

|->

Title 22@ Social Security

|->

Division 1@ Employment Development Department

|->

Subdivision 1@ Director of Employment Development

|->

Division 1@ Unemployment and Disability Compensation

|->

Part 1@ Unemployment Compensation

|->

Chapter 5@ UNEMPLOYMENT COMPENSATION BENEFITS

|->

Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

|->

Section 1256-23@ Voluntary Leaving -Good Cause -Working Conditions

1256-23 Voluntary Leaving -Good Cause -Working Conditions

(a)

Scope. This section relates to whether good cause for leaving the most recent work exists when an individual leaves work due to various aspects of working conditions. Sections 1256-1, 1256-2, and 1256-3 of these regulations set forth general principles also applicable under this section. The "working conditions" discussed in this section include duties or requirements of the work, employer rules for the work, the method, manner, quality, or quantity of work, relations with other employees, and work transfer situations. Other working conditions situations are discussed in separate regulations (see Section 1256-14 concerning opportunity for advancement; Section 1256-15 concerning health, safety, or morals; Section 1256-20 concerning days, hours, and shifts of work; Section 1256-21 concerning union relations, including violation of collective bargaining agreements; Section 1256-22 concerning wages issues; and Section 1256.2-1 concerning discrimination by employers).

(b)

General Principles. An individual who leaves work due to mere personal dislike, distaste, or minor inconvenience caused by working conditions leaves without good cause. If the working conditions are so unsatisfactory as to be intolerable to a reasonable person genuinely desirous of retaining employment and prior to

leaving work the individual has taken steps to preserve the job as provided under Section 1256-3 of these regulations, there is good cause for leaving the work. An individual who has good cause to leave work for intolerable working conditions is not required to seek an adjustment from the employer prior to leaving work if the employer is unable to remedy the working condition or has previously refused the individual's request for adjustment, or the individual knows that the employer has refused the requests of other employees for an adjustment of the same working condition.

EXAMPLE 1. The employer repeatedly criticized A in a sarcastic manner in front of customers and other employees, despite A's objections. The criticism was for A's errors in the work, for errors not attributable to A, and for matters unrelated to the work. The criticism was so severe that A on several occasions had to leave the work station in tears. A left the work due to the repeated criticism. A's leaving was with good cause due to abusive, hostile, and intolerable treatment.

EXAMPLE 2. B was a painter and hand decorator. B was placed at work near kilns where the heat was intense, then was moved to a location with improper lighting. Plaster and water dropped into B's paint and on B. On numerous occasions, B complained to the employer of these conditions. The employer took no action. The conditions continued, and B began to have headaches. B's leaving was with good cause under intolerable working conditions.

EXAMPLE 3. C was a statistician. C left the work because C objected to the employer's general policies and to the rote character of the work. C's leaving was without good cause since it was due merely to personal distaste and unreasonable.

EXAMPLE 4. D, a retail salesclerk, was required to work a shift from 4:30 p.m. to 1 a.m. and report to work again at 7 a.m. without a break of at least 8 hours, in violation of state law. D did not complain and did not seek a transfer to another shift or work arrangement. D left due to these working conditions. Although D's

leaving would have been with good cause had D complained and sought adjustment of shifts, D's failure to complain negated good cause and the leaving was without good cause, since D's duty to preserve the job had not been performed.

(c)

Duties or Requirements of Work. An individual may leave work because the employer's work requirements violate the agreement of hire, impose duties beyond those of the employee's occupation, or reassign work to or from another employee or make changes in the distribution of workload among employees. The leaving of work is without good cause unless the employer's requirements cause undue hardship to or discriminate against the individual worker, or are unreasonable under the circumstances. The employer's requirements are unreasonable under any of the following circumstances: (1) The claimant is required to perform duties beyond his or her physical ability or skills. (2) The duties required impose an undue risk of injury or illness upon the claimant (see Section 1256-15 of these regulations). (3) The required duties would be demeaning to the claimant in view of the occupation and status of the claimant. (4) The employer's requirements are intended to abuse or harass the claimant. (5) The primary duties assigned to the claimant entitle the claimant to a higher wage but the employer pays a lower wage level (see Section 1256-22 of these regulations concerning wages). (6) The primary duties assigned to the claimant are for work on a substantially lower skill and status level than the claimant's usual work. (7) The claimant reasonably objects to the employer's requirements on moral grounds (see Section 1256-15 of these regulations concerning leaving work on moral grounds). (8) The employer's requirements will substantially increase the claimant's workload. (9) The primary duties assigned to the claimant

could cause a loss of proficiency in the skills of the claimant's usual occupation.

