ance was in effect in all States in the Union, and more than 4 years before the first old-age benefits were payable. Wage records had to be set up, reserves accumulated, and an administrative organization established. After some 8 years, not all States yet have all three assistance programs in operation. The process of establishing social provisions which affect the lives of millions of people is necessarily slow if progress is to be sound, well-considered, and economical. At the present time, the social security program is the richer for the past years of effort and has resources in experience, training, organization, and methods tested by actual operation. Even so, however, it will take time to effect whatever provision the Congress finds desirable to correct past deficiencies and strengthen the program to meet future stresses. Whether one believes that the war will end in one year or five, the time in which to build a stronger system of social security is short in view of the character of the changes and readjustments we confront as individuals and as a people.

Trends in Disqualification From Benefits Under State Unemployment Compensation Laws

By **Ewan Clague and Ruth Reticker***

IN HIS TALK BEFORE the Interstate Conference of Employment Security Agencies last October, the Chairman of the Social Security Board, Arthur J. Altmeyer, called attention to the rapid and persistent trend of State legislation and State administration toward the imposition of more and more severe disqualifications on workers, and for an increasing number of causes. "Through the years," he said, "we have centered much attention on the amount of the average weekly benefit and the duration of benefits. These seemed to constitute the heart of the problem of improvement in the benefit structure. However, at the very time that many State laws were being liberalized in benefit rates and duration, the disqualification provisions were made much more restrictive in many State laws." The purpose of this article is to consider the trend in disqualifications as revealed in laws and benefit decisions and the implications of this trend for unemployment insurance.

Unemployment compensation is a program of benefits for workers unemployed through no intention or fault of their own. The purpose of disqualification provisions is merely to make certain that workers cannot obtain benefits by their voluntary action—collectively in going out on strike or individually in quitting work without good cause or in remaining unemployed when suitable work is available. Disqualifications extend also to cases in which the worker is unemployed involuntarily but because of his own misconduct connected with his work. Beyond these four grounds—voluntary leaving without good cause, refusal of suitable work, participating in a labor dispute, and discharge for misconduct—disqualification should not go.[1] Yet ever since benefits have been paid under the State unemployment compensation laws, there has been an unmistakable trend toward more rigid disqualification provisions and more severe penalties for disqualification. It is clear that the trend is not merely a temporary adjustment to the wartime attitude that in a period of manpower shortage everyone should be at work and no one should be drawing benefits. In fact, some instances of flexibility in adjusting disqualification policy to the wartime problems of the drafted man will be cited; they are, however, definite exceptions to the long-run trend toward more severe disqualifications.

Trend Toward More Rigorous Disqualifications

The trend in disqualifications appearing in

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[1] Provisions for disqualification for a particular week because of the receipt of other income are not true disqualifications. Although a claimant in receipt of benefits under another social insurance program may not be entitled to unemployment benefits, except insofar as the unemployment compensation benefit exceeds the other benefit, it seems unfortunate that deductions of benefits under other insurance programs have been classified as disqualifications.

State unemployment compensation laws is directly opposite to the trend of liberalized benefit amounts and duration. By denying access to benefits, disqualifications can nullify provisions for more liberal benefits.

All States disqualify a worker who leaves his work voluntarily without good cause. In 1938, the good cause which justifies a quit was limited to "good cause attributable to the employer" or "to the employment" in 4 States. As of January 1, 1944, this limitation prevails in 19 States; in 18 of these States by statute, and in 1 by regulation (table 1). In some other States, the same limitation appears to be applied in some decisions. A worker may have any one of a number of good causes for quitting a job which are not attributable to the employer—for example, causes connected with health, war work, family responsibility, selective service, or a better job. In some of these situations, while the cause of the separation persists, the individual may be unable to work or unavailable for work and therefore not eligible for benefits. Once ability and availability are restored, however, continued unemployment is no longer voluntary and it seems unreasonable to deny benefits for any additional period or to cancel benefit rights. In other situations, the individual is available for work and should be entitled to benefits as soon as the ordinary waiting period is served.

Typically, disqualification has involved the denial of benefits but only for the period during which the cause of a claimant's unemployment could be considered the original disqualifying act. If he continued to be unemployed after that period, his unemployment would be due to the general state of the labor market in which he could not get a job. There is a definite tendency to increase the period of disqualification (table 2). As of January 1, 1944, a claimant who leaves work voluntarily without good cause may be disqualified for the duration of his unemployment in 10 States. In 6 of these States the same penalty may be applied to claimants who are discharged for misconduct, and in 5 of these States and 6 others, to claimants who refuse suitable work. In many States without the duration-of-unemployment provisions, the specified disqualification period has been lengthened. The maximum period is 9 weeks or more in 18 States for discharge for misconduct, in 9 States for voluntary leaving without good cause, and in 7 States for refusal of suitable work. In Nevada, the disqualification period has recently been extended to up to 15 consecutive weeks "within the current *and following* benefit year."[2]

Analyses of actual disqualifications in States whose laws provide for a disqualification period at the discretion of the deputy show that in most of these States the minimum disqualification is rarely imposed. A recent report on unemployment insurance disqualifications in California stated that "93 percent of the disqualifications imposed for refusal of suitable employment in September 1943 carried the maximum penalty of 6 weeks." Other States are reported to assess the maximum disqualification uniformly or, if the range is 3–10 weeks, to limit discretion to 6–10 weeks. Still other States are reported to make disqualifications run for the *individual claimant's* maximum potential duration of benefits.

In unemployment insurance systems in other countries, disqualification has involved no diminution of total benefit rights in a benefit year. In the State systems there is an increasing tendency to cancel benefit rights which would have been drawn during the period of the disqualification, or to cancel all benefit rights resulting from the employment which terminated under a disqualifying condition. The development since 1938 is shown in the following tabulation of the number of States with provisions canceling wage credits or reducing maximum benefits payable:[3]

Disqualifying act	January 1938	January 1940	January 1944
Total laws reducing or canceling benefit rights	8	14	28
Voluntary leaving	5	10	20
Discharge for misconduct	6	12	20
Refusal of suitable work	6	9	21

Five States require a specified minimum amount of employment or earnings following disqualification before a claimant may again be eligible for benefits—a nominal amount in New Hampshire but a significant amount in Alabama, Florida, Minnesota, and Washington; 3 additional States have special requirements concerning future em-

[2] Italics ours.

