

Defense Trainees and Availability for Work

RALPH ALTMAN *

ONE OF THE PROBLEMS which the war emergency has brought to the doorstep of State employment security agencies has been that of determining the eligibility of defense trainees for unemployment benefits. Defense training began when this country, emerging from a prolonged oversupply of labor, discovered that it was faced with labor shortages. The mushroom growth of the war's industrial demands had revealed great manpower gaps that could be filled only with the aid of a giant-sized training program. Soon both private and Government-supported courses began to meet that need through a variety of vocational courses and curricula that have been generically labeled "defense training." As this vocational training program grew, it attracted people from all situations and all walks of life. There were businessmen and students, lawyers and housewives, debutantes and salesmen—all engaged in the business of acquiring the occupational skills needed for active participation in the industrial war effort. Of course, most of the defense trainees were not and could not be unemployment compensation claimants. Many of them had never worked in covered employment or, if they had, they had not built up the necessary wage credits. In other cases, trainees continued working at their regular jobs while in training.

Some of the trainees, however, were unemployed workers who had accrued rights under unemployment compensation laws—individuals whose work history showed an attachment to the labor market. Out of this group have come the defense-trainee claimants of unemployment benefits. In many cases, these claimants undoubtedly filed their claims not only as a matter of right but also as a matter of need. Despite the fact that the courses they were attending often were tuition-free, these workers, nevertheless, had to supply their own food, clothing, and shelter while in training.

The size of this group of defense trainees who applied for and received unemployment benefits is, for lack of the necessary data, unknown. It is impossible to estimate the number beyond saying that, in these days of small claim loads, the defense-trainee claimants constitute a substantial

group. Some idea of the size of the defense-trainee group as a whole may be obtained from the following tabulation of enrollments in U. S. Office of Education—Defense Training Programs.¹

Type of course	Active		Cumulative	
	Feb. 28, 1942	Feb. 28, 1943	Feb. 28, 1942	Feb. 28, 1943
Total.....	533,060	610,000	2,825,704	6,141,177
Pre-employment.....	170,551	138,568	968,551	2,182,214
Supplementary to employment.....	176,528	170,577	1,047,049	2,187,535
NYA out-of-school work program.....	77,844	164,215	448,217	808,813
Engineering, science, and management.....	108,187	139,540	301,977	662,615

For the defense trainees who have received unemployment benefits, as for all other recipients of unemployment compensation, unemployment benefits have been based on wage credits built up by previous work in covered employment. Thus unemployment benefits have not been paid to young people or housewives who have entered the labor market for the first time via defense training. Nor have they been paid to those who were formerly self-employed, or to domestic servants, farmers, Government workers, and others who had no qualifying covered employment before they began their training.

Unemployment benefit payments have also been confined to defense trainees who were "unemployed" in the weeks for which they were claiming benefits. Eligibility requirements in State unemployment compensation laws stipulate that claimants be either totally or partially unemployed; a week of total unemployment is usually defined as one in which the claimant performed no service and with respect to which no remuneration is payable to him, and partial unemployment as a week of less than full-time work in which the claimant's earnings fell below his weekly benefit amount for total unemployment. There are various reasons for the unemployment of defense-trainee claimants. Some have been discharged or laid off from their jobs and subsequently enter on their training. Some leave their work to enter a training course or to continue

* Bureau of Employment Security, Administrative Standards Division.

¹ Figures do not include enrollments in non-Government-sponsored courses

a training course they have already begun. In some instances, they leave their work for other reasons or are discharged because of their training. Regardless of the reason, they are all required to meet the test of "unemployment" before they can receive unemployment benefits.²

Pre-War Attitude Toward Student Availability

The polar question about which the cases of defense trainees have revolved is the question of availability for work. This situation arises from the requirement of State laws that an individual must be available for work in order to be eligible for unemployment benefits. This provision, an effort to restrict unemployment compensation payments to persons genuinely in the labor market, requires that a claimant be ready and willing to work and that his personal conditions and circumstances permit him to take a job. The great stumbling block to the receipt of unemployment benefits by defense trainees was the pre-war attitude of the unemployment compensation agencies as to the availability of students for work. The following statement summarizes pre-war rulings.

