Unemployment Compensation in Louisiana - Benefits, Contributions, Eligibility Requirements, Disqualification Provision, and Judicial Review

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COMMENTS

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Disqualification Provision, and Judicial Review

The unemployment compensation program is a part of the
social legislation which was prompted by the intense desire for
economic security which prevailed after the mass unemployment
of the depression of the 1930s.1 The federal government pro-

STATUTES ANNOTATED LX (1951). For a detailed treatment of the developments
which led to the enactment of legislation aimed at economic security, see Witte,
A Historical Account of Unemployment Insurance in the Social Security Act, 3
LAW & CONTEMP. PROB. 157 (1936).

[448]
vided an “inducement” for the states to adopt unemployment compensation programs by imposing a three percent tax on payrolls while allowing employers within a state a ninety percent offset for taxes paid into an approved state fund. Consequently, by June of 1937, all forty-eight states, along with Alaska and Hawaii, had adopted unemployment compensation laws.

The Louisiana legislature reacted quickly to the federal “inducement” and passed the Louisiana Unemployment Compensation Law in 1936. This Comment is intended to deal primarily with the eligibility and disqualification provisions of the Louisiana statute and the jurisprudence interpreting them. However, an occasional reference to the laws of other states for purposes of comparison is thought to be desirable. Likewise, a brief treatment of employer contributions and the benefits payable is included in order to assist the reader in fully appreciating the problems involved in the primary subject matter of the paper.

**Benefits**

The precise amount of benefits payable to an individual in Louisiana depends on his earnings during that quarter of his base period in which he earned the most wages. He is entitled to a weekly benefit amount equal to 1/20th of his total wages for insured work during the highest quarter of the base period, provided, of course, that the maximum to be drawn is $35.00 per week. The United States Supreme Court used this “inducement” language in rejecting the argument that this tax was an unconstitutional means of coercing state legislation in violation of the Tenth Amendment to the United States Constitution. Stewart Machine Co. v. Davis, 301 U.S. 548 (1937).


4. La. Acts 1936, No. 97. The legislature acted under the authority of La. Const. art. XVIII, § 7, which provides that the legislature may establish a system of unemployment compensation.


6. Id. 23:1592, as amended, La. Acts 1958, No. 382, which increased the minimum weekly benefit from $5.00 to $10.00 and the maximum weekly benefit from $25.00 to $35.00. Previously the claimant could earn up to $3.00 a week without reporting that income to have it deducted from his benefits. This amount of permissible nonreportable earnings has been increased to $5.00 per week. Id. 23:1593, as amended, La. Acts 1958, No. 382.

7. The individual’s “base period” is defined as “the first four of the last five complete calendar quarters immediately preceding the first day of an individual’s benefit year.” Id. 23:1472(4). A “benefit year” begins “with the first day of the first week with respect to which the individual first files a claim for benefits . . . , and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a claim for benefits after the termination of his last preceding benefit year; provided, that at the time of filing such a claim the individual has been paid wages for insured work required under R.S. 23:1600(5).” Id. 23:1472(6).
week. If $600.00 were earned during the best quarter, the weekly benefit would be 1/20th of that amount, or $30.00. Therefore, the worker who was earning $200.00 a month before becoming unemployed would receive about $120.00 a month. In addition, he could earn another $5.00 a week without reporting it, this giving him a non-taxable income of $140.00 a month, whereas he would otherwise have been earning only $200.00 a month subject to taxation and the other expenses of working. Thus the necessity for elaborate safeguards in the form of eligibility requirements and disqualification provisions is readily evident.

The duration of benefits is also based on prior earnings. During a benefit year a claimant may receive 28 times the weekly benefit amount, or he may receive 40% of wages paid him for insured work during the base period, whichever is less.

TAX CONTRIBUTIONS AND EXPERIENCE RATING

The unemployment compensation tax is paid solely by the employer; no part of the tax whatsoever is permitted to be shifted to the employee. The Louisiana tax is basically 2.7% of the annual wages for insured employment paid by the employer. The tax was evidently set at this figure to take full advantage of the offset provision of the federal legislation.

Although the maximum state tax is 2.7%, it is not fixed at that figure. Stable employment and resistance to benefit claims are encouraged by allowing the employer a reduced rate of taxation if he has a favorable experience rating. Under the present formula a favorable rating can be achieved and maintained by having few compensation claims charged to the employer's record. As fewer layoffs occur in the employer's business, fewer payments will be made to his former employees; consequently fewer benefit payments will be attributed to the employer's record.

8. See note 6 supra.
9. LA. R.S. 23:1595 (1950), as amended, La. Acts 1958, No. 382. A worker earning $200.00 a month during his base period would have probably earned around $2400.00, of which 40% is $960.00. On the other hand, 28 times his weekly benefit amount, $30.00, is $840.00, which is less than $960.00. Therefore, he would receive the $30.00 for 28 weeks. However, if the hypothetical claimant had earned $700.00 in his highest quarter, with a $2000.00 total earnings for the base period, his weekly benefit, $35.00, times the full 28 weeks would amount to $980.00. 40% of his total base pay is only $800.00; therefore he would receive $35.00 per week for 22 weeks with a final check of $30.00 in the 23d week.
11. Id. 23:1532, 1534.
12. See note 2 supra and accompanying text.
ord by the agency. The lowest tax currently permissible in Lu-
ouisiana is .1% of insured wages. 15

The statute provides for emergency situations when the fund
becomes dangerously low. 16 If such an emergency occurs, the tax
of those employers enjoying a favorable experience rating can
be increased to build the fund back up to the required mini-
um. Thus if benefits are awarded on the basis of unjustified
claims with the result that the fund is depleted to the danger-
point, employers with favorable experience ratings are apt to ex-
erience an economic injury which they are powerless to avoid.

Many employers can save themselves a great deal of money
by considering the facts surrounding each discharge or layoff
and protesting timely in proper cases. Such close attention and
prompt action by employers will benefit the public as a whole,
since lower prices will be enjoyed when the full 2.7% tax is not
figured into the cost of goods and services. Claimants with legi-
timate claims will also benefit from the assured continued exist-
ence of the fund when the drain of unjustified payments is re-
moved. It is highly probable that many businessmen throughout
the state are unaware of their right to protest payments charge-
able to their accounts, and if they are aware of the right, prob-
dly do not know what circumstances render a claimant inel-
gible or disqualified. Ordinarily, 17 without an adversary to con-
test a claimant’s contentions, the agency has only a claimant’s
self-serving statement to pass upon his right to benefits.

