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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

1260(a)-1 Purging Disqualification-Voluntary Leaving or

Article 1@ ELIGIBILITY AND DISQUALIFICATIONS

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Section 1260(a)-1@ Purging Disqualification-Voluntary Leaving or Discharge for Misconduct

Discharge for Misconduct**(a)**

Scope. This section interprets subdivision (a) of Section 1260 of the code which provides for a purge of a disqualification under Section 1256 of the code if a disqualified individual, after the act causing disqualification, performed service in bona fide employment for which remuneration is received equal to or in excess of five times his or her weekly benefit amount. Sections 1256-1 to 1256-43, inclusive, of these regulations interpret various circumstances relating to what is good cause for voluntary leaving of most recent work and when a discharge is for misconduct connected with the most recent work.

(b)

Bona Fide Employment. The basic test to determine whether employment is "bona fide" to purge a disqualification under Section 1256 of the code is whether the total facts lead reasonably to a conclusion that the individual was in good faith genuinely attached to the labor market. An individual was not engaged in bona fide employment, however, if he or she admittedly worked for the sole, primary, or dominant purpose of avoiding and purging a disqualification under Section 1256 of the code. No fixed rule can govern when employment is "bona fide," but the following factors shall be considered by the department: (1) The manner in which the employment was obtained, and the nature and extent of the claimant's search

for work. (2) Whether the employment was in the regular course of the employer's business. (3) Whether the employer had previously hired someone for the job, and whether someone was hired for the job after the claimant asserting purging relief was separated from the job. (4) Whether the employment was in the claimant's usual occupation. (5) Whether the wages for the employment were equivalent to the claimant's wages in his or her usual occupation or last preceding employment. (6) Whether the claimant is willing to accept future employment of the same kind and under the same conditions as the employment asserted as the purging employment. (7) The claimant's reasons for accepting the employment, the length of the employment, and the reasons for the termination of the employment.

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(4)

Whether the employment was in the claimant's usual occupation.

(5)

Whether the wages for the employment were equivalent to the claimant's wages in his or her usual occupation or last preceding employment.

(6)

Whether the claimant is willing to accept future employment of the same kind and under the same conditions as the employment asserted as the purging employment.

(7)

The claimant's reasons for accepting the employment, the length of the employment, and the reasons for the termination of the employment.

(c)

Types of Work. Normally, self-employment or work as an independent contractor indicates a withdrawal from the labor market, and not a genuine attachment to the labor market, and is not bona fide employment under Section 1260 of the code. However, self-employment may be bona fide employment if the claimant has qualified for elective unemployment insurance coverage based on such self-employment. In such cases, the net earnings from self-employment determined to be bona fide are counted to determine whether the claimant has received remuneration of five times the weekly benefit amount to purge a disqualification under Section 1256 of the code. Military service, any work in a common law employment relationship whether or not covered for unemployment insurance purposes, and all work covered for unemployment insurance purposes except illegal employment such as prohibited gambling or narcotics sales, are "employment" for purposes of purging under Section 1256 of the code, and remuneration for such work may be counted if the work is "bona fide" under all the facts. (For discussion of the common law employment relationship and who is an "employee" see Sections 606-1, 621(b) - 1, 621(c) - 1, and 680-1 of these regulations. For interpretation of some exemptions from covered employment, see Sections 629-1 to 653-1 of these regulations.)