[3] Seven additional States cancel some or all wage credits when claimants leave to marry or are discharged for dishonest or unlawful acts; 6 other States cancel more credits when claimants are separated for one or the other of the causes stated than under the general voluntary-leaving and discharge provisions.

Table 1.—*Disqualification for voluntary leaving, discharge for misconduct, and refusal of suitable work in State unemployment compensation laws, by type of experience-rating provision, as of January 1, 1943* [1]

Type of experience rating and State	Voluntary leaving without good cause			Discharge for misconduct		Refusal of suitable work	
	Good cause restricted to cause attributable to—	Weeks disqualified	Benefits reduced	Weeks disqualified	Benefits reduced	Weeks disqualified	Benefits reduced
No experience rating:							
Alaska		1-5		1-5		1-5	
Louisiana		1-6		1-6		1-6	
Mississippi		1-5		1-7	[2]	1-5	
Montana		[3] 1-5	[4]	[3] 1-9		1-5	
New York		6		7		All	
Rhode Island		3		1-10		1-3	Optional.
Utah		[5] 1-5		1-9		1-5	
Washington	Employment	[6] All		2-5		1-5	
Experience rating, pooled fund:							
Alabama	do	All	Mandatory-employer.	3-6	Mandatory [7]	[8] All	Mandatory.
Arizona	do	4	Mandatory	4	do	1-5	
Arkansas		1-5		1-5		1-5	
California		1		1-5		1-5	
Colorado	Employer	3-15	Mandatory	3-15	Mandatory	3-15	Do.
Connecticut	Employment [9]	4		4		4	
Delaware		All		All		All	
District of Columbia		3		1-4		3	
Florida [10]		All		All		All	Optional 1-3.
Georgia	Employment	2-8	Mandatory 2-8	3-10	Mandatory 3-10	2-8	Mandatory 2-8.
Hawaii	Employer	2-7		2-7		2-7	
Idaho	Employment	All		All		1-5	Mandatory.
Illinois		3-7		3-7	[11]	3-7	
Iowa	Employer	All	Mandatory-employer. [12]	2-9	Mandatory	All	
Kansas		1-9		1-9	[11]	1-9	
Maine		1-5	Mandatory	1-9	Mandatory	1-5	Do.
Maryland		1-9	Optional	1-9	Optional	1-9	Optional.
Massachusetts	Employer	All		All		1-4	Do.
Michigan	do	All		All		3-5	Mandatory 3-5.
Minnesota	do	[13] All-employer	Mandatory-employer.	All-employer	Mandatory-employer.	[14] All	
Missouri [15]		1-1	Mandatory	1-8	Mandatory	4-8	Mandatory.
Nevada [16]		1-15	[4]	1-15		1-15	
New Hampshire	Employer [17]	[17] All		3	Mandatory [11]	3	
New Jersey		3		3		3	
New Mexico		1-13	Mandatory	1-13	Mandatory	1-13	Do.
North Carolina [18]	Employer	4-12	do	5-12	do [31]	4-12	
Ohio	Employment	[19] 3	Mandatory 6	[19] 3	Mandatory 6	All	
Oklahoma		[20] 2		3		2	
Oregon		[21] 2		2-5		4	
Pennsylvania [22]		All		No provision		All	
South Carolina [23]		1-5	Optional	1-9	Optional	[24] 1-5	Optional.
Tennessee [22]		1-5		1-9		1-5	
Texas [25]	Employment	2-16	Mandatory	2-16	Mandatory	2-8	Mandatory.
Vermont		1-9		[26] 1 or more		[27] 6	
Virginia		1-5		1-9		1-5	
West Virginia	Employer	[21] 6	Mandatory	6	Mandatory	[28] 4	Do.
Wyoming		1-5	do [4]	1-5		1-5	Do.
Experience rating, employer reserve:							
Indiana		3	Mandatory 6 [4]	3	Mandatory 6 [11]	3	Mandatory 6.
Kentucky [29]		1-16	do	1-16	Mandatory	1-16	Mandatory.
Nebraska		1-5	[4]	1-5	[11]	All	Do. [30]
North Dakota		1-7	[4]	1-10		1-7	
South Dakota	Employer	All-employer	Mandatory-employer.	All-employer	Mandatory-employer.	All	Mandatory-employer.
Wisconsin	do	[13] All-employer	do. [4]	[13] All-employer	do	All	Mandatory. [30]

[1] Unless otherwise noted, weeks of disqualification are consecutive weeks following that in which disqualifying act occurred. "All" means that disqualification is for duration of unemployment due to or following the particular act. In columns on benefit reduction, "mandatory" indicates mandatory reduction to be applied in every case; "optional" indicates that reduction is optional with State agency; the reduction is equal to weekly benefit amount multiplied by number of weeks of disqualification, unless otherwise noted; "employer" indicates that benefit rights based on the employment which the individual left are canceled.

[2] If discharged for fraud or moral turpitude.

[3] Following waiting period.

[4] If left to marry, wage credits earned prior to marriage canceled.

[5] If left to marry or leave locale with husband, until she earns $100 or becomes main support of family.

[6] Until individual works at least 4 weeks and earns at least $50.

[7] All benefit rights from separating employer canceled if discharged for dishonest or criminal act.

[8] Until individual earns wages equal to 20 times his weekly benefit amount.

[9] Omits "voluntary."

[10] Until individual earns wages equal to 10 times his weekly benefit amount.