ELIGIBILITY AND DISQUALIFICATIONS —
GENERAL CONSIDERATIONS

An important distinction between eligibility and disqualifica-
tion rests in the length of time for which benefits may be denied
under the two sections. If a claimant is ineligible, he is denied
benefits for any week in which the condition which imposed the
ineligibility continues to exist. 18 Thus, if a claimant is un

15. Id. 23:1536 (7).
16. Id. 23:1540 (A-E). If the fund drops below 8%, but more than 7% of
the total payroll of all employers for the 12 months period ending on the com-
putation date, then those employers enjoying less than 2.7% rate of taxation will
have their rate raised .3%. If the fund falls below 7% but above 6% of the total
payroll such employers will have their rate increased .6%. If the fund goes below
6% of the payroll, all rates will be increased to 2.7%. Of course, under no cir-
cumstances will the state tax be raised over 2.7% of the annual payroll.
17. Since the number of claims processed daily are many and the personnel
available to investigate them are relatively few, it would appear to be impossible
for the agency to check with the previous employer on every claim.
to work because of illness, he is considered ineligible for benefits during any week in which the illness precludes his ability to work. On the other hand, a disqualification usually lasts until a certain condition, unrelated to the initial disqualifying circumstance, is fulfilled. For example, the claimant who was discharged from his last job because of misconduct connected with his work is disqualified until he has, subsequent to the disqualification, earned ten times the weekly benefit amount for which he was eligible.

**Burden of Proof of Eligibility**

Since the Board of Review has the authority to prescribe the rules to be followed in the fact finding procedure and has promoted a relaxed and informal atmosphere in administrative hearings, the burden of proving eligibility does not occupy the position of importance that it would were the facts being determined by the judiciary. Nevertheless, there are conflicting views as to who has the burden of showing the elements of eligibility. One line of authority maintains that the burden rests on the claimant, while the other view is that there is a presumption of eligibility when the individual files a claim.

The language in *Chapman v. Division of Employment Se-
curity suggests that in Louisiana there is a compromise between the two above views. According to the Chapman case it is incumbent upon the claimant to establish a prima facie case showing entitlement to the benefits claimed. When a person seeks to file a claim, certain questions pertaining to his eligibility are asked him. If his answers are favorable to his receiving benefits and are accepted by the agency representative, at that moment he apparently establishes a prima facie case of eligibility, and the burden of proving his ineligibility shifts to the party attacking the claim.

The view requiring the claimant to establish a prima facie case of eligibility is appealing because of its simplicity and apparent effectiveness. The administrative and criminal penalties for misrepresentation are severe enough to induce honesty. An additional safety factor is found in the fact that his statements are checked against agency records which will reveal any misrepresentation except as to ability to work and availability for work. The fact that the employer may contest the claim is still another safeguard against misrepresentation.

Rule of Construction

The Louisiana courts have generally agreed that the declaration of public policy within the act requires a liberal construc-

25. 104 So.2d 201, 203 (La. App. 1958): "When he submitted his claim for unemployment compensation it was incumbent upon him to establish a prima facie case showing entitlement to the benefits claimed." The court then suggests that the claimant can establish his prima facie case by his personal assertion of right to benefits when it says: "[H]e can hardly do this [establish his prima facie case] without taking the witness stand to substantiate his position." See also Division of Employment Security, Policy and Precedent Guide 40 (La. 1955), which states: "A claimant's certification that he is available for work is accepted as prima facie evidence of availability in the absence of facts to indicate unavailability."

26. LA. R.S. 23:1601(8) (1950): "An individual shall be disqualified for benefits: (8) For the week, or fraction thereof, with respect to which he makes a false statement or representation knowing it to be false, or knowingly fails to disclose a material fact in obtaining or increasing benefits, or thereby receives any amount as benefits under this Chapter to which he was not entitled, and for the fifty two weeks which immediately follow such week. All benefits so received shall be immediately due and on demand paid to the administrator for the fund, and such individual shall not be entitled to further benefits until repayment has been made." Id. 23:1711 provides that making such false statements or knowingly withholding a material fact shall be a misdemeanor punishable by a fine not less than $50.00 nor more than $200.00 and/or imprisonment not less than 30 days nor more than 90 days.

27. Id. 23:1471: "As a guide to the interpretation and application of this Chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to pre-
tion of the statute in order to benefit unemployed individuals as much as possible. It would seem that an overzealous application of this rule would have the unfortunate effect of minimizing the safeguards set up by the legislature. It is doubtful that the legislature intended for such a rule to be used to diminish the effectiveness of these elaborate safeguards which are clearly designed to prevent abuse of the program and to prevent the diminution of the incentive to work.

It is difficult to determine how much emphasis the courts of Louisiana have placed on this rule of construction. Although the rule has been mentioned in several cases, the courts have not indicated what effect, if any, it had on the decisions. It has been stated, however, that where the statutory provision is clear and unambiguous, reference need not be made to the policy behind the statute. The difficulty is that in very few unemployment compensation cases is there a clear and unambiguous provision in the statute with which to decide the case. It is to be hoped that the Louisiana tribunals will not consider themselves bound to interpret the statute on the superficial basis of this "remedial legislation — liberal construction" rule. The most desirable approach would be to recognize realistically that the statute is directed toward the dual objectives of (1) supplying benefits to those who meet the requirements of the act while (2) preserving the initiative to work. While the former can be categorized as primary and the other as ancillary, it would seem that both are equally important to the ultimate success of the whole program.

vent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during period of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this state require the enactment of this measure, for the compulsory setting aside of unemployment reserves to be used for the benefit of unemployed persons."


29. See note 28 supra.

30. Sheffield v. Heard, 92 So.2d 295, 296 (La. App. 1957). In this case the claimant left her former employment to follow her husband to another city. The court held that this was good cause for leaving, but that it was not connected with the employment. After citing Articles 13 and 14 of the Civil Code, the court stated: "When a law, therefore, is clear and free from all ambiguity, we are not at liberty to disregard its language under the pretext of pursuing its spirit."
ELIGIBILITY REQUIREMENTS

The eligibility section requires that a claimant must have been paid certain wages for insured work during his base period. The term "wages" is defined essentially as "remuneration for services." "Insured work," according to the statute, means "employment" for employers who are subject to the law. By far the greatest exclusionary feature of the statute is found in the definition of employment and its express provision that certain classes of employees are outside that definition.

31. LA. R.S. 23:1600 (1950), as amended, La. Acts 1958, No. 521: "An unemployed individual shall be eligible to receive benefits with respect to any week only if the administrator finds that:

"(1) He has made a claim for benefits in accordance with the provisions of R.S. 23:1621 and R.S. 23:1622 [apparently referring to filing requirements, although Subsection 1621 appears to apply to employers who are therein required to distribute forms and information pertinent to the program to his employees].

"(2) He has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulations as the administrator may prescribe. The administrator may, by regulation, waive or alter either or both of the requirements of this Section as to such types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this Chapter; but no such regulation shall conflict with R.S. 23:1591 [requiring that all benefits be payable only through employment offices].

"(3) He is able to work, and is available for work.

"(4) He has been unemployed for a waiting period of one week; provided however, that after the unemployed individual has been unemployed for six consecutive weeks or longer he shall be eligible for benefits with respect to such week of waiting period if he is not otherwise disqualified for benefits with respect to such week under other provisions of this Chapter. No week shall be counted as a week of unemployment for the purposes of this sub-section:

"(a) unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits, provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment.

"(b) if benefits have been paid with respect thereto:

"(c) unless the individual was eligible for benefits with respect thereto as provided in this section and in R.S. 23:1601 [disqualifications], except for the requirements of this sub-section and sub-section (5) of R.S. 1601 [disqualification for benefits during week in which unemployment compensation benefits are received from another state or from the United States].

