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Title 22@ Social Security

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Division 1@ Employment Development Department

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Subdivision 1@ Director of Employment Development

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Division 1@ Unemployment and Disability Compensation

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Part 1@ Unemployment Compensation

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Chapter 5@ UNEMPLOYMENT COMPENSATION BENEFITS

1256-15 Voluntary Leaving -Good Cause -Health, Safety,

Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1256-15@ Voluntary Leaving -Good Cause -Health, Safety, or Morals

or Morals

(a)

Scope. This section relates to whether good cause exists for leaving the most recent work when an individual's leaving of work is for reasons related to the individual's health, safety, or morals. Sections 1256-1, 1256-2, and 1256-3 of these regulations set forth general principles also applicable under this section. For discussion of the claimant's duty to request or accept a leave of absence, rather than leave work, see Section 1256-16 of these regulations.

(b)

General. A claimant leaves work with good cause if a reasonable person genuinely desirous of remaining employed would have left work due to an undue risk of injury or illness caused by health reasons, physical impairment, impairment of hearing, speech, or vision, pregnancy, or unsanitary conditions, temperature or ventilation problems, adverse weather or climate conditions, or other working conditions, or for a reasonably foreseeable and substantially probable serious risk to his or her morals, and the claimant has taken reasonable steps under the circumstances to preserve the employment relationship such as seeking sick leave where health factors are involved, or other leave, if available, or a transfer to other available work the claimant can perform (see Section 1256-3 of these regulations). However, a claimant who fraudulently fails to disclose or materially

misrepresents his or her health or physical condition at the time of hire negates what would otherwise be good cause for that claimant to leave work due to the health or physical condition if the employer could have lawfully refused to hire the claimant had the condition been disclosed. A high risk of illness or injury is ordinary and inherent in the nature of the work for some occupations such as a miner, sand hog, or firefighter. A worker in such occupations accepts these inherent high risks. However, if working conditions violate the law or are so intolerable as to adversely affect the health of employees, and the employer is aware of and does not correct the conditions, good cause for leaving work exists. For example, the employer may knowingly violate sanitation standards required by law for the occupation or industry or for women or minors, and in such case the claimant affected who leaves due to poor sanitation leaves with good cause. Generally, an individual must, prior to leaving work due to an objection to working conditions, use any existing grievance procedure to review a complaint or objection in order to have good cause for leaving work (see Section 1256-21 of these regulations). However, if an individual believes based on reasonable grounds that a substantial and immediate threat of serious injury or illness exists due to a working condition, the individual has good cause to refuse to work and if necessary under the particular circumstances leave the premises or work without using any existing grievance procedure prior to leaving, since immediate protective action is necessary. "Serious injury or illness" means a risk of an injury or illness of sufficient gravity to require immediate emergency medical treatment and pose a danger of probable loss or substantial impairment of a member of the body, or any degree of permanent disability, or death.

(c)

Undue Risk. As used in this section, "undue risk of injury or illness" means a

reasonably foreseeable and substantial probability of incurring any injury or illness which would require hospitalization or the services of a physician for proper medical care, or would cause any degree of permanent disability, and which meets any one of the following conditions: (1) The risk on the particular job is more hazardous than normal for the occupation or industry. (2) The risk is more hazardous for the claimant than for other employees in like work due to circumstances peculiar to the claimant. (3) The claimant establishes that he or she has a reasonable basis to believe that the working conditions would cause a reasonably foreseeable and substantial probability of incurring an injury or illness which would require hospitalization or the services of a physician for proper medical care, or would cause a degree of permanent disability, even though the risk is normal for the occupation or industry, excluding conditions inherent in the nature of the work which the claimant must accept.

(1)

The risk on the particular job is more hazardous than normal for the occupation or industry.

(2)

The risk is more hazardous for the claimant than for other employees in like work due to circumstances peculiar to the claimant.

(3)

The claimant establishes that he or she has a reasonable basis to believe that the working conditions would cause a reasonably foreseeable and substantial probability of incurring an injury or illness which would require hospitalization or the services of a physician for proper medical care, or would cause a degree of permanent disability, even though the risk is normal for the occupation or industry, excluding conditions inherent in the nature of the work which the claimant must accept.