[11] All prior wage credits canceled if discharged for dishonest or criminal act; or in Nebraska, if misconduct was gross, willful, and flagrant or unlawful; in North Carolina, all base-period wages canceled.

[12] By court decision.

[13] An individual is disqualified from previous employers' accounts for 3 weeks—in Wisconsin for 4 weeks for voluntary quit; in Minnesota, if left to marry, until she earns wages in at least 6 weeks equal to weekly benefit amount.

[14] Until individual earns $200.

[15] Benefits charged as if paid if claim is filed within 1 year of disqualifying separation notice.

[16] Experience rating not yet effective; disqualification may extend to following benefit year.

[17] By regulation; until individual earns wages equal to $2 more than weekly benefit amount.

[18] Following the filing of a claim.

[19] Actually, usual waiting period of 2 weeks is lengthened to 5 weeks; if left voluntarily to marry or discharged for dishonesty, all.

(Continued on next page)

ployment before benefits can be payable to claimants who leave to be married.

Good Cause Attributable to the Employer

A few cases will illustrate disqualifications actually imposed because the claimants left work without good cause attributable to the employer. A cigar salesman [4] quit to accept employment as a lubricating engineer in an arsenal but was rejected by the arsenal doctor. His former job had been filled and benefits were denied because his "action . . . in leaving nonessential industry and accepting employment in an essential industry is purely a voluntary one." In West Virginia, a claimant who quit her employment, upon the advice of the plant physician, because her hands were affected by the acid used in her work was held to have quit her employment without good cause involving fault on the part of her employer; since others were not so affected it appeared that she had an allergy. [5]

In Iowa a laborer left an outdoor job in anticipation of an annual seasonal lay-off and took a better job. When he was laid off from the second job after 7 weeks, he was disqualified because he had left his preceding employer without good cause attributable to the employer. The Supreme Court of the State held that he was not entitled to any benefits based on any wages credited to his account at the time he left his work. The worker's acceptance of any bona fide job would seem clearly to cancel the effect of any previous separation as a cause of unemployment. Yet in this case, although the claimant was not unemployed between jobs and although he held a new job for 7 weeks, he not only was disqualified because of the earlier quit, but also had his benefit rights canceled.[6] The Iowa Employment Security Commission considered the effect of this interpretation of the law sufficiently important to call it to the attention of the Governor in its annual report for the year ended June 30, 1943. The Commission said that notices of separation without good cause attributable to the employer are being filed at the rate of more than 135,000 annually and are jeopardizing the benefit rights of more than 100,000 of Iowa's 350,000 covered workers. The report pointed out that many of these workers had moved from nonessential to essential industry, yet in the post-war period they may find their benefit rights lost or substantially reduced because of earlier separations without good cause attributable to the employer.

The implications of this case are significant in view of our present emphasis on free enterprise in our American way of life. Free enterprise should certainly extend to the workers. We believe that workers have a right to better themselves and that it is socially desirable that they should seek and take work whenever possible, rather than lean on their benefit rights. If this laborer had waited a few more days, he would have been laid off, as he had been by the same employer a year previously, and could have drawn benefits. Because he chose to work, he was penalized when his new job ended because of lack of work. Such a limitation on labor mobility seems neither good personnel practice nor sound social policy.

Other issues are involved in other voluntary-

Table 2.—*Period of disqualification for voluntary leaving, discharge for misconduct, and refusal of suitable work under State unemployment compensation laws, January 1, 1940, and January 1, 1944*

Cause for disqualification [1]	Number of States which cancel benefit rights or disqualify for the duration of unemployment [2]	Cumulative number of States with maximum period of disqualification specified [3]			
		More than 9 weeks	9 or more weeks	6 or more weeks	1 or more weeks
Voluntary leaving:					
January 1940 [4]	7	1	4	7	43
January 1944	13	6	9	16	38
Discharge for misconduct:					
January 1940 [4]	4	2	17	26	45
January 1944 [5]	9	9	18	26	41
Refusal of suitable work:					
January 1940	11	6	2	6	40
January 1944	11	5	7	15	40

[1] Some States provide more severe penalties under particular specified circumstances, such as voluntarily leaving to marry, discharge for criminal acts, repeated refusal of suitable work, or refusal of former employment.

[2] Some States included here cancel wage credits from one employer and provide specific periods of disqualification with respect to benefits based on other wage credits. Canceling wage credits from one employer makes many workers ineligible for benefits (because they do not have wage credits from other employers) and thus has the same effect as a disqualification for the duration of the unemployment.

[3] Including those States where benefit rights are reduced.

[4] In 1940, New York had no disqualification for voluntary leaving, Massachusetts and Pennsylvania none for discharge for misconduct.

[5] In 1944, Pennsylvania has no disqualification for discharge for misconduct.

[4] Benefit Series 8212, Colorado R., Vol. 6, No. 11.

[5] A-4231 (6-28-43) (affirmed by R-710).

[6] 230 Iowa 751; 298 NW 791.

(*Continued from preceding page*)

[20] If left to marry, all.

[21] If left to marry, until she earns wages in subject employment; in West Virginia at least 30 days.

[22] Experience rating not yet effective.

[23] Weeks of unemployment in which claimant is otherwise eligible.

[24] For repeated refusals, agency may extend disqualification until individual earns 8 times his weekly benefit amount.

[25] Actually, 1-8 (2-week) benefit periods—1-4 in case of refusal of suitable work—following the filing of a claim.

[26] Such number of weeks (but not less than 1) as agency determines.

[27] Regular 2-week waiting period not required.

[28] And such additional period as any offer of suitable work continues open.

[29] Actually, usual waiting period of 1 week is lengthened to 2-17 weeks.

[30] Including all wage credits up to date of refusal of suitable work.

leaving cases. In Alabama, a 17-year-old girl who lived 4 blocks from a street-car line quit her job when her family could no longer use the family car to meet her when she went off duty at 1 a. m. She was held to have left work without good cause connected with the work, and was disqualified for 4 weeks.[7] (Under the same law as amended, she might now be disqualified for a longer period.) One may well ask whether it is good social policy to put pressure on a 17-year-old girl to remain in such work.