"(5) He has during his base period been paid wages for insured work equal to not less than thirty times his weekly benefit amount. For the purposes of this subsection, wages shall be counted as 'wages for insured work' for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employing unit, by which such wages were paid, became an employer within the meaning of any provision of this Chapter."

The only change made by Act 521 of 1958 was in Section 4, wherein the individual is now allowed to receive benefits for the week of waiting if he remains unemployed for six consecutive weeks provided he is not otherwise disqualified. The wisdom of such a rule is questionable in that it would seem to encourage the claimant to avoid employment especially immediately before the sixth week of unemployment.

32. Id. § 5.
33. Id. 23:1472(20) (A-D).
34. Id. 23:1472(16).
35. Id. 23:1472.
36. Id. 1472(12) (A-H). The specific exclusions are accomplished by Subsection (F). In general terms these are (1) agricultural labor as defined in the
The statutory definition of "employer" has the effect of excluding some persons who might meet the requirement of the "employment" definition in that to be an employer, an employing unit must have employed four or more persons during twenty weeks of either the current or the preceding calendar year.\textsuperscript{37} An employing unit may, however, elect to pay the tax on behalf of its employees even though not required to do so, and, in this event, employees of the electing unit are considered covered by the act.\textsuperscript{38}

Another requirement of eligibility is that the claimant must have been paid wages for insured work during his base period equal to thirty times his weekly benefit allowance.\textsuperscript{39} This rule is apparently designed to prevent a claimant from working a few months out of the year and living off the fund during the remaining months.

The statute further provides that in order to be eligible for benefits the claimant must be "able to work" and "available for work."\textsuperscript{40} These two requirements merit individual treatment.

**Able to Work**

Although inability to work is often expressed in terms of availability,\textsuperscript{41} it appears that this requirement was intended to refer primarily to the mental and physical capacity for work.

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\textsuperscript{37} Id. 23:1472(11) (A-F): "'Employer' means: (a) With respect to the calendar year 1941 and each calendar year thereafter, any employing unit which in each of twenty different weeks within either the current or the preceding calendar year, whether or not such weeks are or were consecutive, has or had in employment four or more individuals, not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week . . . ."

\textsuperscript{38} Id. 23:1573.

\textsuperscript{39} See note 31 supra, at subsection (5).

\textsuperscript{40} See note 31 supra, at subsection (3).

\textsuperscript{41} Louisiana: 3 P-H Soc. Sec. Tax Serv. f 27,796 (8) (La. Bd. of Rev. Dec. 429-BR-53) (1954) (claimant unable to work full time because of high blood pressure held unavailable); \textit{Ibid.} (La. Bd. of Rev. Dec. 278-BR-53) (claimant left previous job because of nervousness, probably could not hold job very long, held unavailable).
The requirement probably reflects the fear that unemployment compensation could become a form of health insurance. Nevertheless, the requirement is construed quite liberally in order to prevent physically disabled persons from being denied benefits if they can do any type of work.\textsuperscript{42}

\textit{Available for Work}\textsuperscript{43}

An exact definition of availability is not to be found in the cases.\textsuperscript{44} The cases do, however, fit into several factual situations which usually result in a finding of unavailability. One of the most frequently litigated fact situations involves the attempt by the claimant to limit unreasonably his availability to certain days, hours, and working conditions.\textsuperscript{45} This situation arises frequently in cases involving female claimants with children.\textsuperscript{46}

\begin{itemize}
\item \textsuperscript{42} Id. 27,796 (.11) (La. Bd. of Rev. Dec. S-BR-46) (claimant's left arm permanently injured, unable to do former work, held eligible because he is not injured in such a manner as to make him totally unable to work).
\item \textsuperscript{43} The requirement that a claimant be available for work has been the subject of extensive study and legal writings. See Altman, \textit{Availability for Work} (1950) for book length treatment of this area of unemployment compensation. In addition to that work numerous law review articles have been devoted to the question of availability. E.g., Freeman, \textit{Availability, Active Search for Work}, 10 Ohio St. L.J. 151 (1949); Freeman, \textit{Able to Work and Available for Work}, 35 Yale L.J. 123 (1945); Williams, \textit{Eligibility for Benefits}, 8 Vand. L. Rev. 286 (1955).
\item \textsuperscript{44} Some courts of other states have concluded that no hard and fast rule is possible, consequently availability in each case must be decided on the merits of the facts. Department of Industrial Relations v. Tomlinson, 251 Ala. 144, 46 So.2d 496 (1949); Swanson v. Minneapolis-Honeywell Regulator Co., 240 Minn. 449, 61 N.W.2d 526 (1953); Producers Produce Co. v. Industrial Commission, 291 S.W.2d 166 (Mo. 1956). Other courts reach much the same position by stating a general rule that the availability requirement was designed to test the current attachment of the claimant to the labor force, then proceeding to determine on the merits of the case whether the claimant met the general test. Fleiszig v. Board of Review, 412 Ill. 49, 104 N.E.2d 818 (1952); Kentucky Unemployment Insurance Comm. v. Henry Fischer Packing Co., 259 S.W.2d 436 (Ky. App. 1953); Rex v. Unemployment Compensation Board of Review, 183 Pa. Super. 442, 132 A.2d 363 (1957).
\item \textsuperscript{45} One Louisiana court of appeal stated in dicta that "for purposes of drawing unemployment compensation employees cannot arbitrarily remove themselves from availability for work by restricting their willingness to work to certain hours, types of work, or conditions not usual or customary in the occupation, trade or industry." Raborn v. Heard, 87 So.2d 146, 149 (La. App. 1956) (claimant held available for work notwithstanding fact that she only applied for jobs similar to her previous one; only two such manufacturers in the area; slack season).
\item \textsuperscript{46} The Louisiana appellate courts have not dealt squarely with the situation in which a claimant restricted her availability because of need to care for children. Taylor v. Administrator, 88 So.2d 486 (La. App. 1956) can be interpreted to mean that if the record had shown the claimant to have limited her availability to the hours from 8:00 a.m. to 3:00 p.m., she would have been held to be unavailable. The claimant first told the agency that she was limited to work during those hours, but later under oath told the Board of Review that she had helped at that time so that no such limitation still existed. The Board of Review apparently viewed this as a self-serving statement and imposed the ineligibility based on unavailability; however, the court of appeal held that the record failed to reveal
\end{itemize}
Often availability is an issue when there are labor union restrictions on the time, wages, and working conditions of claimants who are union members.\textsuperscript{47} Frequently a claimant will lose his job for non-disqualifying reasons, and will move to a place where there is no market for his services.\textsuperscript{48} A worker may be employed in seasonal work and not be able to find other work during the “off season.”\textsuperscript{49} Claims are often filed by persons temporarily laid off, but who fully intend to return to the old employer upon recall.\textsuperscript{50} In contrast to the foregoing situations which usually result in a determination of unavailability, Louisiana holds that a claimant whose sincere religious beliefs preclude working on certain days acts reasonably in refusing to work on those days and is therefore available for work notwithstanding the availability restriction.\textsuperscript{51}

that any such limitation existed and reversed the Board of Review decision.

The Division of Employment Security, Policy and Precedent Guide 41 (La. 1955) instructs that “the individual who restricts herself to day work only, because she is unable to hire some one to care for her child except during the day, is available for work if such work is generally performed in the area.”