In States where the availability requirement is interpreted to denote availability for full-time work, the inquiry, in the case of students, is generally whether the restrictions upon the hours of work resulting from school attendance are such as to make it impossible for claimant to accept full-time work and what are the conditions under which claimant is free to leave school in order to accept employment. Generally, the decisions reflect a reluctance to infer that claimant is willing to interrupt his course of study when, in order to do so, he would forfeit his tuition or lose an opportunity to finish a course looking toward an academic or professional degree. When, on the other hand, a course of training or study may be readily interrupted without financial loss and other substantial detriment and claimant declares his willingness to accept work, availability for work is readily found.³

Before Pearl Harbor, the assumption was readily made that students were not properly entitled to unemployment benefits. They were primarily interested in their own training and education. Their attachment to the labor market was at best tenuous; often it was almost imaginary. Consequently, although students who qualified

² All references in this article to State actions concerning defense trainees are, except in the case of particular statutory provisions, based on the appealed benefit decisions of State quasi-judicial tribunals. The results of initial determinations of defense trainees' claims are, therefore, reflected here only indirectly, as they are revealed in administrative appeals.

³ "Issues Involved in Decisions on Disputed Claims for Unemployment Benefits," *Social Security Yearbook*, 1940, p. 38.

otherwise and could prove their availability for work received benefits, they were a decided minority of the student claimants. A typical statement was made by an Indiana appeal tribunal in 1938:

A student who is enrolled in a regularly established school is not in a position to accept full-time employment and is expected to devote the greater portion of his time to his studies both within and without the classroom. The fact that he would be willing to discontinue his school work upon offer of employment is not a determining factor.⁴

This language was echoed by a Florida appeal tribunal in 1939:

However, where an individual's status is primarily that of a student rather than an unemployed person unreservedly in the labor market, he is not considered as being in a position to accept full-time employment and is expected to devote the greater portion of his time, both within and without the classroom, to his school work. The fact that he would be willing to discontinue his school work upon an offer of employment should not be a determining factor.⁵

Although many of these pre-war decisions on student availability were stated in the context of academic pursuits, there was, in fact, a carry-over from these decisions to the cases of vocational and trade-school students. It took a war and a defense training program to separate vocational and academic training for the purposes of unemployment compensation eligibility.

Wartime Rulings and Appealed Decisions

It is difficult to generalize about the way the various States have handled the problem of the availability of defense trainees since the beginning of the war effort. No blanket rulings on the eligibility of this group have been issued. Instead, adjustment to the wartime situation has been met partly by adopting attitudes of leniency toward, or predispositions in favor of, the defense-trainee claimant, but mainly by refining and "rethinking through" the general concepts of availability in order to apply them properly to the cases of defense trainees. Implementing these attitudes of leniency toward defense trainees has sometimes raised the difficulty of defining defense trainees. None but the broadest definition would seem to suffice in a total war. However, in spite

⁴ Social Security Board, *Unemployment Compensation Interpretation Service—The Benefit Series*, Vol. 2, No. 3, 1021-Ind. A, p. 438. This statement reflects the Indiana statute before it was amended in 1930 to disqualify students.

⁵ *Benefit Series*, Vol. 3, No. 4, 3070-Fla. A, p. 54.

of the difficulty of deciding satisfactorily whether or not a student in a comptometer course organized at the request of an aviation company, for example, is a defense trainee, the State employment security agencies have generally agreed that individuals enrolled in federally sponsored war training courses are defense trainees and have gone on from that point to a case-by-case description of the defense trainee.