(d)

Health or Safety. (1) General. Mere concern with one's health or safety is not sufficient to justify good cause for leaving work. The work must cause an undue risk of injury or illness to the claimant. A claimant who leaves work due to fear of becoming ill or being injured has good cause if the claimant has a reasonable basis to believe that there is an undue risk of injury or illness. A physician's advice or objective factors showing detriment to health or safety such as a prior adverse medical history are a reasonable basis for a claimant's belief. A reasonable basis for a claimant's belief that there is an undue risk of injury or illness can be established due to objective factors such as heavy lifting, constant standing, or chemical fumes, if consideration of the claimant's age, height, strength and physical condition, prior medical history, work experience and the job duties disclose a reasonable basis for the claimant's belief in detriment to his or her health or safety even through a physician's advice is not sought. Minor chronic health conditions that are not aggravated or significantly affected by the work do not justify leaving the work. A desire to rest is not a basis for good cause to leave work, unless a physician's advice is involved. On the other hand, a claimant who leaves work because he or she has a contagious illness leaves with good cause if no sick leave is available. (2) Drugs. A claimant addicted to alcohol or other drugs has good cause to leave work if he or she has competent professional advice that entry into a treatment facility or program is necessary and cannot be accomplished unless work ceases, or that the work is a factor in the addiction or poses an undue risk of injury or illness related to the addiction. "Competent professional advice" includes a statement from a physician, psychiatrist, counselor, director, or administrator of a drug or alcohol treatment facility or program. Due to the nature of alcohol and drug addiction, good cause to leave

work is not negated by an addicted claimant's failure to request a leave of absence or sick leave. The claimant may not be sufficiently rational, or may fear effect on the job or future employment, at the time of leaving, and a leave request could be detrimental to the claimant. A claimant who has previously had leave for these same reasons from the employer, however, has no good cause for not requesting leave. (3) Pregnancy. If a claimant's leaving work is voluntary due to pregnancy, the leaving is with good cause if pregnancy rendered the claimant unable to continue work. This is usually established by a physician's advice but is also present if a claimant has a history of miscarriages or difficult pregnancies, or if there is a threat to the health or safety of the fetus, or if objective factors exist such as heavy lifting or other strenuous tasks which are required in the work. Some pregnant women are able to do other light work and, if such light work is available, such a claimant must request a transfer to light work or her leaving work due to pregnancy will be without good cause (see also Section 1256-16 of these regulations). A claimant's leaving work due to pregnancy is voluntary if the employer has no requirement that pregnant women leave work at a specific time, or if the claimant requests and is granted leave by the employer, or if the claimant leaves prior to a time set by an employer's policy. If the claimant leaves due to an employer rule requiring pregnant women to leave work, or to accept leave of absence due to pregnancy required by employer rule, the leaving is involuntary and not disqualifying under Section 1256 of the code.

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General. Mere concern with one's health or safety is not sufficient to justify good cause for leaving work. The work must cause an undue risk of injury or illness to the claimant. A claimant who leaves work due to fear of becoming ill or being injured has good cause if the claimant has a reasonable basis to believe that there is an undue risk of

injury or illness. A physician's advice or objective factors showing detriment to health or safety such as a prior adverse medical history are a reasonable basis for a claimant's belief. A reasonable basis for a claimant's belief that there is an undue risk of injury or illness can be established due to objective factors such as heavy lifting, constant standing, or chemical fumes, if consideration of the claimant's age, height, strength and physical condition, prior medical history, work experience and the job duties disclose a reasonable basis for the claimant's belief in detriment to his or her health or safety even through a physician's advice is not sought. Minor chronic health conditions that are not aggravated or significantly affected by the work do not justify leaving the work. A desire to rest is not a basis for good cause to leave work, unless a physician's advice is involved. On the other hand, a claimant who leaves work because he or she has a contagious illness leaves with good cause if no sick leave is available.

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Drugs. A claimant addicted to alcohol or other drugs has good cause to leave work if he or she has competent professional advice that entry into a treatment facility or program is necessary and cannot be accomplished unless work ceases, or that the work is a factor in the addiction or poses an undue risk of injury or illness related to the addiction. "Competent professional advice" includes a statement from a physician, psychiatrist, counselor, director, or administrator of a drug or alcohol treatment facility or program. Due to the nature of alcohol and drug addiction, good cause to leave work is not negated by an addicted claimant's failure to request a leave of absence or sick leave. The claimant may not be sufficiently rational, or may fear effect on the job or future employment, at the time of leaving, and a leave request could be detrimental to the claimant. A claimant who has previously had leave for these same reasons from the employer, however, has no good cause for not requesting leave.

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Pregnancy. If a claimant's leaving work is voluntary due to pregnancy, the leaving is with good cause if pregnancy rendered the claimant unable to continue work. This is usually established by a physician's advice but is also present if a claimant has a history of miscarriages or difficult pregnancies, or if there is a threat to the health or safety of the fetus, or if objective factors exist such as heavy lifting or other strenuous tasks which are required in the work. Some pregnant women are able to do other light work and, if such light work is available, such a claimant must request a transfer to light work or her leaving work due to pregnancy will be without good cause (see also Section 1256-16 of these regulations). A claimant's leaving work due to pregnancy is voluntary if the employer has no requirement that pregnant women leave work at a specific time, or if the claimant requests and is granted leave by the employer, or if the claimant leaves prior to a time set by an employer's policy. If the claimant leaves due to an employer rule requiring pregnant women to leave work, or to accept leave of absence due to pregnancy required by employer rule, the leaving is involuntary and not disqualifying under Section 1256 of the code.