\textsuperscript{47} No appellate court decisions were found on the question of labor union restrictions in Louisiana. However, an Appeals Referee held in 1621-AT-52 (reported only in The Division of Employment Security, Policy and Precedent Guide (La. 1955)) that where claimant made himself available only for work at $2.06 an hour (union scale) and only for work assigned to him by the union hiring hall, he had unduly restricted his availability. The theory used was that the legislature did not intend to establish a dual standard of availability for union and non-union claimants; neither did it intend to vest such power over eligibility requirements for unemployment compensation in labor unions. Accord, id. 1805-AT-52, 3 P-H Soc. Sec. Tax Serv. ¶ 27,796(18) (La. Bd. of Rev. Dec. 326-BR-53) (1954).

\textsuperscript{48} Many jurisdictions find the claimant unavailable for work where there is no market in the area for services within the claimant’s capabilities. Mills v. Review Board, 96 N.E.2d 128 (Ind. App. 1951); Kentucky Unemployment Insurance Commission v. Henry Fischer Packing Co., 259 S.W.2d 436 (Ky. App. 1953); Weiner v. Director of Division of Employment Security, 99 N.E.2d 57 (Mass. 1951). Louisiana apparently subscribes to this view, although the question has not yet reached an appellate court. Cf. 3 P-H Soc. Sec. Tax Serv. ¶ 27,796(.6) (La. Bd. of Rev. Dec. 450-BR-53) (1954). See also Division of Employment Security, Policy and Precedent Guide 41 (La. 1955), which states: “There must be a reasonable possibility of securing the type of work for which he claims he is available.”

\textsuperscript{49} The Louisiana Employment Security Law directed that a study be made of the problems involved in bringing seasonal workers under the protection of the program. La. R.S. 23:1596 (1950). Apparently this study has not been completed. It would seem that the necessary implication to be drawn from such a provision is that until further legislation is enacted based on such a study seasonal employees are not within the coverage of the law.

\textsuperscript{50} Waiting to be recalled by the previous employer is considered by the administrative tribunals to be a restriction on availability which renders the claimant unavailable. 3 P-H Soc. Sec. Tax Serv. ¶ 27,796 (.14) (La. Bd. of Rev. Dec. 297-BR-53, 684-BR-53) (1954).

\textsuperscript{51} Id. ¶ 27,796(.15) (La. Bd. of Rev. Dec. 114-BR-50) (1954) (claimant, member of Seventh-Day Adventists, discharged for refusal to work on Saturday; her religious beliefs forbade working on that day; she offered to work on Sunday instead; held available for work since claimant was sincere in her beliefs).
Pregnancy is often treated as an availability issue. There is a disqualifying provision for pregnancy in the Louisiana statute, but this provision covers only a short period before and after the birth of the child. Consequently, the availability of a pregnant claimant may still be an issue when the unemployment falls outside the time limits of the express disqualification. Since the pregnant claimant would be capable of only limited types of work and for only a limited time, it is questionable that she should be considered available for work. This is especially true in view of the fact that many employers apparently are reluctant to hire pregnant applicants, even though they might be capable of doing the work involved.

One of the most crucial issues in interpreting the availability requirement is the question of whether the claimant has to be actively seeking employment in order to be considered available for work. Many jurisdictions require that a claimant in order to be “available” must be independently searching for work. In Louisiana the rule seems to be that the claimant need not go out every day in search of work, but that he must be in some way

52. E.g., Alabama Mills Inc. v. Carnley, 44 So.2d 622 (Ala. 1949); Re Steinberg, 263 App. Div. 916, 52 N.Y.S.2d 197 (1942); Reese v. Hake, 184 Tenn. 423, 199 S.W.2d 569 (1947).
53. La. R.S. 23:1601(6) (1950): “An individual shall be disqualified for benefits: (6) if not otherwise disqualified under this Section, for the twelve weeks prior to the week in which occurs the expected date of birth of a child of that individual and for the six weeks following the week in which such child is born.”
54. For a 1950 Board of Review decision it appears that the general rule is that a pregnant woman is considered unavailable for work; however, she can by proving that she is still able to work maintain her eligibility. P-H Soc. Sec. Tax Serv. ¶ 27,796 (12) (La. Bd. of Rev. Dec. 50-BR-50) (1954). Such a rule appears to be open to criticism, however, since the time for which claimant would remain available for work is of necessity very short, with the result that few employers would hire her. There seems to be little difference between the pregnancy situation and the situation in which the claimant is held to be unavailable while awaiting recall by the former employer. See note 50 supra.
55. E.g., Department of Industrial Relations v. Wall, 41 So.2d 611 (Ala. App. 1949) (claimant did not apply to other plants in the area during the period of the claim; held unavailable); Department of Industrial Relations v. Tomlinson, 251 Ala. 144, 46 So.2d 496 (1948) (claimant remained passive and waited for work to seek him out; held unavailable); Loew's Inc. v. California Employment Stabilization Commission, 76 Cal. App.2d 231, 172 P.2d 938 (1946) (required to be diligently seeking work); Claim of Jackson, 68 Idaho 360, 195 P.2d 344 (1948) (refusal to go out and look for work — unavailable); Dwyer v. Appeal Board, 321 Mich. 178, 32 N.W.2d 434 (1948) (claimant only sought work 3 or 4 times during long period of unemployment — unavailable).
Altman advocates a “guided, but active work search” in which he would require that the agency supervise the search for work. In the absence of such supervision, he would not impose the obligation to actively search for work on the claimant. Altman, Availability for Work 115 (1950). It would seem that such a position would, as a practical matter, eliminate the requirement altogether, since there are not enough personnel available to provide such supervision.
engaged actively in an independent search for work.56

The lack of transportation to and from work opportunities creates a question of availability. The Louisiana view is that transportation is a personal problem, and if the claimant has no means by which to get to work, he is unavailable for work.57

It is generally agreed that a claimant should not be required to make himself available for unsuitable work. For example, a bookkeeper should not be declared ineligible due to unavailability when he refuses to make himself available for work as a hod-carrier. A Louisiana court of appeal has stated that the claimant must make himself available only for suitable work in order to preserve his eligibility.58 Since this interpretation of the availability provision is based on the refusal of suitable work disqualification, the criteria embodied therein will probably be used as a test for availability purposes.59

 Upon becoming unemployed, a claimant may reasonably restrict his availability to work similar to his previous job; but the longer he remains unemployed, the more willing he should be to accept less attractive work.60 The length of time permitted to elapse before the suitability standards are lowered would vary in each individual case according to the type of work involved, the chances of securing such work, and the current economic situation. Such a theory is apparently in accord with the notion of how an unemployed person would act if he were not assisted by unemployment compensation. There is no indication that the program was designed to preserve the economic and social standing of the individual. Rather it seems that the program is designed merely to relieve the shock of the loss of that standing and to allow a temporary period of relief during which the claimant must make his own adjustments. Thus, if the claimant is not willing to lower his suitability standards in order to assist

57. Although there has been no decision rendered by a Louisiana appellate court on the matter of lack of transportation, the Board of Review has taken the position that transportation is a personal problem and the lack of it will render the claimant unavailable for work. 3 P-H Soc. Sec. Tax Serv. ¶ 27,796(.6) (La. Bd. of Rev. Dec. 450-BR-53, 691-BR-53, 394-BR-53) (1954).
59. See page 467 infra.
in his own readjustment, there appears to be no reason to pay him benefits.