EXAMPLE 5. E worked as a parking attendant in a storage garage. Initially, E checked automobiles in and out of the garage, and collected fees from customers. Due to a shortage of help, the employer required E to begin parking automobiles. E made no complaint to the employer or E's union, although E was dissatisfied. After several months of work under these conditions, E left due to the requirement that E park cars and because E considered this a violation of the agreement of hire with the employer. E's leaving was without good cause since the employer's action was reasonable and E made no complaint or effort to seek adjustment.

EXAMPLE 6. F was over 50 years old and worked in a warehouse. F originally had a workload of lifting and stacking not over 300 cases weighing 65 to 80 pounds over a 10-day period. The employer increased this to 1,000 cases in a 10-day period. F requested aid, but the employer refused. F left the work because F believed F's health was threatened and there was an undue risk. F's leaving was with good cause in view of the undue risk.

EXAMPLE 7. G requested a transfer to another department or a salary increase, when a new supervisor took over and assigned minor additional duties to G on a temporary basis. The employer refused the transfer and salary increase. G would have continued the work had the salary increase been granted. G left the work when G's requests were refused. G's leaving was without good cause, since the additional duties were temporary and minor, and the employer's requirements were not unreasonable.

EXAMPLE 8. Situation 1. H, a doctor's receptionist, left work because H was required to wash windows daily. Situation 2. I, a cook's helper, left work because I was required to wash kitchen windows daily. H's leaving was with good cause since washing windows is demeaning for the occupation of receptionist. I's leaving was without good cause since washing kitchen windows is not demeaning for the occupation of cook's helper and is not a

substantial departure from the usual work.

(1)

The claimant is required to perform duties beyond his or her physical ability or skills.

(2)

The duties required impose an undue risk of injury or illness upon the claimant (see Section 1256-15 of these regulations).

(3)

The required duties would be demeaning to the claimant in view of the occupation and status of the claimant.

(4)

The employer's requirements are intended to abuse or harass the claimant.

(5)

The primary duties assigned to the claimant entitle the claimant to a higher wage but the employer pays a lower wage level (see Section 1256-22 of these regulations concerning wages).

(6)

The primary duties assigned to the claimant are for work on a substantially lower skill and status level than the claimant's usual work.

(7)

The claimant reasonably objects to the employer's requirements on moral grounds (see Section 1256-15 of these regulations concerning leaving work on moral grounds).

(8)

The employer's requirements will substantially increase the claimant's workload.

(9)

The primary duties assigned to the claimant could cause a loss of proficiency in the skills of the claimant's usual occupation. **EXAMPLE 5.** E worked as a parking attendant

in a storage garage. Initially, E checked automobiles in and out of the garage, and collected fees from customers. Due to a shortage of help, the employer required E to begin parking automobiles. E made no complaint to the employer or E's union, although E was dissatisfied. After several months of work under these conditions, E left due to the requirement that E park cars and because E considered this a violation of the agreement of hire with the employer. E's leaving was without good cause since the employer's action was reasonable and E made no complaint or effort to seek adjustment.

EXAMPLE 6. F was over 50 years old and worked in a warehouse. F originally had a workload of lifting and stacking not over 300 cases weighing 65 to 80 pounds over a 10-day period. The employer increased this to 1,000 cases in a 10-day period. F requested aid, but the employer refused. F left the work because F believed F's health was threatened and there was an undue risk. F's leaving was with good cause in view of the undue risk.

EXAMPLE 7. G requested a transfer to another department or a salary increase, when a new supervisor took over and assigned minor additional duties to G on a temporary basis. The employer refused the transfer and salary increase. G would have continued the work had the salary increase been granted. G left the work when G's requests were refused. G's leaving was without good cause, since the additional duties were temporary and minor, and the employer's requirements were not unreasonable.

EXAMPLE 8. Situation 1. H, a doctor's receptionist, left work because H was required to wash windows daily. Situation 2. I, a cook's helper, left work because I was required to wash kitchen windows daily. H's leaving was with good cause since washing windows is demeaning for the occupation of receptionist. I's leaving was without good cause since washing kitchen windows is not demeaning for the occupation of cook's helper and is not a substantial departure from the usual work.