It is the result of this case-by-case method that we are trying to capture. Although the basic generalization may readily be made that mere attendance at a defense training course will not render a claimant unavailable for work, other broad conclusions involving more detailed questions of availability are harder to draw. It is possible, however, to take a long view of the situation, selecting certain trends or patterns of decisions that are true for most of the country. For instance, it may be said that generally the availability of a defense trainee does not depend on whether the course he is attending is free and Government-sponsored or a tuition course which is privately operated. However, the following States have, in varying degrees, differentiated between the claim of a trainee in a privately operated tuition course and that of a trainee attending a free, Government-sponsored course: California, Idaho, Louisiana, Minnesota, New York, South Dakota, and Vermont. The distinction made has rested mainly on the obvious fact that individuals who have paid tuition are loath to sacrifice their investment by dropping their training to accept work. Partly, however, the distinction has been based upon the differentiation between Government-sponsored and privately operated courses, although logically it is difficult to see what difference it makes in an individual's availability for work if he attends a Government-sponsored course rather than a privately sponsored course. Not the sponsorship of the course but the other circumstances that surround the trainee will decide whether he will drop his training to accept work or take a job while in training.

It may also be said that generally the mere fact that a claimant is engaged in a full-time instead of part-time course will not make him unavailable for work. This is a broadening of pre-war rulings. It is part of the wartime tendency in the field of student eligibility to decide availability more from the standpoint of the work a claimant is actually

willing to accept and less from the standpoint of what the claims deputy thinks the claimant will be capable of accepting. Colorado, Pennsylvania, and Virginia, exceptions in this area, have distinguished between trainees attending part-time refresher courses and trainees attending full-time courses who are not able to accept work until they have completed their training. The latter group they have considered unavailable for work.

Another criterion for deciding the availability of a defense trainee has sometimes been whether he voluntarily left his work to enter a training course. In the following States, a claimant who quit suitable work to enter defense training has been held unavailable for work: Kansas, Missouri, New Mexico, and Ohio. In Idaho, Iowa, Massachusetts, New Hampshire, South Dakota, and Washington, such a voluntary leaving results in a complete disqualification for benefits for the duration of the unemployment. This disqualification is statutory and arises because the voluntary leaving is personal and not related to the work,⁶ is without good cause attributable to the employer,⁷ or is without good cause connected with the work.⁸ Probably, but not certainly, persons who leave work to enter defense training have been held unavailable in Connecticut and Florida; Mississippi has taken this position only if the training is full time. In Oklahoma and Texas, these circumstances have not made a claimant unavailable, but he has had a harder time proving that he is available for work. The majority of the States, however, have ruled that the availability of a claimant who has left work to enter a training class must be decided by the rules applied to the availability of other defense trainees.⁹

Special Statutory Disqualifications

Special statutory disqualifications for students are to be found in the laws of Alabama, Connec-

⁶ Washington Unemployment Compensation Act, sec. 4 (c) of present law, and sec. 5 (b) of amended law, effective July 1943.

⁷ Iowa Employment Security Act, sec. 1551.11A; Massachusetts Employment Security Law, sec. 25 (c); New Hampshire Unemployment Compensation Law, sec. 4 (a) and Regulation No. 21; South Dakota Unemployment Compensation Law, sec. 17.0630 (1), as amended this year, effective July 1943; the South Dakota statutory language is "attributable to the employer or the employment."

⁸ Idaho Unemployment Compensation Law, sec. 4 (c).

⁹ West Virginia Unemployment Compensation Law, art. VI, 4 (7), as amended in 1943, disqualifies totally any individual whose unemployment results from a voluntary leaving "to attend a school, college, university, or other educational institution" while in attendance or waiting to start attendance; this evidently does not affect defense trainees.

ticut, Indiana, Montana, Nebraska, Nevada, North Dakota, Ohio, and Utah. In Alabama, Montana, and Ohio, the disqualifications apply to an individual who has left work for the purpose of attending, or who is a student regularly attending, an established educational institution during the school term or is on vacation within the school term. There is no indication that these States have invoked this disqualification against the claims of defense trainees per se. The Connecticut statute bars from benefits any individual who "has left employment to attend a school, college or university as a regularly enrolled student." Presumably this provision is inapplicable to persons engaged in a short-term vocational training course. Nebraska and North Dakota disqualify students and define them as individuals registered for full attendance at, and regularly attending, an established school, college, or university or as individuals who have so attended during the most recent school term; both these States have construed these disqualifications strictly and pay benefits to defense trainees.