**Disqualifications**

*Disqualification for Leaving Employment Without Good Cause Connected With the Employment* 61

The reason prompting a disqualification based on voluntary quitting is that if it were not for the claimant's own choice he would be working in his former employment. Payment of benefits when the employee voluntarily chose to leave his old job could tend to encourage instability of employment, whereas the statute seeks to stabilize employment as much as possible.

In considering this disqualification three issues are involved: (1) whether there was a voluntary quitting, (2) if so, whether it was with good cause, and (3) if both of the foregoing are found, whether the good cause was connected with the work. If the quitting is found to be involuntary, there is no need to consider the other two issues; but if the quitting is found to be voluntary, the claimant must then show that it was with good cause and that the good cause was connected with the employment in order to avoid disqualification.

Disagreement over wages is always a potential source of the voluntary quitting issue. Such a disagreement may be caused by the failure of the employer to grant an increase previously agreed on, by the rejection of a present demand for an increase, or by a reduction in wages. In each of these instances the test used by the Louisiana agency is whether the claimant acted reasonably in quitting. 62

In the only Louisiana appellate case dealing with the voluntary quitting issue the claimant first stated that he left because he was denied a wage increase, but later declared that he left because of bad health. In affirming the Board of Review's disqualification on the basis that the claimant left in fact because of the denial of a raise, the court did not consider the possibility

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61. LA. R.S. 23:1601(1) (1950): "An individual shall be disqualified for benefits: (1) if the administrator finds that he has left his employment without good cause connected with his employment."

62. Division of Employment Security, Policy and Precedent Guide 8 (La. 1955): "The pertinent consideration is whether or not the worker acted reasonably in quitting work, having in mind such general factors as policy and what the normal worker would have done under the same circumstances."

that the claimant may have left with good cause connected with the employment. Although the case may indicate that the Louisiana courts will be hesitant in finding good cause when the leaving is the result of a wage dispute, the case is such weak authority for that proposition the probabilities are that the courts will use the broader "reasonableness of the quitting" test when squarely faced with the issue.

Other reasons which may furnish good cause for quitting are undue risk to health, increases in work load without proportionate increases in pay, unfavorable relations with other employees, and extensive use of profanity by fellow employees when permitted by the employer. It is submitted that good cause for leaving should be found only in cases where the circumstance objected to existed to the extent that it unreasonably threatened to upset the employee's peace of mind or posed a serious threat to his health.

Factors considered by the Louisiana agency as bearing on the employee's reasonableness in quitting are whether he gave the work a fair trial or sought to remedy the situation by bringing it to the attention of the employer before resorting to quitting.

Leaving work because of pregnancy is often treated as a voluntary quitting issue. More appropriately, the question should be dealt with under availability if the express statutory disqualification does not apply. In Louisiana the individual is expressly disqualified for benefits during the twelve weeks prior to the birth of the child and also for the following six weeks. An Iowa court held that where the claimant quit because she was pregnant, the quitting was voluntary since "her condition was due to her own deliberate, voluntary act, and choice. . . . Claimant's case has some analogy to that of one who deliberately maimed himself to unfit himself for work." Although the

65. Id. at 5: "An important test of 'good cause,' therefore, is the reasonableness of the worker's leaving, as measured by what the normal worker might have done under similar circumstances. . . . "
66. "Most workers will not abandon a job until they have sought another solution to their difficulties, by one or more of the following steps: "'(1) giving the work a fair trial; "'(2) seeking an adjustment of unsatisfactory work conditions by the employer. . . . ""
67. See note 53 supra.
The analogy used is humorous, it appears that the approach is well taken if pregnancy is to be considered as a voluntary quitting issue. It seems difficult to say that pregnancy is connected with the employment, so even if it were considered to be good cause, this element would be lacking.

A distinction must be drawn between the case in which the claimant quits of her own volition because of pregnancy and where the employer requires that an employee leave after being pregnant for a certain time. In the latter case the Louisiana administrative tribunals apparently refuse to apply the voluntary quitting disqualification, but rather are likely to rule the claimant ineligible due to unavailability. In the former case, however, it would seem that the analogy set forth above would require a finding of good cause not connected with the work, thus resulting in disqualification.

In Pennsylvania, persons who lost their jobs while under legal detention are considered to have left work voluntarily. In Louisiana, legal detention has been considered misconduct connected with the work. However, it would seem that during the period of detention his unavailability for work would be the factor prompting a finding of ineligibility. Of course, upon his release he would become available for employment, and then either the disqualification for voluntary quitting or misconduct might be used to deny benefits in most cases.

In Louisiana, domestic difficulties appear to be good cause for leaving employment, but are not considered connected with the work. This position was taken by a Louisiana appellate court which held that a claimant who quit her job to follow her husband to another town left voluntarily without good cause con-

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68. App. Ref. 3152-AT-57, reported only in Division of Employment Security, Policy and Precedent Guide (La. 1955): “In the instant case, the claimant left her employment in accordance with the rules and regulations of the company pertaining to maternity cases. The claimant had no alternative but to leave her job in accordance with the rules and regulations which discontinue the employment of an employee after the third month of pregnancy. Therefore, the disqualification [voluntary quitting] should be removed.”

69. Ibid.


72. Id. ¶ 27,811 (.10), which digests several decisions by the Board of Review which held domestic and personal problems to be good cause, but unconnected with the work.
nected with the work and consequently imposed the disqualific-

ation.78

Disqualification for Misconduct Connected with the Employment74

The misconduct disqualification rests on the premise that un-
employment due to the fault of the claimant should not be com-
penated. In order to impose the disqualification, two elements
must be found, “misconduct” and “connection with the work.”

The problem of defining misconduct first arose in Louisiana
in Burge v. Administrator75 where the claimant, a railroad con-
ductor, had allowed his train loaded with explosives to go
through a warning signal. In holding the claimant guilty of wil-
ful misconduct, the court of appeal quoted the appeal referee’s
definition of misconduct,76 which was in agreement with the pre-
vailing view,77 but for some unexplained reason did not refer to
it in disposing of the case. From the language used by the court
it can only be concluded that misconduct does not require wilful
misconduct, but does require something more than mere heedless-
ness or carelessness. A single deliberate violation of a reason-
able rule designed to insure safety of workers and property will
constitute misconduct.