(d)

Employer Rule. If a claimant leaves work because he or she objects to an

employer's rule which applies to all or a group of employees, the leaving is without good cause unless the employer enforces the rule only against and harasses the claimant who suffers significant inconvenience, or enforcement of the rule would create undue hardship for the claimant, or the rule is unreasonable.

An employer rule is unreasonable under any of the following circumstances: (1)

Compliance with the rule is impossible for the claimant due to reasons such as physical limitations which are peculiar to him or her and, if the reasons are not apparent, are made known to the employer or the employer's representative. (2)

A new and unreasonable burden would be imposed on the claimant. (3) The rule

is not designed to protect or preserve the employer's business interests. (4) The

claimant reasonably and in good faith believes compliance with the rule would

result in a violation of the law, objects or makes a reasonable effort to object to

the employer, and the employer makes no reasonable effort to explain the basis

for the rule to the employee. Whether compliance with the rule would be a

violation of the law is not determinative. (5) The claimant reasonably believes

compliance with the rule would cause an undue risk of injury or illness (see

Section 1256-15 of these regulations). EXAMPLE 9. J agreed when hired to submit

to a polygraph test requested of all employees by the employer in the event of

cash shortages or thefts from the employer. One year later the employer had cash

shortages and required that J submit to the polygraph test as a condition of

continued employment. J left the work as a result. J's leaving was with good cause

since J is entitled to the presumption of innocence and the rule is unreasonable

even though agreed to by J. Note: For nongovernmental employers, demanding or

requiring a polygraph test as a condition of employment or continued employment

is prohibited by Section 432.2, Labor Code. EXAMPLE 10. K, a retail clerk,

submitted some incorrect prior employment experience information at the time of

hire. On several occasions after hire, K was required to submit further prior employment experience information in accordance with employer procedures for all employees. K left work in anger when a further request for such information was made by the employer. K's leaving was without good cause since the employer is entitled to insist on accurate prior employment experience information and mere anger is not sufficient to justify leaving the work. There was no harassment and no abuse.

(1)

Compliance with the rule is impossible for the claimant due to reasons such as physical limitations which are peculiar to him or her and, if the reasons are not apparent, are made known to the employer or the employer's representative.

(2)

A new and unreasonable burden would be imposed on the claimant.

(3)

The rule is not designed to protect or preserve the employer's business interests.

(4)

The claimant reasonably and in good faith believes compliance with the rule would result in a violation of the law, objects or makes a reasonable effort to object to the employer, and the employer makes no reasonable effort to explain the basis for the rule to the employee. Whether compliance with the rule would be a violation of the law is not determinative.

(5)

The claimant reasonably believes compliance with the rule would cause an undue risk of injury or illness (see Section 1256-15 of these regulations). **EXAMPLE 9.** J agreed when hired to submit to a polygraph test requested of all employees by the employer in the event of cash shortages or thefts from the employer. One year later the employer

had cash shortages and required that J submit to the polygraph test as a condition of continued employment. J left the work as a result. J's leaving was with good cause since J is entitled to the presumption of innocence and the rule is unreasonable even though agreed to by J. Note: For nongovernmental employers, demanding or requiring a polygraph test as a condition of employment or continued employment is prohibited by Section 432.2, Labor Code. EXAMPLE 10. K, a retail clerk, submitted some incorrect prior employment experience information at the time of hire. On several occasions after hire, K was required to submit further prior employment experience information in accordance with employer procedures for all employees. K left work in anger when a further request for such information was made by the employer. K's leaving was without good cause since the employer is entitled to insist on accurate prior employment experience information and mere anger is not sufficient to justify leaving the work. There was no harassment and no abuse.

(e)

Method, Manner, Quality, or Quantity of Work. A claimant who leaves work due to an objection to the method or manner of work performance or to the quality or quantity of the work required or to materials used in the work leaves without good cause unless one or more of the following circumstances is present: (1) The employer uses a method or manner of work which is not customary and thus reduces or will reduce the claimant's earning power. (2) The methods and quality of work are inferior and will adversely affect the reputation and integrity of workmanship which is an essential customary feature of the claimant's usual occupation. (3) The claimant will suffer a potential loss of skills due to a low quantity of work. (4) The employer substantially increases the quantity of work required without increasing wages (see Section 1256-22 of these regulations for discussion of wages issues). (5) There is an undue risk of injury or illness or a

serious risk to morals (see Example 6 above, and see Section 1256-15 of these regulations for discussion of situations involving health, safety, or morals).