In Indiana the disqualification covers individuals attending a "regularly established school, college, university, hospital or training school," "*any scholastic course of an academic or curricular nature, such as, but not limited to courses in draftsmanship, chemistry, engineering and accountancy,*" or "*a training course sponsored, held or conducted by an employing unit for training workers for positions in its own plant or establishment.*" The disqualification excludes attendance at "any night school, or part-time training course" or "*enrollment or attendance as a student in a training course designed and intended to train workers for skilled positions in industries engaged in the production of war materials.*"¹⁰ The Nevada statute clearly exempts students in night or vocational training schools from its disqualification. Utah's law not only excludes from its disqualification students in night schools, vocational, defense, or part-time training courses but also any other students who can show "to the satisfaction of the commission that he was unemployed through no fault of his own prior to enrollment in such school and that he is attending school because of lack of work and is actively seeking work and will

¹⁰ The material in italics was added by amendment in 1943. Previously the appealed benefit decisions reflected the agency's reluctance to apply to defense trainees the statutory disqualification of persons attending a "training school."

quit school to accept full-time work during customary working hours or that the major portion of his wages . . . during his base year was for services performed while attending school."

An Appraisal of State Rulings and Appealed Decisions

A careful study of the experience of State employment security agencies in handling the question of the availability of the defense trainee shows that generally there has been neither an expansion nor a distortion of the concepts of availability developed before this country entered the war. Instead, agencies have employed current concepts of availability as tools in handling a new situation. Necessarily, some of the tools did not fit, and some became more valuable than before because they were constantly used. One of the tools, for example, that most of the States decided did not meet the needs of the situation, was the test: Is the claimant taking a full-time course? Most States came to the conclusion that that test belonged in the sphere of academic, not vocational, training.

The tests most frequently applied are: Is the claimant willing to accept work and is he willing to quit school to accept work? These tests have, in turn, given rise to subsidiary ones: Is the claimant able and willing to change his class hours so as to be in a position to accept work? Can he quit his course in order to accept work without losing tuition or credit? Other evidentiary tests often used are: Did the claimant make an active, independent search for work? Did he work while in training? Did he refuse any offers of work? Throughout the country as a whole it seems clear that if a defense trainee is able and willing to accept work, is willing to quit school to accept suitable work, or makes an active search for work, he will be considered available for work. On the other hand, the claimant who is unable or unwilling to accept work or who will make no adjustment in, or cannot drop, his training program in order to accept a work offer will generally be held not available for work.

This statement, of course, does not imply that appealed decisions in any State conform exactly to this pattern. The statement is highly generalized inconsistencies existing not only among different States but within individual States. The distinction between the available and the unavailable defense trainees will often blur upon close examina-

tion. Other factors may and do intervene, but they do not obliterate this general pattern of decision.

In effect, the State agencies have taken a middle road. They have neither met the problem head-on as a new and unique situation warranting special ad hoc treatment; nor have they been so rigid as to force the defense trainees into the mold of student availability. Instead they have done a little of both these things. Perhaps somewhat instinctively, often without complete rationalization, the State agencies have been pursuing an indirect attack. This approach goes in one direction by recognizing the unique character of the defense trainee. It goes the other way when it insists that the assumptions which underlie student-availability discussions provide the guides for the examination of the defense trainee's availability.

An interesting perspective on the oblique method used by the State employment security agencies in adapting their thinking to the needs of defense trainees is furnished by a consideration of trends in the general field of law. One of the identifying marks of Anglo-American law has been the habit judicial bodies have of never taking a firm stand or propounding a new principle if an old one can be made to do the work. There is widespread recognition of this tendency in the courts. It is not so clearly understood that the tendency persists on the "administrative" or "quasi-judicial" side of our legal system as well. The handling of the defense-trainee problem is an excellent illustration.