Nor is it sound public policy to deny benefits to claimants who quit to enlist or because they were drafted into the armed forces, and then fail to pass the physical examination. In fact, in 7 States,[8] special provision is made to exempt from disqualification workers who leave under such circumstances. Yet in more than 1 State, men who left their jobs to join the Army and then were rejected have been held to have left work voluntarily without good cause attributable to the employer. In Connecticut, the only State which does not limit disqualifications to *voluntary* leaving, claimants drafted for induction but rejected have been held to have left work without, as one court decision stated, "sufficient cause connected with his employment, since induction into the Army is a reason totally unconnected with his employment."[9] Connecticut has recently amended "sufficient cause which is connected with employment" by adding "or is, solely by reason of Governmental regulation or statute, beyond his control."

Double Disqualification

In some States, a double disqualification is imposed when a worker is reoffered a job which he has left without good cause attributable to the employer. When he refuses it, for the same reasons which prompted him to leave, he is disqualified a second time—this time for refusing suitable work without good cause. This situation is illustrated by an Alabama case involving three claimants who drove 17 miles to work in a textile mill. When the tires on the family car wore out, the man was unable to get authorization from his local rationing board for additional tires or recaps or to obtain living accommodations in the mill town. The family then approached the employer, suggesting a transfer from the third to the second shift because they could arrange transportation with a neighbor for work on this shift. When this request was refused, they left their jobs and filed claims for benefits. Then they were referred to work with the same employer—again for work on the third shift. This they refused for the same reasons for which they had left.

In a hearing on August 20, the three claimants were disqualified for 4 weeks ending May 16 for having left voluntarily on April 24 without good cause attributable to the employer and 4 weeks ending May 30 for refusal to accept suitable work on May 7. It was also ruled that since filing claims on May 4, 1942, they had not been available for work and "this state of ineligibility shall continue until [they] shall notify the local employment office that [they have] restored [their] services to the labor market." The last ruling was reversed by the Alabama Board of Appeals December 16.[10]

In this same State when, under similar conditions, another family moved to another mill village so that the husband could reach his work, the wife claimed benefits while trying to find employment near her new home. She was reoffered the job which she had left because of the lack of transportation and housing facilities, and was disqualified both for voluntary leaving and for refusing suitable work under a Supreme Court decision in that State [11] which held that no worker voluntarily placing distance between himself and available work may thereafter complain that the same work, if reoffered, is unsuitable. The doctrine laid down in these decisions has now been incorporated in the Alabama statute.[12]

In Indiana, a disqualification for refusal of suitable work can be imposed only when a claimant is otherwise eligible for benefits. This limitation has been interpreted to prohibit the imposition of a disqualification for refusal of suitable work during a period for which a worker had been disqualified for voluntary leaving. However, it would not prevent the imposition of repeated, nonoverlapping disqualifications for refusal of the same work that the claimant had left, after the period of disqualification for voluntary leaving had expired.

[7] Benefit Series 8069, Alabama R., Vol. 6, No. 7.

[8] Alabama, Connecticut, Iowa, Ohio, Pennsylvania, Washington, Wisconsin.

[9] Benefit Series 7860, Connecticut, Ct. D., Vol. 6, No. 3.

[10] Alabama, A. D. 817, Decision No. 757; Benefit Series 8250, Alabama R., Vol. 6, No. 12.

[11] Benefit Series 7482, Alabama, Ct. D., Vol. 5, No. 8.

[12] See page 20.

Although the disqualification period in this State is only 3 weeks in addition to the week of the disqualifying act, 6 weeks of benefits are deducted for each disqualification. Therefore a double disqualification would wipe out 12 weeks of a maximum potential 16 weeks of benefits.

The Minnesota law includes a special disqualification for failure to "accept his former employment when offered by such employer" which involves cancelation of wage credits "earned in such employment." Many claimants who left jobs in this State without good cause attributable to the employer would have no benefit rights to be canceled since, if they were unemployed after they left their jobs, their benefit rights would have been canceled. However, if a claimant had left "to accept employment in an industry, occupation, or activity in accordance with War Manpower policies of the United States or to accept employment offering substantially better conditions of work or substantially higher wages or both," only 25 percent of his wage credits would have been canceled previously.

Disqualification of Servicemen

Practically all States have amended their laws to preserve the benefit rights of servicemen. Twelve laws [13] specifically provide that one or more types of disqualification for acts prior to military service will not apply after discharge from the Army. In some other States, disqualifications which had been imposed would be wiped out by lapse of time. In States which cancel or reduce benefit rights, however, the returning serviceman who risked his life for his country may find his benefit rights lost by reason of some petty infraction of a shop rule before he entered the Army.

In addition, there seems to be a new trend toward whittling away the rights which have been safeguarded for the servicemen, through additional eligibility provisions. For example, Michigan [14] has enacted a provision that a claimant is eligible only if "he is able to perform full-time work of a character which he is qualified to perform by past experience or training, and of a character generally similar to work for which he has previously received wages." Under this provision, a claimant who was unable to engage in his former work as a laborer as a result of a brain concussion sustained during service in the Navy, but was certified by his doctor as able to do light work, was held unavailable for work inasmuch as he was not able to perform work of a character for which he had received wages.[15]

Under the Selective Service Act, ex-servicemen have rights to their prior employment. Realistically, we know that, even when the jobs exist, some servicemen will not be able to return to their former jobs though able to carry on other types of full-time employment; and that for many others who will have learned a new trade in the Army some other work would be more suitable. The Minnesota law, which includes a waiver of disqualifications for acts prior to military service, makes a mockery of this protection by providing that "no military trainee shall be deemed eligible for benefits . . . unless he has applied for and been denied reinstatement in his former employment or such employment is not available."