In Lacombe v. Sharp78 the claimant, a nurse’s aide, was re-
placed due to her failure to notify her employer of her expected
date of return from the last of several indefinite leaves of ab-
sence caused by family illnesses. After noting the claimant’s
emotional stress during the absence, the court held that the fail-
ure to notify was “thoughtlessness” which fell short of miscon-
duct. It would seem, however, that failure to notify of the pro-
posed date of return would work such a hardship on the em-
ployer that the replacement of the employee would almost become

74. La. R.S. 23:1601(2) (1950): “An individual shall be disqualified for
benefits . . . (2) If the administrator finds that he has been discharged for mis-
conduct connected with his employment.”
75. 83 So.2d 532 (La. App. 1955).
76. Id. at 534: “The term ‘misconduct’ has been defined as follows:

‘Wilful and wanton disregard of an employer’s interest as is found in de-
liberate violations or disregard of standards of behavior which the employer has
the right to expect of his employees, or in carelessness or negligence of such degree
or recurrence as to manifest equal culpability, wrongful intent or evil design, or
to show intentional and substantial disregard of the employers’ interest, or of the
employee’s duties and obligations to his employer.”
77. See note 80 infra.
a necessity. The holding seems to be unjustified in view of the ease with which the employer could be notified. The court may have been influenced by the employer's sympathetic attitude toward the payment of benefits to the claimant. However, mere acquiescence by the employer should not be deemed controlling, since there are other interests which must also be protected.

In Sewell v. Sharp the court of appeal adopted a definition of misconduct which is partially in agreement with that prevailing in most jurisdictions. The rule as stated by the Louisiana court is: "Misconduct . . . must be an act of wanton disregard of the employer's interests, a deliberate violation of the employer's rules, and a disregard of standards of behavior which the employer has the right to expect of his employees." (Emphasis added.) The rule as expressed in other jurisdictions is not stated conjunctively, and goes further to state "or carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer." The definition as stated in other jurisdictions is used by the administrative tribunals in Louisiana. It is not thought that the court intended to change the disjunctive meaning of the prevailing definition or to exclude negligence or carelessness. It is rather believed that under the facts of the Sewell case, which involved no issue of negligence, the court merely saw no need to express that part of the definition.

No other Louisiana cases were found which attempted to draft a definition of misconduct. However, a very recent case,

79. 102 So.2d 259 (La. App. 1958). In this case the claimant's vacation period was shifted due to sickness among fellow employees. She insisted on taking the vacation at the time originally scheduled because her daughter was sick and required her attention during that period. The employer insisted that she wait until later, but she refused the postponement, failed to come to work, and was fired. The court held that this was not misconduct within the meaning of the term as defined by the court. The court viewed the vacation as part of the contract of employment, stating that the claimant has a right to insist that the company live up to its obligation. However, the court indicated that each case must be decided on its merits and that the insistence on the vacation as scheduled might in some cases constitute misconduct.


82. See, e.g., Boynton Cab Co. v. Newbeck, 237 Wis. 249, 259, 296 N.W. 636, 640 (1941), a leading case which set forth the same definition used by the Louisiana Appeal Referee. See note 76 supra.

without reference to any definition, held that three incidents of tardiness constituted misconduct. These facts probably constitute "disregard of standards of behavior which the employer has the right to expect" under the misconduct definition of the administrative tribunal which appears to have been adopted by the Sewell case.

In order to constitute misconduct within the definitions discussed above, the action of the employee would often, of necessity, be connected with the employment. However, occasions might arise where the alleged misconduct does not occur within the scope of employment. In such cases the controlling factor is whether or not such misconduct renders the individual undesirable for employment.

Apparently in an effort to strengthen the misconduct disqualification further, the statute provides for the "aggravated misconduct" doctrine. If it is found that "such misconduct has impaired the rights, damaged or misappropriated the property of, or has damaged the reputation of a base period employer, then the wage credits earned by the individual with the employer shall be cancelled and no benefits shall be paid on the basis of the wages paid to the individual by such an employer." The provision has important possibilities, but has apparently not been litigated in Louisiana. The doctrine prevents the employer from suffering both the damage to his business through the employee's misconduct and the damage to his experience rating through payments of benefits to the guilty employee.

Before leaving the misconduct disqualification, it is essential to consider a rule of construction which was stated in Sewell v. Sharp. In that case the court stated: "The term [misconduct] should be construed in a manner least favorable to working a forfeiture so as to minimize the penal character of the provision." Since the disqualification is based primarily, if not exclusively, on fault, it would appear that such a rule of con-

85. Cf. DIVISION OF EMPLOYMENT SECURITY, POLICY AND PRECEDENT GUIDE 20 (La. 1955): "Offenses outside the scope of the claimant's employment do not constitute misconduct within the meaning of the law unless they bear such a relationship to the worker's particular job as to render him unsuitable for employment."
87. Ibid.
88. 102 So.2d 259 (La. App. 1958).
89. Id. at 262.
struction has no application where the question to be resolved is the misconduct of the claimant. Although mitigating circumstances may well be considered in determining the issue of misconduct, a further consideration of the nature of the disqualification as a forfeiture is unjustified.

Disqualification for Refusal of Suitable Work

There are three ways in which a claimant may become disqualified under the refusal of work provision. First, he might fail to apply for available, suitable work when directed to do so by the agency. Next, he might refuse an independent offer of employment, such as an offer for re-employment by a base period employer who would rather rehire than have benefit payments charged against his experience rating. Finally, he might refuse to return to his ordinary self-employment, if he has any.

The statute provides guides for the determination of suitability of work in individual cases. These are as follows: The degree of risk involved to the claimant's health, safety, and morals; his physical fitness for the job offered; his prior training, experience, and earnings; his length of unemployment; the prospects of his securing work in the locality in his customary occupation; and the distance of the available work from his residence.

The first of these criteria, the degree of risk to health, safety, and morals, is to a large degree self-explanatory. It would seem that the fear of physical injury must be a real fear of substantial injury before work could be validly refused on that basis. The second criteria, the physical fitness of the claimant for the job offered, also appears to be self-explanatory.

Prior training, experience, and wages are closely related to the prospect of securing his customary work in the locality. These criteria provide justification for the theory discussed

90. La. R.S. 23:1601(3) (1950): "An individual shall be disqualified for benefits: . . . (3) if the administrator finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the administrator or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the administrator."
91. Ibid.
92. Ibid. 23:1601(3) (a).
93. Cf. App. Ref. Dec. 3678-AT-55, reported only in Division of Employment Security, Policy and Precedent Guide (La. 1955), where the appeal referee held that the claimant justifiably refused suitable work on the basis that there was a labor dispute in progress which involved violence confronting the claimant with a real fear of physical injury.
under "availability," in which the range of suitable work becomes greater as the claimant is out of work longer.94 Thus the emphasis placed on prior earnings, experience, and training diminishes as the period of unemployment increases and the chances of securing work similar to his prior employment in the locality diminishes.

Union requirements of a fixed wage scale for union members give rise to the application of the refusal of work disqualification. It has been held that work is suitable where the wages offered are substantially comparable to those prevailing in the locality for the work in question, even though the claimant might be required by union rules not to accept work at the prevailing rates.95 Such work at the prevailing wage scale is deemed suitable, notwithstanding the fact that the union claimant may be subject to expulsion from the union for accepting the work at the lower pay rates. Similarly, the fact that new work is at a non-union shop does not render the work unsuitable for a union claimant, even if acceptance would mean expulsion from the union.96 The theory seems to be that the employer in such cases is simply seeking labor and is not posing the resignation from union membership as a condition of employment which would render the work unsuitable.97 The contra argument is that the result is the same, a separation of the claimant from his union, even though there is an expulsion for violation of union rules rather than a forced resignation. The latter argument is forceful but cannot prevail in view of the alternative which would be a dual standard of suitability for union and non-union claimants.