EXAMPLE 11. L is paid on a piecework basis for packing crates of produce. The prevailing custom is to deliver crates on a gravity belt. The employer does not use a gravity belt, although prevailing wages per crate are offered. This reduces L's earning power. L complains to the employer, who refuses to supply a gravity belt delivery system. For this reason, L leaves the work. L's leaving is with good cause since L's earnings power is adversely affected by the employer's failure to use customary work methods. EXAMPLE 12. M is a highly skilled carpenter with a reputation for integrity of work. M's employer issues instructions for production of clearly inferior products. The work would have been identified with M and M's reputation damaged. M objects; the employer insists on the instructions. M leaves the work due to the threat to M's reputation. M's leaving is with good cause since M's reputation is essential in M's highly skilled occupation and it is threatened by the employer's ordered work methods.

(1)

The employer uses a method or manner of work which is not customary and thus reduces or will reduce the claimant's earning power.

(2)

The methods and quality of work are inferior and will adversely affect the reputation and integrity of workmanship which is an essential customary feature of the claimant's usual occupation.

(3)

The claimant will suffer a potential loss of skills due to a low quantity of work.

(4)

The employer substantially increases the quantity of work required without increasing

wages (see Section 1256-22 of these regulations for discussion of wages issues).

(5)

There is an undue risk of injury or illness or a serious risk to morals (see Example 6 above, and see Section 1256-15 of these regulations for discussion of situations involving health, safety, or morals). EXAMPLE 11. L is paid on a piecework basis for packing crates of produce. The prevailing custom is to deliver crates on a gravity belt. The employer does not use a gravity belt, although prevailing wages per crate are offered. This reduces L's earning power. L complains to the employer, who refuses to supply a gravity belt delivery system. For this reason, L leaves the work. L's leaving is with good cause since L's earnings power is adversely affected by the employer's failure to use customary work methods. EXAMPLE 12. M is a highly skilled carpenter with a reputation for integrity of work. M's employer issues instructions for production of clearly inferior products. The work would have been identified with M and M's reputation damaged. M objects; the employer insists on the instructions. M leaves the work due to the threat to M's reputation. M's leaving is with good cause since M's reputation is essential in M's highly skilled occupation and it is threatened by the employer's ordered work methods.

(f)

Relations With Other Employees. A claimant who leaves work due to mere annoyance with or general dislike to another employee or his or her supervisor leaves without good cause. A claimant leaves with good cause if he or she leaves work due to a course of conduct by another employee or his or her supervisor which subjects the claimant to continued abuse, endangers the claimant's health or safety by such conduct as actual or threatened violence or acts affecting the claimant's mental well-being, causes demands for an unreasonable quantity of work to be produced by the claimant, or unreasonably discriminates against the

claimant. EXAMPLE 13. N, a new employee, believed that another employee was not doing a fair share of filing work. N's workload was not increased by any shirking of the other employee. N's request for transfer to other work was denied. N left the work due to the other employee's low production. N's leaving was without good cause since no increased workload was imposed on N and the shirking of another employee was the problem of the employer without significant effect on N. EXAMPLE 14. O was an automobile messenger required to use O's own automobile in the work. O had advised the employer of prior breakdowns but did not tell the employer about a broken spring because O was "tired" of doing so. O's supervisor reprimanded O for failure to report the problem. O thereupon left the work. O's leaving was without good cause since the supervisor was reasonable and did not engage in a course of conduct amounting to hostility or harassment or abuse. O had no good reason for failure to report the broken spring. EXAMPLE 15. P had worked as a senior investment analyst for 18 years. P's new supervisor was 15 years younger. P believed the supervisor refused to recognize P's experience, and P did not report details of the work to the supervisor, as required. The supervisor tried to discuss improvements in relationships with P, but P was unreceptive. P left the work on the following day due to the relationship with the supervisor. P's leaving was without good cause, since the supervisor was not abusive or hostile but in fact was trying to improve the situation in good faith. Mere resentment and a "generation gap" do not establish good cause to leave work. EXAMPLE 16. Q, a bookkeeper, objected to her supervisor about repeated offensive rubbing and touching of her body. The supervisor became extremely critical of Q's work, yelling and cursing at Q, and asked personal questions about Q's relationship with her boyfriend. The supervisor became angry over Q's misunderstanding of work instructions, shoved Q, and shouted that Q was stupid and ignorant. Q left the

work due to these occurrences. Q's leaving was with good cause due to the pattern of abusive conduct and intolerable treatment by the supervisor.

