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 475.00 - 475.05

AA UNION RELATIONS

AA 475.00 UNION RELATIONS.

475.05 UNION RELATIONS: GENERAL.

INCLUDES CASES CONTAINING (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.

Appeal No. 1039-CF-79. A claimant who has been issued a union permit and has secured and performed work on the basis of that permit, but who is not a full union member in good standing, does not come within the union member exception to the general requirement of an active, independent search for work set out in the policy statement on work search under AA 160.05. (For a more complete digest of this decision, see AA 160.05.)

Appeal No. 1023-CA-79. A claimant whose union does not operate a hiring hall does not come within the union member exception to the general requirement of an active, independent search for work set out in the policy statement on work search under AA 160.05. (For a more complete digest of this decision, see AA 160.05.)

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 500.00

AA WAGES

AA 500.00 WAGES.

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

Appeal No 86-05869-10-041087. The claimant was separated from his \$8.00 per hour job on February 1, 1986. With no intervening work the claimant filed an initial claim on August 14, 1986, indicating \$7.00 per hour as his minimum acceptable wage. On September 22, 1986 the claimant refused a job offering \$5.00 per hour simply because of the hourly rate. The claimant eventually secured a job at \$7.20 per hour. **HELD:** The claimant had good cause to reject the \$5.00 per hour job offer because of the low pay. The length of the claimant's unemployment as a factor in determining the reasonableness of his wage demand is measured not from the date of separation from work, but from the date he files his initial claim for benefits. (Clarifying the decision in Appeal No. 2282-CA-77, digested under AA 500.00 and SW 500.35. Cross-referenced under SW 295.00 and SW 500.50.)

Appeal No. 2282-CA-77. Although a claimant must have a reasonable and realistic wage demand which will not hinder or prevent his finding suitable work, the reasonableness of a claimant's wage demand must be considered in light of his earnings on his last job, his prior work experience and job classification, as well as the most commonly paid wage in the area where he is seeking work. Where there is a wide disparity between the most commonly paid wage for a particular job classification and what the claimant last earned, such factors as the length of the claimant's unemployment, the reasonableness of the claimant's wage demand, and the availability of jobs which the claimant might secure at such wage he is demanding must be considered. The overriding consideration is the probability of the claimant's securing suitable employment at a reasonable wage within a reasonable length of time. (Cited in Appeal No. 2190-CF-77 under AA 295.00 and Appeal No. 87-04333-10-032488 under SW 500.35.) (Cross-referenced under AA 160.06, SW 295.00, SW 500.35 and SW 500.50.)

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 500.00 (2)

AA WAGES

For future cases, the Commission established the following policy for the consideration and guidance of the Benefits Department and the Appeal Tribunal in determining a claimant's eligibility under Section 207.021(a)(4) of the Act with reference to the claimant's wage demand. In cases where a claimant has been laid off for lack of work and has immediately filed a claim for unemployment insurance benefits, it is not unreasonable to expect that claimant to demand a minimum wage or salary of approximately eighty-five to ninety percent of the wage or salary the claimant earned in his last employment. Such a minimum wage demand should not present any issues with respect to ineligibility under Section 207.021(a)(4) of the Act during the first eight weeks of the claimant's unemployment. Thereafter, however, the claimant should reasonably be expected, if he remains unemployed, to lower his minimum wage or salary demands to seventy-five percent of his former wage or salary. If the claimant's unemployment continues in spite of this further reduction, and there exists a considerable difference between his wage demand and the most commonly paid wage for his occupation in his locale, then further reduction in the claimant's demand, in order to bring such wage demand in line with the prevailing wage, would be in order.

Appeal No. 4267-CA-76. During her four months of unemployment, the claimant had been demanding a wage equivalent to 80% of her last wage. Following an active work search, she secured work paying a wage equivalent to her last wage. HELD: The fact that the claimant secured work at a higher wage than she had been demanding demonstrated that her wage demand was not unreasonable.

Appeal No. 2277-CF-76. A claimant who is demanding a beginning wage in excess of the most commonly paid wage in the area for the occupation in which he is seeking work and in excess of any prior earnings by him is not available for work. However, there is no basis for holding a claimant ineligible due to his wage demand prior to the time he has been advised of the most commonly paid wage in the area, if his wage demand has not been out of line with his prior earnings.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 500.00 (3)

AA WAGES

Appeal No. 1927-CA-76. The claimant was seeking apartment maintenance work, demanding \$3 per hour if an apartment was not furnished as part of the compensation. The most commonly paid wage for such work in the claimant's area was \$2.75 per hour. However, this was merely the most commonly paid cash compensation for such jobs in the area, about one-half of the area jobs in the claimant's occupation provided additional compensation in the form of the rent-free use of an apartment. HELD: In light of the fact that about one-half of the area jobs in the claimant's occupation provided a rent-free apartment in addition to the most commonly paid wage of \$2.75 per hour, the claimant's wage demand of \$3 per hour, if an apartment was not furnished rent-free, was reasonable and did not render him unavailable for work under Section 207.021(a)(4) of the Act.