(e)

Morals. If a claimant reasonably believes that continued work will cause a reasonably foreseeable and substantially probable serious risk to his or her morals, the claimant's leaving of work for this reason is with good cause. There is a reasonably foreseeable and substantially probable serious risk to morals if the claimant is required to engage in immoral, dishonest, illegal, or unethical acts, or discriminate against minorities, or is subjected to improper advances from co-workers or the employer. Prior to leaving, the claimant must have objected to the employer or taken other reasonable steps to preserve the job. (Under circumstances specified by Section 1256.2 of the code, a claimant need not object prior to leaving where discrimination exists; see Section 1256.2-1 of these

regulations.) For example, a salesperson who unsuccessfully objects to the employer's requirement that false and misleading sales pitches be used and thus leaves the work has good cause for leaving. Similarly, a cannery inspector who unsuccessfully objects to the employer's insistence that the inspector approve products known to be below standards set by law and thus leaves the work has good cause for leaving.

EXAMPLE 1. A, a sailor, while on a voyage had a severe cold and pleurisy pains. A informed the purser but was not given medicine or aid. At the next port, A left the ship, purchased medicines, and went to bed for six days. A had a similar prior experience. A had been on several continuous voyages with the ship. A's leaving was with good cause, since A was ill and though A's failure to see a physician may have been poor judgment, work would have been an undue risk to A's health.

EXAMPLE 2. B worked full time as a bank teller from 8:30 a.m. to 5 p.m. B also worked part time for another employer as an intermediate file clerk 25 hours a week, Monday through Friday, from 5:30 p.m. to 10:30 p.m. B left the part-time job because the long hours of both jobs were too much of a strain. B's leaving was with good cause since the part-time job was an undue risk to health under the circumstances, and the purpose was to remain fully employed. (This example applies only to employer ruling situations.)

EXAMPLE 3. C had worked many years for a paper box manufacturing company. The employer ordered C and other employees to work in an adjacent building which was unheated with a cement floor, and cold enough to numb feet and hands. C and the other employees refused. The employer then told C and the other employees that the next day all should wear warm clothing because they would be expected to work in the unheated building. Even though C did not have warm clothing on that day, the employer ordered C to immediately work in the building. C refused and left work. Shortly thereafter the employer was ordered by State officials to provide

heat in the building in question before assigning workers in the area. C's leaving was with good cause, since the employer's failure to provide heat and reasonable temperature for work was an undue risk to C's health and intolerable. EXAMPLE 4. D had a controlled tuberculosis condition, and had previously suffered a perforated ulcer. D complained to the employer of air-conditioning drafts at work, and moved about to try to escape the drafts. The employer took no action. D suffered a cold for two days in each of two weeks, and D's ulcer began to trouble D. D left the work due to the air-conditioning problems, and the next day consulted a physician, who prescribed two weeks' rest. D's leaving was with good cause, since there was an undue risk to D's health. D sought corrective action unsuccessfully and D's good faith is further established by the prompt consultation of a physician.

EXAMPLE 5. E had a job in Pomona, California, and lived in Montclair. E read books and articles about smog in the area. E's opinion was that E and the family members had suffered occasional eye irritation and possible respiratory irritation, but neither E nor any member of the family had consulted a doctor. E requested a transfer to another area but no transfer was available. E left the work due to the smog and moved to Portland, Oregon. E's leaving was without good cause, since there was no medical advice of an immediate problem, and E took no steps to secure another job before leaving based on E's own opinions. Smog, in and of itself, is not an undue risk and is not good cause to leave work. EXAMPLE 6. F had worked for a firm in a large office in which several other co-workers smoked. The employer had not established any separate nonsmoking areas and had placed no restrictions on smoking at work, although several employees did not smoke and had previously requested some limitations or protection from smoking. F developed sensitivity to tobacco smoke for which F had consulted a doctor. F requested that the employer make an adjustment by limiting or restricting

smoking in the work area, or to transfer F to other work. The employer declined the request. F suffered nausea, dizziness, and general chronic irritation from the tobacco smoke in the surrounding work area. F left the work for this reason. F's leaving was with good cause due to the undue risk to F's health caused by tobacco smoke in the work area. EXAMPLE 7. G was a truck driver. G had repeatedly complained to the employer about defective emergency and foot brakes, but the employer took no action. Finally, in addition to defective brakes, the truck's battery became so low G had to crank the truck which rolled backwards and crashed into a nearby building. G left the work due to the defective truck. G's leaving was with good cause due to the undue risk as to safety.