Confusion Between Disqualifications and Eligibility

In the handling of claims and appeals there are many evidences of confusion between ability to work and availability for work, which, as part of the eligibility requirements, are tested every week, and the disqualification provisions which involve a definite period of postponement of benefit rights and in many States involve cancelation of benefit rights. Even when the effect on the claimant is the same, it is important to distinguish between these two concepts. The confusion is illustrated by the provision in the Minnesota law that "an individual shall be *disqualified* . . . if he is unable to perform such work or is no longer *eligible or available* for such employment and *all wage credits earned in such employment shall be cancelled.*" [16]

The confusion between disqualification and ineligibility is reflected also in the provisions regarding special groups such as students, married women, or pregnant women. The laws of 25 States provide for denial of benefits to one or more special groups: 12 to students, 16 to women who quit on account of marriage, and 14 to pregnant women. Of these 14 States which deny benefits

[13] Alabama, California, Florida, Hawaii, Iowa, Minnesota, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, Wisconsin.

[14] The director of the Michigan agency is quoted as saying that this amendment was passed over the protest of the Unemployment Compensation Commission.

[15] Michigan B3-336.

[16] Italics ours.

to pregnant women, 5 use the term "disqualification"; 4 say they are unavailable; 2, unable and unavailable; 2, "unable"; and 1, "ineligible."

Obviously there are many cases in which such individuals are not in the labor market—for example, are not able to work or are not available for work—and should not draw unemployment compensation. Wholesale disqualifications of such groups, however, dodges administrative responsibility for making individual determinations of availability for work or ability to work or of disqualification under the general disqualification provisions. In Michigan, for instance, a woman who left work to marry or because of pregnancy would undoubtedly be held disqualified under the general provision for disqualification for the duration of the unemployment "if the individual left work voluntarily without good cause attributable to the employer," but special causes of disqualification (with no period specified) were added in 1943:[17]

> f. When such individual leaves work voluntarily either to marry or because of marital obligations.
>
> g. When it is found by the Commission that total or partial unemployment is due to pregnancy.

For example, to disqualify all women who leave work to marry or are discharged because of a company rule against working after marriage, and to cancel wage credits earned prior to marriage will lead to the automatic disqualification of many claimants who depend in whole or in part on their earnings and do not wish to remove themselves from the labor market. To disqualify all pregnant women will put pressure on some women to remain in work which may be injurious, through fear that they will not be able to find suitable work. The language of the Utah law, particularly, has this effect, since it provides that a woman is ineligible for benefits during pregnancy if she "voluntarily left *her last work in her customary occupation.*" [18] A woman who voluntarily left her customary occupation in a factory for an easier job from which she was separated because of lack of work would be ineligible for benefits during the rest of her pregnancy, although she might be able to work and available for work.

[17] In South Dakota, 1943 amendments added both the clause "attributable to the employer or the employment" and a special section, "An individual shall not be entitled to any benefits on account of her most recent employment, whose unemployment is due to separation from her most recent employment because of pregnancy or for the purpose of assuming the duties of a mother or housewife."

[18] Italics ours.

Special Problems of Limited Availability

Special problems arise when claimants must limit their availability for work. Two types of limited availability will be discussed here: limits on the time of employment and on the place of employment.

As the war has led to the extension of night shifts and the suspension of laws prohibiting night work for women, the limitation by claimants of their employability to particular shifts has become a large problem. It is understandable that in wartime there should be a strong tendency to consider as ineligible for benefits those workers who will not accept otherwise suitable work because of the hours. Usually the pressure of public opinion plays a part here; it is hard to explain why benefits are being paid to a worker who is idle while his skills are needed and can be used, although at a time of day when he cannot or will not work.

These considerations have given rise in recent months to a wave of restrictive rulings requiring workers to hold themselves available for work at any hour of the day if they are to receive benefits while unemployed. Most of the appealed benefit decisions involving shift employment deal with the claims of women who, because they must care for children, specify particular shifts as the only times they can work. Usually the desired shift is the day shift; sometimes it is one of the other shifts when another member of the family who works on the day shift is able to care for the children. It can hardly be said that such women cut themselves off from the active labor force when they set reasonable limitations upon the hours they will work. To put pressure on them, by withholding benefits, to accept work at such hours that they must neglect their children may be socially unwise.

This problem is illustrated by the case of a woman with two children (9 and 4 years old) who worked as a machine operator in the flashlight department of an arms plant from 8 a. m. to 5 p. m. When the flashlight department ceased operating entirely, she was offered a job in another department on the 3–11 p. m. shift or on the 11 p. m.–7 a. m. shift. She refused because she wanted to be at home with her children at night. She continued actively seeking day-time work but refused all evening or night work. The commissioner's decision called attention to the fact that the

Governor had suspended the statute which prohibited employment of women between the hours of 10 p. m. and 6 a. m. in manufacturing, mechanical, or mercantile establishments. It said:

With the bar of this statute removed and with factories commonly operating 24 hours a day, it is apparent that this claimant by refusing to work on any shift other than the day has materially lessened her chances of employment. This is a fatal impairment of her availability unless her prior experience, health, or length of unemployment reasonably justifies it.

When she first became unemployed, she, under my conception of the law, was entitled to look for a job where the pay, the nature of the work, and the conditions of employment were substantially the same as in her former work, but she is not entitled to persist beyond a reasonable time in pursuit of such work.[19]

"Reasonable time" was set at 3 weeks.