When the prior employer offers to re-employ the claimant in order to protect his experience rating, the Louisiana agency uses

94. See page 460 supra.
95. App. Ref. Dec. 8-AT-53, reported only in DIVISION OF EMPLOYMENT SECURITY, POLICY AND PRECEDENT GUIDE (La. 1953). In this case the claimant, a union member, insisted on the union wage scale of $1.02 an hour and refused an offer of employment at $.90 an hour after having been out of work for two months. Held, disqualified for refusing suitable work offer; no dual standard of suitability for union and non-union workers.
96. Bd. of Rev. Dec. 715-BR-52, aff'ing, App. Ref. Dec. 4770-AT-52, reported only in DIVISION OF EMPLOYMENT SECURITY, POLICY AND PRECEDENT GUIDE (La. 1955), holding that where claimant was laid off of a union job and offered otherwise suitable work on a non-union job, the mere fact that the new job was non-union did not justify the refusal.
97. LA. R.S. 23:1601(3) (b) (1950) : "Notwithstanding any other provision of this Chapter, no work shall be deemed suitable and benefits shall not be denied under this Chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions: . . . (iii) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."
the "genuineness of the offer" test in order to determine the suitability of the offer. The theory is that the termination of the employment relation is indicative of a former unhappy relationship; thus the agency realizes the offer of re-employment may be prompted by selfish motives, and requires that the offer be "genuine." A genuine offer appears to exist only in the rare event that no other claimant on the rolls is qualified to do the work offered. Although the theory protects the claimant from an offer of re-employment which is designed solely to disqualify him, it would seem that the other criteria of suitability afford adequate protection in this respect. If this observation is sound, it would be a more desirable policy to allow the employer to protect his experience rating by rehiring the claimant. In that way the claimant would again be productively employed, and the fund (the public) would be saved the expense of paying him the benefits.

In the only Louisiana appellate case dealing directly with the refusal of work disqualification, the claimant refused to report for an interview when directed to do so by the agency. The claimant had contacted the personnel manager of the firm offering the job and learned that the job only paid $.61 an hour, whereas he had been previously earning $1.20 an hour. The court affirmed the disqualification, saying that while the offer may have turned out to be unsuitable, the claimant should have gone to the interview and made his qualifications known, thereby allowing the prospective employer to make an offer more commensurate with his skills. The court specifically refrained from a consideration of whether the wages involved were suitable for the claimant. The case is authority for the rule that the claimant must at least report for an interview upon referral, even though the referral may appear unsuitable at the outset.

The Labor Dispute Disqualification

The disqualification imposed on claimants who lost their jobs due to a labor dispute is a very important one, which has been

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99. Id. at 52.
101. LA. R.S. 23:1601(4) (1950): "An individual shall be disqualified for benefits: . . . (4) for any week with respect to which the administrator finds that his unemployment is due to a labor dispute which is in active progress at the factory, establishment, or other premises at which he is or was last employed; but such disqualification shall not apply if it is shown to the satisfaction of the
dealt with many times in other states. However, there are practically no decisions interpreting this vital disqualification in Louisiana. Since the problems posed by such a provision are many and complicated, and since it would be mere speculation to attempt to anticipate the interpretations which will be afforded the disqualification by the Louisiana tribunals, a discussion of this aspect of unemployment compensation is not thought to be within the scope of this endeavor.

**JUDICIAL REVIEW**

When a claim is filed, the statute requires that notice be sent to the last employer and all base period employers. Upon determination of the claim, notice of that decision is also sent to the claimant, the last employer, and all base period employers. If benefits are denied, the reasons therefor are included in the notice.

An appeal from the initial determination can be directed to the appeal tribunal by any party who was entitled to a notice of determination. This appeal must be filed within seven days after the dispatch of the notice of determination. After af

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103. La. R.S. 23:1624 (1950). Although notice of the filing is required to be sent to all the base period employers, as a practical matter this is almost impossible until the claim is processed by the agency in order to determine the identity of the base period employers. During this process a determination is also rendered as to eligibility. Thus it appears that the first notice to the base period employers is received after a decision has been reached as to eligibility. Any earlier notice would necessarily be based on the claimant’s often inaccurate identification of his base period employer. To delay the determination of eligibility until the agency can identify and notify all base period employers would unduly delay benefit payments to those who have legitimate claims. Consequently compliance with this statutory requirement would probably prove too great an administrative burden.

104. Id. at 23:1625. Mailing to the last known address of the persons listed is considered sufficient notification.

105. Id. at 23:1629.

106. Only one case was found in which a late filing of the appeal was allowed. In that case the claimant was apparently illiterate, and there was no one to read the determination to him. 3 P-H Soc. Sec. Serv. ¶ 29,509 (La. Ref. Dec. 2690-AT-53) (1954). In less extreme cases, it would appear that for administrative reasons, late appeals will not be allowed.
fording the parties a reasonable opportunity for a fair hearing, the appeal tribunal either affirms, modifies, or reverses the agency determination. This decision is final unless an appeal is initiated to the Board of Review within ten days of notification by mail of the appeal tribunal’s decision.107

The appeal to the Board of Review is “of right” only when the decision of the appeal tribunal was not unanimous or did not agree with the staff decision. Where the Board denies an appeal the decision of the appeal tribunal is considered to be the decision of the Board for purposes of judicial review. The time for filing for judicial review runs from the date of mailing the notification of the refusal of the Board to hear the case.108

Final decisions of the Board of Review or appeal tribunal and principles of law declared by them in arriving at those decisions are binding upon the agency and appeal tribunals in subsequent proceedings involving similar questions of law. However, if the administrator or any appeal referee has serious doubt as to the correctness of any principle so declared, he may certify the facts and the question of law involved to the Board, which will allow all parties a hearing as to the law and then certify an answer.109

The administrator or anyone who was a party to the proceeding before the Board of Review can petition the district court of the domicile of the claimant for a review of the Board’s decision. The other parties to the proceedings before the Board of Review are made party defendants, and the administrator is specifically deemed to be a party. The administrator is responsible for filing a certified copy of the record of the case with his answer or petition. Since the courts are not empowered to take new evidence, a default judgment cannot be rendered against the administrator when he fails to submit the certified copy of the record.110 His opponent’s remedy in that event would be through mandamus proceedings or by way of a rule for contempt.111 Service as to all parties is initiated by leaving with the administrator as many copies of the petition as there are defendants. He will then send the other parties a copy by registered mail, which is deemed to be service on them.112

108. Ibid.
109. Id. 23:1633.
111. Ibid.
The Louisiana statute has the usual provision that "the findings of the Board of Review as to the facts, if supported by sufficient evidence, and in the absence of fraud, shall be conclusive, and the jurisdiction of the courts shall be confined to questions of law." Thus the courts are not empowered to hear evidence, but they can remand the case with instructions to take more evidence if they are dissatisfied with the record. The statute was amended in 1958 to read "if supported by sufficient evidence" (emphasis added) from the previous wording "if supported by evidence." It is difficult to determine what the legislature intended in adding the word "sufficient." The rule was apparently well established under the previous wording that the Board's finding of fact was conclusive if "supported by the evidence," which was interpreted to mean "legal, competent, and sufficient proof." An argument which could be raised is that the legislature was disturbed by the courts' holding that the statute meant legal, competent, and sufficient evidence, since such language could be taken to mean that formal rules of evidence had to be followed in the administrative proceedings. However, the courts have never imposed such a requirement on the administrative tribunals, and the statute clearly provides that the Board has the authority to establish its own procedural rules, without conforming to the formal rules of evidence and procedure. On the other hand, the change may have been intended as a thrust in the direction of the "substantial evidence rule," which serves to test the extent of judicial review of facts in other administrative areas. Nevertheless, a glance at the judicial decisions reviewing administrative findings indicates an extreme reluctance on the part of the courts to question the administrative conclusions as to facts; thus it is not thought that the legislative addition of the word "sufficient" will change the law in this area.