Also see Appeal No. 2190-CF-77 under AA 295.00 and Appeal No. 766-CA-77 under AA 450.155.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 510.00 - 510.10

AA WORK, NATURE OF

AA 510.00 WORK, NATURE OF.

510.10 WORK, NATURE OF: CUSTOMARY.

WHERE A CLAIMANT'S INSISTENCE UPON, OR INABILITY OR UNWILLINGNESS TO ACCEPT, WORK IN HIS USUAL OCCUPATION RAISES A QUESTION ABOUT HIS AVAILABILITY FOR WORK.

Appeal No. 2980-CA-76. A claimant who restricts her availability to work in a particular occupation, from which type of work she was last separated under involuntary circumstances due to health problems related to that work, has unduly limited her availability for work because her prospects of securing such work are severely limited.

Appeal No. 1846-CA-76. A claimant who is precluded by her physical condition from accepting work in any of the occupations in which she has had prior experience, but who has almost entirely restricted her work search to such occupations, is not available for work.

Appeal No. 13201-AT-70 (Affirmed by 119-CA-77). Even though a claimant has worked in a particular occupation for the last four years and will no longer accept that type of work, her availability for work is not unduly limited if she is qualified for other work and has demonstrated that fact by obtaining such work on a part-time basis.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 510.10 (2)

AA WORK, NATURE OF

Appeal No. 809-CA-67. A claimant will not be required to be available for work in her regular occupation when she had to quit that kind of work on her doctor's advice for health reasons, provided she is available for other work and is actively seeking work.

Appeal No. 30337-AT-66 (Affirmed by 291-CA-66). A claimant who restricts her availability to the type of work she last performed is unduly limiting her availability where it is shown that she has practically no chance of securing such work in the area and other work which she is qualified to perform is available.

Also see Appeal No. 4267-CA-76 under AA 160.20 and Appeal No. 1865-CA-76 under AA 295.00.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 510.40

AA WORK, NATURE OF

AA 510.40 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.

Appeal No. 86-07928-10-050787. The claimant was temporarily laid off for two weeks with a definite recall date. He went to Arkansas on family business for three days during the lay off. **HELD:** A claimant who has been laid off for a temporary period of time, and is awaiting a return to his previous job after a specific amount of time, need not search for work during his temporary unemployment. In the present case, since the claimant was laid off for a two week period, after which he could return to his previous job, he was available for work during the period in question. (Also digested under AA 160.05.)

Appeal No. 2722-CA-77. A claimant who, in good faith, relies on a definite recall date or a definite promise of work to begin in the near future, no longer needs to make an active personal search for work in order to be considered available for work under Section 207.021(a)(4) of the Act. (In the present case, the claimant had been promised the job "within several weeks" and it materialized five or six weeks after she ceased her work search. The Commission characterized this as a delay in the job's materialization but held that the claimant should not be held accountable for such delay.)

Appeal No. 2364-CSUA-77. Since being laid off due to lack of work by a school district prior to the end of the academic term in May, with notice that she could not be guaranteed re-employment for the Fall term because of a decrease in student enrollment, the claimant made no work search other than contacting the school district for reemployment. **HELD:** Unavailable for work under Section 207.021(a)(4) of the Act as the claimant had not made an active personal search for work sufficient to show an attachment to the general labor market.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 510.40 (2)

AA WORK, NATURE OF

Appeal No. 2156-CSUA-77. In March, the claimant had been involuntarily separated from her employment as a special education teacher with a school district due to family and personal illness and the exhaustion of her sick leave. Prior to the Appeal Tribunal hearing on June 16, the claimant was notified that her contract had been reviewed for the academic year beginning in September. From the filing of her initial claim in March until the Appeal Tribunal hearing, the claimant sought work with the school district for the remainder of the then-current Spring academic term and the Summer term but was unsuccessful because no positions were available for the remainder of the Spring term and the district did not customarily utilize special education teachers during the Summer. HELD: The claimant was unduly limiting her availability by concentrating her work search on reinstatement to a position as a special education teacher, when no such positions were available.

Appeal No. 2353-CA-76. A claimant who had left work and filed her initial claim in May because of pregnancy and who was guaranteed re employment when again able to work (estimated to be in November), but who made no search for work during the interim as she felt this would jeopardize her guaranteed re employment, was held unavailable for work under Section 207.021(a)(4) of the Act.

Appeal No. 363-CA-76. A claimant who restricts her availability to work with one employer and that in an occupation in which, in regard to that employer and the three other possible employers in such occupation in her area, there are very limited chances of securing employment, is not available for work under Section 207.021(a)(4) of the Act.

Also see Appeal No. 2480-CA-77 under AA 450.55.

APPEALS POLICY AND PRECEDENT MANUAL

ABLE AND AVAILABLE

AA 515.00 - 515.55

AA WORKING CONDITIONS

AA 515.00 WORKING CONDITIONS.

515.55 WORKING CONDITIONS: PREVAILING FOR SIMILAR WORK IN LOCALITY.

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 THE "LABOR STANDARDS" PROVISIONS ARE APPLICABLE IN SUCH SITUATIONS.

See U.I. Program Letter No. 9-84 under VL 315.00.