A contrasting decision was given in Delaware when a claimant who had worked alternate weeks on the day and night shifts left her job because she could no longer find anyone to take care of her small child during the night shift and her employer was unable to place her on the day shift permanently. She was held "to have left her most recent employment voluntarily *with good cause and to be available for work* when she attached no conditions to her availability for day work, the normal period of employment in the community." [20] The referee's decision stated:

Does the Delaware Statute provide that a person must be available for work during the entire 24 hours of a day? A normal work week is approximately 40 hours and the number of working hours a day is 8 hours. If an individual is available for normal periods of employment, it is sufficient to establish eligibility for benefits, provided that the hours and conditions of availability are reasonable. It would be grossly unjust and illogical to hold that unavailability for night work makes one unavailable for day work.[21]

When the case was appealed by the employer, the commission affirmed the decision of the referee:

Turning now to the instant case, we see a woman, a good worker, who is unable to work on the night shift because she can find no one to care for her child. She is available for work during the day. Despite ever-increasing night work due to defense industry, the daytime is unquestionably the normal period of work in this community. We have no hesitation, therefore, in holding that claimant is available for work. We are the happier to arrive at this decision because a contrary finding would, in our opinion, render a real disservice to the social welfare of the many children of working parents in this city.

[19] Connecticut, 250, C-42.

[20] Italics ours.

[21] Benefit Series 7778, Delaware R., Vol. 6, No. 2.

We also feel that claimant voluntarily quit her most recent employment with good cause. Faced with the alternative of working at night while her child lay home unattended and completely at the mercy of such dangers as sudden sickness, fire, and the like, or of giving up her job and properly caring for the child, we think the normal parent would choose the latter course, particularly in this community, where a great number of daytime jobs are presently available. Again, we think we have arrived at a decision which is neither contrary to social welfare nor the Unemployment Compensation Law of this State as we interpret it.[21]

A South Carolina court decision concerned a claimant who would not accept second-shift work because his wife worked on that shift and he had to care for the children meanwhile, or third-shift work because his doctor had ordered him to stop night work on account of his eyes. Though he could accept first-shift work, he was held not available for work because of the limitation he placed upon the hours he would work. In reversing this decision, the court said that a claimant must be able to work and available for work for a majority of the average number of hours customarily worked daily in his occupation and for at least 8 hours a day, and that the actual hours he could accept work need not be the hours of his latest employment unless he is available for no other kind of work and the hours he is available are not included in his industry's work day.[22]

Yet in the same court, another judge held later against a claimant who quit after 7 months as a quiller tender on the third-shift when she lost the help of the relative who had cared for her four children, aged 2 to 9 years. Since quitting, she had been offered third-shift work on several occasions but refused each time, saying that she was available only for first and second-shift work. She had never worked prior to this employment. The court held that in order to be entitled to benefits under the act the unemployed individual must be able to do, and be available for, the work which she had been doing and that the claimant was therefore not available for work; and that it was not the purpose of the act to relieve unemployment due to changes in the personal conditions of the employee.[23]

[22] *Judson Mills* v. *South Carolina Unemployment Compensation Commission and Spears*, Court of Common Pleas, Greenville County, December 9, 1942 (Gaston, Presiding Judge, 13th Circuit). Benefit Series 7944, South Carolina, Ct. D., Vol. 6, No. 5.

[23] *Judson Mills* v. *South Carolina Unemployment Compensation Commission and Gaines*, Court of Common Pleas, Greenville County, South Carolina, August 10, 1943 (Oxner, Judge, 13th Circuit).

Problems of Place of Employment

The accelerated wartime migration of workers has precipitated new problems of determining availability for work in terms of location. Interstate claims have always involved a determination whether a given claimant should be required to be available for work in the State of his present residence or in the State where he had earned wage credits. Two States have enacted provisions, which, by defining availability in terms of location add to the requirements which the claimant must meet. For example, the Alabama and Michigan laws require a claimant to be "able to perform work of a character which he is qualified to perform by past experience or training, and . . . available for such work either at a locality at which he earned wages for insured work during his base period or at a locality where it may reasonably be expected that such work may be available." Another type of amendment dealing with suitable work has much the same effect. Alabama, Colorado, and West Virginia provide, in effect, that no work shall be deemed unsuitable because of its distance from the individual's residence if such work is in the same or substantially the same locality as was his last previous regular place of employment and if the employee left such employment voluntarily without good cause connected with such employment.

This latter type of provision affects not only claimants who have moved from their place of employment but claimants who have experienced wartime transportation difficulties. Some State decisions have definitely made allowance for such difficulties. For example, a Rhode Island decision which ruled that a mill worker was available for work when she quit her job because she lost her ride with a neighbor said:

> . . . the claimant has resided in her own home for a period of 12 years. She has not by her own act removed herself to a position of inaccessibility for which she could be expected to assume the risks created thereby, including the likelihood of lack of transportation. Nor can her inability to obtain transportation be predicated upon any act of her own. It is strictly the fortuitous circumstances arising from present wartime exigencies through no fault or conduct on the part of the claimant. From the evidence produced at the hearing, claimant has made reasonable efforts to remedy the situation in which she finds herself. In essence, her unemployment is attributable to a break-down in our economic and industrial system to the extent that we are not in a position to provide the rubber and gasoline essential to bringing the labor to the place of employment, and considered as such the situation differs very little from that in which unemployment is caused by failure of plant machinery or other causes traceable to the same inadequacies.[24]

The Nebraska law provides that a claimant who left work voluntarily without good cause "shall be disqualified from benefits for any week of unemployment when he does not report in person to a Nebraska State Employment Service Office." Under this provision, a man who left the State to seek a war job would be unable to use the interstate benefit-payment procedure to claim benefits in Nebraska no matter how much employment he had obtained subsequently in other States.