In following this practice, the State agencies and appeal bodies have had to take the same risks and, possibly, to make the same errors of judgment as our courts. They have had to develop fictions—both fictions of law and fictions of fact. We have seen, for example, that it is common for State agencies to hold that a defense trainee who can change his class hours so as to be able to accept work is available for work. On its face, this seems an excellent basis for an availability ruling. In point of fact, it may often be purely hypothetical. The rush of people to take defense-training courses in 1941 and 1942 is well known. Many workers, because of inadequate facilities, had to wait for long periods before they were permitted to begin their training. Is it likely that a defense trainee who may have had to wait weeks

or even months to enter a training course will be in a position to change his class hours easily? Apparently what has happened is this: Theoretically, the trainee has this right to change his class schedule. The training authorities accede the right to him and will answer any inquiry in terms that indicate that he is permitted to change his class hours. Evidently the question is seldom raised as to the difficulty such a change will entail. Of course, this attitude flows logically from the adherence to the principle pointed out above. When this adherence produces desirable results, the necessary disregard of the facts may very well be condoned. Certainly, it justifies itself if it makes the unemployment compensation system flexible, ready without legislative amendment to make reasonable adjustments to the problems both of war and of peace.

Another significant aspect of the unemployment compensation history of the defense-trainee problem is the light it casts on post-war prospects in unemployment compensation. The economic dislocations that will be inevitable at that time may include a great shifting of workers from war industries into new peacetime occupations. Retraining will be imperative and upon a scale that may rival or exceed the war-training effort. Questions immediately arise: Will the unemployment compensation system be able to help out effectively in that situation? Will it be necessary to amend unemployment compensation laws so as to make specific provision for unemployment benefits to trainees? Our experience thus far with the defense trainees seems to point to "yes" to the first question. In answer to the second question, it would be helpful to clarify the statutory authority for payment of unemployment benefits to trainees. Of course, after the war, some of the enthusiasm and patriotism that impelled some administrators and referees to lean over backwards to help trainees get unemployment benefits will be gone. There will probably be few decisions granting benefits to post-war trainees "on grounds of public policy" or "because of the national emergency." But something in the student-availability field has been gained and will not be lost with the cessation of hostilities. A thinking job has been done that has driven a wedge clearly between the claims of academic students and the claims of vocational students. The new Indiana law cited above is a good illus-

tration of the effect of this kind of thinking.

Three examples are worthy of note in thinking of the post-war relationship between the unemployment compensation system and a retraining program. (1) There is a growing tendency in New York, Michigan, and New Jersey to use attendance at a defense-training course as a test of attachment to the labor market. Thus a claimant who refuses a referral to a defense course gives evidence tending to show unavailability. A claimant may show a return to the labor market, may prove his availability, or demonstrate that he never left the labor market by entering or applying for entrance to a defense-training course. (2) The Massachusetts Manual of Local Office Basic Operations states that claimants enrolling in one of the courses of the Vocational School Re-employment Program *by referral from the Employment Service* are available for work.

(3) As amended by the 1943 legislature, section 28 (f) of the Michigan Unemployment Compensation Law requires as a condition of eligi-

bility for benefits that a claimant shall have "when directed by the commission attended a vocational retraining program maintained by the commission or by any public agency or agencies designated by the commission." The act further provides for extended benefits under certain circumstances to such individuals. It states that an individual who is required by the commission to undergo such vocational retraining must accept suitable work if offered, "provided, however, that an individual who has enrolled in such a recognized training course shall be permitted to continue in such course and receive benefits to the end of such compensable period, if the commission finds such continuance necessary to complete such training."

These are outposts of thinking that will have a bearing on the question. They reflect a departure from a literal interpretation of availability provisions. They are the earnest of a promise that the unemployment compensation system is going to help Americans adjust to a peacetime world.