(g)

Transfer. (1) A claimant who either resigns or elects to be laid off or discharged rather than accept a transfer to other work has voluntarily left the work. If the transfer is to reasonably related work at a reasonably comparable rate of pay, the leaving of work is without good cause. (2) A leaving of work rather than accept a transfer to other work is with good cause under any of the following conditions: (A) The transfer is to work unrelated to the last work and also unrelated to any work within the claimant's prior training, experience or qualifications. (B) The transfer is to work which would cause the claimant to lose proficiency in his or her highest skill, except that there is no good cause for leaving work if the transfer is a return to work previously performed where the claimant's work in a new position has been unsatisfactory. (C) The transfer would cause the claimant to suffer a substantial wage reduction (see Section 1256-22 of these regulations for interpretation of wages issues, including what is a "substantial" reduction). (D) The transfer is to work which the claimant cannot perform due to his or her health, safety, or morals factors (see Section 1256-15 of these regulations for discussion of leaving due to health, safety, or morals factors). (3) A claimant who leaves work because a requested transfer is refused by the employer leaves work without good cause if the leaving is for noncompelling personal reasons, such as personal convenience, prestige, or self-advancement. The claimant's leaving of work because a requested transfer is not made by the employer is with good cause if either of the following conditions exists: (A) The employer's refusal or failure to make the requested transfer is the result of a misrepresentation of the claimant's work or due to discrimination by the employer against the claimant. (B)

The claimant has requested the transfer for compelling reasons such as his or her health, morals, or safety factors (see Section 1256-15 of these regulations for discussion of leaving due to health, morals, or safety factors).

(1)

A claimant who either resigns or elects to be laid off or discharged rather than accept a transfer to other work has voluntarily left the work. If the transfer is to reasonably related work at a reasonably comparable rate of pay, the leaving of work is without good cause.

(2)

A leaving of work rather than accept a transfer to other work is with good cause under any of the following conditions: (A) The transfer is to work unrelated to the last work and also unrelated to any work within the claimant's prior training, experience or qualifications. (B) The transfer is to work which would cause the claimant to lose proficiency in his or her highest skill, except that there is no good cause for leaving work if the transfer is a return to work previously performed where the claimant's work in a new position has been unsatisfactory. (C) The transfer would cause the claimant to suffer a substantial wage reduction (see Section 1256-22 of these regulations for interpretation of wages issues, including what is a "substantial" reduction). (D) The transfer is to work which the claimant cannot perform due to his or her health, safety, or morals factors (see Section 1256-15 of these regulations for discussion of leaving due to health, safety, or morals factors).

(A)

The transfer is to work unrelated to the last work and also unrelated to any work within the claimant's prior training, experience or qualifications.

(B)

The transfer is to work which would cause the claimant to lose proficiency in his or her

highest skill, except that there is no good cause for leaving work if the transfer is a return to work previously performed where the claimant's work in a new position has been unsatisfactory.

(C)

The transfer would cause the claimant to suffer a substantial wage reduction (see Section 1256-22 of these regulations for interpretation of wages issues, including what is a "substantial" reduction).

(D)

The transfer is to work which the claimant cannot perform due to his or her health, safety, or morals factors (see Section 1256-15 of these regulations for discussion of leaving due to health, safety, or morals factors).

(3)

A claimant who leaves work because a requested transfer is refused by the employer leaves work without good cause if the leaving is for noncompelling personal reasons, such as personal convenience, prestige, or self-advancement. The claimant's leaving of work because a requested transfer is not made by the employer is with good cause if either of the following conditions exists: (A) The employer's refusal or failure to make the requested transfer is the result of a misrepresentation of the claimant's work or due to discrimination by the employer against the claimant. (B) The claimant has requested the transfer for compelling reasons such as his or her health, morals, or safety factors (see Section 1256-15 of these regulations for discussion of leaving due to health, morals, or safety factors).

(A)

The employer's refusal or failure to make the requested transfer is the result of a misrepresentation of the claimant's work or due to discrimination by the employer against the claimant.

(B)

The claimant has requested the transfer for compelling reasons such as his or her health, morals, or safety factors (see Section 1256-15 of these regulations for discussion of leaving due to health, morals, or safety factors).