In other States, numbers of claimants who file claims through the interstate benefit-payment procedures are ruled not available for work. For example, a Virginia claimant who quit her job to follow her soldier husband to a small California town was held not available because:

> This claimant has established her home in a small area wherein there is practically no chance of her being placed in another job in suitable employment, because her husband is in the armed forces of the U. S. and employers in that locality appear to be not interested in employing the wives of soldiers because of the uncertainty and duration of their employment.
>
> It is true, no jobs have been offered this claimant, and she has refused no jobs, but such might be expected in an area where no jobs are available, due to restrictions placed upon employment by employers in the area wherein the claimant has established her home.[25]

A hosiery worker in Maryland who went to South Carolina to be near her husband was also declared unavailable in a decision which commented:

> The claimant left work voluntarily without good cause. Her husband did not go to North Carolina in order to establish a permanent domicile, but because he was transferred there under military orders.
>
> When individuals choose to leave their work and follow their husbands to areas where work is restricted because of the size of the place, the influx of many people due to proximity of a camp, and unwillingness of employers to hire wives of soldiers, those individuals must bear the loss of benefits due to their unavailability for work. They are not unemployed through no fault of their own since they voluntarily create the circumstances which render them unavailable for work. Also, in this case, there is work for the claimant with her former employer in Maryland.[26]

While many decisions follow similar reasoning, some States find claimants available when they

[24] Benefit Series 8047, Rhode Island R., Vol. 6, No. 7.
[25] Virginia—D545, M 5-62.
[26] Benefit Series 8306, Maryland A, Vol. 7, No. 1.

move to localities where work or transportation is limited. Oregon decisions emphasize:

> The test with respect to availability for work is the claimant's availability for work and not the availability of work to the claimant. Otherwise, during periods of slackness of work, no claimant would be entitled to benefits.[27]

Another Oregon decision discusses the problem in detail. The claimant quit work to follow her soldier husband from Oregon to Nebraska, to Illinois, to Mississippi. She intends to stay with him as long as he is in the continental United States. In Nebraska she found short-term work in a department store and a drugstore. In Mississippi she found a job as coffee demonstrator. She was held available for work in a decision which states:

> Where the husband moves from the legal residence for the purpose of going from place to place in search of work, or is engaged in the kind of work, (including military service) where he knows or has reason to know that he cannot remain in any one place for a substantial period, and the wife, knowing that no new place of residence will be chosen or the old residence abandoned, and where she knows that such moving about will take place or will in all likelihood be the custom, but nevertheless follows her husband, she is not, we believe, under legal obligation to leave the legal residence previously established.
>
> Where she chooses to leave her work in order to follow such nomad life, she then leaves such work voluntarily and not because of any superior legal, or even moral duty existing. Having so left her work, and having chosen the nomad life, if she chooses to limit her availability for work to that kind in which employers by necessity must have someone upon whom they can depend for services for a substantial period, she thereupon voluntarily limits her availability for work in a substantial degree and thereby cannot be properly deemed to be available for work within the meaning of the Unemployment Compensation Law. If such nomad wife, under such circumstances, is willing to take work wherein it may reasonably be expected that such short time or temporary work will be generally acceptable to prospective employers, (such as has been the case with nurses, fruit pickers, waitresses, and the like) then she may be found available for work.[28]

Relation of Disqualification and Experience Rating

With the limitation of good cause to cause "attributable to the employer" and with the practice of double disqualification, the function of disqualification is shifted from limiting benefits to workers unemployed through no fault of their own to limiting payments to cases where the employer is at fault. The West Virginia law uses the words "without good cause involving fault on the part of the employer." This limitation of good cause to the employer or the employment is in harmony with the theory that the individual employer can prevent unemployment and that the costs of unemployment can be allocated to employers through a system of employers' experience rating.

The provisions for the reduction or cancelation of wage credits when the employer is not at fault are a part of the same philosophy. These provisions protect the employer's account by eliminating not only payments during a disqualification period but also the possibility of the payment, later in the benefit year, of benefits which might be charged to his account.

In the case of *Schwob* v. *Huiet*, a Georgia court which disqualified a worker on the grounds of voluntary leaving and unavailability discussed the relation of experience rating and disqualification:

> Any benefit payments awarded to and paid to the claimant under Section 7 (a) (1 and 2) of the Act, would be charged against the reserves of the petitioner, who, as a result thereof would, for all ensuing years, be obliged to pay a larger unemployment compensation tax in view of the provisions of Section 7 (c) (6) of the Act which provide that the rate of unemployment compensation tax will vary from 1 percent to 2.7 percent of the average annual taxable pay roll according to the amount of money which had been paid as benefit payments to the employers' former employees . . . Employers in Georgia, prior to the enactment of the provisions dealing with employer experience ratings in the Act, with very few exceptions, did not contest the claim awards of the Bureau of Unemployment Compensation by invoking the aid of the courts, because it would have been an unnecessary legal expense without any possible monetary award to the employer in the due exercise of his business or industry.[29]

A relationship between experience rating and disqualification policy and practice was brought out also at a recent hearing before the Pennsylvania Board of Review. The case concerned an interstate claim of a stenographer who had left her employment to join her husband, a member of the armed forces stationed in Georgia. The employer appealed the determination that she was eligible for benefits. The referee and the Board of Review ruled that "the claimant's unemployment

[27] Oregon, 42-RA-134.
[28] Oregon, 43-RA-62.
[29] *Schwob Manufacturing Co. Petitioner* v. *Ben T. Huiet*, as Commissioner of the Department of Labor of the State of Georgia, and Effie Lee Gibbs, *Defendants, Superior Court of Muscogee County, Georgia, November 6, 1942 (F. Hicks Fort, Judge).*

was not due to voluntarily leaving without good cause."

The employer contended, according to the reported decision on the case, that following the enactment of the experience-rating bill the Board of Review should adopt a new philosophy with reference to "good cause"; and that since benefit decisions now directly affect the employers no philosophy should prevail which tends adversely to affect the employers in matters over which they have no control. He also called attention to the fact that when the State of Ohio established a merit-rating system it amended the provisions relating to "just cause" by adding thereto words limiting their effect to causes arising out of the employment.[30]

While the employers' contentions that they should not be charged with benefits for unemployment for which they are in no way directly responsible have weight, so have the workers' contentions that they should not be denied benefits for unemployment in which they are not at fault. To deny benefits to workers unemployed through no fault of their own is to defeat the purpose of the program. The States are beginning to consider ways and means of unlocking the workers' benefits in such cases by providing that benefits be paid even if no employer's account is charged. For instance, a 1943 amendment to the New Hampshire law provides that "benefits paid to an unemployed woman during the period of uninterrupted unemployment next ensuing after childbirth shall not be charged to the last employer, but shall be charged against the fund." If extended to a wide range of disqualifying circumstances, such provisions should be accompanied by modifications in the financing provisions of the State law so that adequate funds will be available to meet the cost of such "uncharged" benefits.

The employers' pressure for disqualifications—in statute and in practice—had led to an attitude that an unemployed worker has a claim against a particular employer rather than against the State, especially in a system of individual employer reserves. The wording of some of the Wisconsin benefit decisions implies the official acceptance of this point of view. Many cases begin:

> The *employer denied* unemployment benefits, claiming that the employee left his employment voluntarily without good cause attributable to the employer. The Commission deputy's initial determination *sustained the employer's denial.*[31]

Under experience rating, the employer has a stake in the denial of claims in the pooled-fund States as well. Yet, under many existing methods of charging employers' accounts, the relationship between the separation and the base-period employer charged may be remote and fictitious. Any employer has a good chance not to be charged when he is "at fault" if the worker gets another job right away. He may, however, be charged when he is not "at fault" and some other employer is "responsible" for the unemployment of a worker who cannot find a job.

The relation between experience-rating provisions and disqualification provisions in State laws is suggested by table 1. Only one law *without* experience rating (Washington State) contains a provision that good cause for voluntary leaving shall be limited to "good cause attributable to the employment." Eighteen laws *with* experience rating include such a provision. No law without experience rating contains any provision that the disqualification for discharge for misconduct shall last for the duration of the unemployment. Only the State of Washington has such a provision for voluntary leaving.[32] Among the laws with experience rating, disqualification is for the duration of the unemployment in 9 States for voluntary leaving and in 5 States for discharge for misconduct. In 3 States disqualification for either cause is for the duration of unemployment chargeable to the employer who alleged the disqualifying circumstances.

No law without experience rating contains any general provision that benefit rights are to be canceled when claimants are disqualified for voluntary leaving or for discharge for misconduct. In the States with experience rating, benefits must be reduced for the number of weeks of disqualification (or in 2 States for twice the period) in 18 States for voluntary leaving and in 18 States for discharge for misconduct. In 2 States

[30] Decision No. B-41-IB-91-A-917. The employer's appeal from this Board of Review decision is now pending in the superior court.

[31] Italics ours.

[32] Effective June 28, 1943. The law specifies a disqualification period of 2-5 weeks, but the added provision that workers who leave for a personal reason not connected with their work are required to earn at least $50 by bona fide services in four separate calendar weeks to be eligible for benefits extends the disqualification for the duration of the unemployment.

benefits may be reduced for either type of disqualification at the discretion of the State agency.

Other causes than experience rating account for the increase in severity of disqualification for refusal of suitable work—notably the national policy for the full utilization of manpower in the war effort. Even so, the incidence of restrictive provisions in this field is largely in the States with experience rating. Among the States without experience rating, only New York disqualifies for the duration of his unemployment a claimant who refuses suitable work without good cause; only Rhode Island provides for cancelation of wage credits and then only "as determined by the Board according to the circumstances in the case," and for only 1–3 weeks following the week in which the failure occurred. Ten States with experience rating disqualify for the duration of the unemployment in cases of refusal of suitable work, and cancelation of wage credits is mandatory in 16 States, optional in 4 others.

Conclusion

Any reading of the laws and of benefit decisions will show that many more problems could be cited. Some of the problems are problems of interpretation; others are concerned with restrictive legislation. Obviously, appeal bodies and State courts must interpret their State laws as they find them, not as they wish they were. But the experts cannot escape their responsibility for telling legislators what are the implications of proposed amendments to whittle down benefit rights and for pointing out the implications of existing restrictive provisions.

Some State legislatures have been persuaded by arguments of interested groups to place increasingly severe restrictions on the payment of benefits. They have not appreciated that the lines of benefit decisions which are now being built up may prove to be a boomerang. If after the war millions of men are again out of work and faced with hunger for themselves and their families, public opinion will respond to the tragedy of individual cases. Some men and women deprived of benefits by what seem unjust decisions will carry their cases far. The personal appeal of such cases will bring discredit to the program.

There are, however, realistic and thoughtful decisions which can be followed as precedents. Some have already been cited. Here is another, from an Illinois court case concerning a claimant's good cause for leaving her work to accompany her husband when he was transferred by his employer to another locality. Although the law did not limit good cause to cause attributable to the employment, her employer had contended that the good cause must be connected with the work.

The court said:

> Altogether too often, ameliorative measures, remedial measures, whose objects were known definitely by the legislature, become through strained construction, instruments detrimental to the very interests that the legislation aimed to protect. If the good grounds here spoken of were to be construed to mean grounds arising solely out of the employment itself, the Act in question would become a means of compelling servitude under the penalty of forfeiting certain benefits that are now granted by law to all citizens.
>
> It is no answer to say that in the absence of this legislation those benefits would not exist. Now they do exist. If these benefits could be taken from an employee simply because under the compulsion of domestic or personal conditions he leaves his employment, then the worker who relies upon these benefits, who finds in them a measure of security during the periods of unemployment would indirectly be tied to his job, compelled to hold it even under conditions which all reasonable men agree would justify his separating himself from it. Instead of being the remedial measure that is approved by all right thinking men, it would turn out to be a club in the hands of certain employers. It would tie the employee to his job. The employer could virtually say to him, "This job is inconvenient. Your own domestic situation, or your health, or other good causes counsel that you should abandon this job, but if you do, you will be deprived of the benefits which now under the law go to all workers who are without their fault unemployed." I can't lend myself to the giving of such a construction to the Act.[33]

[33] *Montgomery Ward and Company* v. *Board of Review*, Circuit Court, Cook County, Illinois, April 15, 1941, Benefit Series 0577, Ill., Ct. D., Vol. 4, No. 10.