113. Ibid.
118. Davis, ADMINISTRATIVE LAW 914 et seq. (1951, wherein the author quotes from Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938): "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Davis quotes from another case, NLRB v. Columbia Enameling & Stamping Co., 306 U.S. 292, 300 (1939), which amplified the initial quotation above by stating: "Substantial evidence... must do more than create a suspicion of the existence
Although the courts’ review of facts is restricted, they have unlimited jurisdiction to review questions of law.\textsuperscript{119} It would appear that at least one Louisiana court has confused the issue of fact and law. It failed to recognize the distinction between evidentiary facts and the legal consequences of those facts.\textsuperscript{120} While the courts cannot question facts as found by the Board if supported by sufficient evidence, they should always be able to determine the meaning of the law to be applied to those facts and to review the application of the law.\textsuperscript{121} Thus, if the issue were the suitability of a job referral, the court should accept the findings of fact as stated in the record if they are supported by sufficient evidence, but the court should itself decide the meaning of the statutory provision on suitability applicable to the facts presented.

Ordinarily an appeal by the employer or the administrator contesting the payment of benefits to a claimant will not suspend payment of benefits.\textsuperscript{122} However, if the decision awarding payment is subsequently reversed, the claimant must reimburse those payments received unless the administrator waives reimbursement under the waiver provision of Act 531 of 1958.\textsuperscript{123} It would appear that if the administrator waives the reimbursement, no charge should be made to the employer’s experience

of the act to be established. . . . It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.” Davis summarizes the rule as follows: “Obviously the test of reasonableness under the substantial evidence rule is unprecise and susceptible of different application by different courts or even by the same court in different cases. Any attempt to make the test more specific is likely to be unprofitable.” Id. at 915.

See also Stason, “Substantial Evidence” in Administrative Law, 89 U. PA. L. REV. 1026 (1941).

\textsuperscript{119} Cf. LA. R.S. 23:1634 (1950).
\textsuperscript{120} Story v. Heard, 85 So.2d 275 (La. App. 1958) (court refused to review a disqualification for leaving suitable employment).
\textsuperscript{121} Cf. Raborn v. Heard, 87 So.2d 146, 148 (La. App. 1956). It would seem that the court in this case accurately stated the correct position to be taken by the courts in reviewing Board decisions. “Generally, the jurisdiction of the reviewing court is limited to questions of law. The findings of the administrative body are ordinarily conclusive on the courts if supported by substantial evidence. But the courts will not sustain a determination where the decision is supported by no substantial evidence and to sustain it will ignore the plain provisions of the statute. So also, a question of law is presented for review if the tribunal misapplied the law as to the facts found by it.” (Emphasis added.) This approach does not preclude the court’s giving due consideration to the construction placed on the statute by the administrators. On the contrary, the principle has been announced in Louisiana in connection with unemployment compensation that the contemporary interpretation of a statute by those charged with its enforcement should not be disregarded unless that interpretation is clearly erroneous. Motion Pictures Advertising Services v. Sharp, 101 So.2d 456 (La. App. 1958).
\textsuperscript{122} Cf. LA. R.S. 23:1635 (1950).
\textsuperscript{123} Id. 23:1713, as amended. La. Acts 1958, No. 531.
rating for the amount waived. There is also a possibility that the waiver provision of Act 531 will run afoul of the Louisiana constitutional provision which denies the legislature the power "to release or extinguish, or to authorize the releasing or extinguishment, in whole or in part, of the indebtedness, liability, or obligation of any...individual to the State."\textsuperscript{124}

The statute provides that no costs are to be assessed against the claimant for filing a claim or for instituting an appeal within the administrative level.\textsuperscript{125} Neither are costs to be assessed against a claimant who seeks judicial review unless the appeal has been instituted frivolously.\textsuperscript{126} It appears, however, that the courts have either overlooked this provision or have chosen to interpret "frivolously" to mean any appeal in which the claimant fails to obtain a reversal in his favor. The frivolity provision has never been mentioned in an appellate court case, whereas several claimants with questions of law not previously settled by the judiciary have been assessed costs.\textsuperscript{127} It would seem that no appeal should be deemed frivolous unless the appeal clearly had no chance of success in light of statutory provisions or of the existing jurisprudence.

The statute further provides that the claimant may be represented by counsel or other duly authorized agent, but the amount paid counsel for services must be approved by the administrator.\textsuperscript{128} Since a person who is dependent on unemployment compensation would be reluctant to engage an attorney to pursue his claim, a provision for the payment of reasonable attorney's fees by the administrator on behalf of a claimant who is successful in an appeal would probably facilitate justice in most cases.

\textbf{CONCLUSION}

It has been seen that the Louisiana Employment Security Law has been before the Louisiana courts in comparatively few cases. However, the recent increase in the number of court of appeal cases in this area and the recent increase in benefits indicate that the courts will entertain an ever-growing number of

\textsuperscript{124} LA. Const. art. IV, § 13.
\textsuperscript{125} LA. R.S. 23:1692 (1950).
\textsuperscript{126} Ibid.
\textsuperscript{128} LA. R.S. 23:1692 (1950).
unemployment compensation cases. These future cases are likely to be highly influential in determining whether the program will be successful in Louisiana. It must be remembered that the very foundation for unemployment compensation is the theory that a fund can be built up during "good times" in order to pay benefits during "bad times." It is significant that the program has never been put to a severe test, although there have been a few minor recessions. Nevertheless, a few states found themselves in difficulty during the relatively short recession of 1958, even though there had been a long period of prosperity before that time. Hence it behooves the Louisiana agency, administrative tribunals, and courts to do their part in protecting the rights of future claimants to benefits during severe economic conditions through a diligent application of the safeguards embodied in the statute, while at the same time giving the statute a fair interpretation assuring benefits to those who presently have a lawful right to them according to the terms of the statute.

J. C. Parkerson

State Taxation of Private Interests in
Federally Owned Property

The framers of the American Constitution viewed their handiwork as a union of sovereign states under a sovereign federal government. Conceptually, the former are governments of broad reserved powers, while the latter is one of delegated, enumerated powers. Although each of these governments is supreme in its sphere of authority, the limits of these spheres

129. This information was taken from a statement made by R. C. Goodwin, Director of the Federal Bureau of Employment Security, which was reported by the Associated Press and published in the Baton Rouge Morning Advocate of November 11, 1958. "Michigan had to borrow $113 million from the federal government to take care of its fund requirements. Reserves of several other states—including Pennsylvania, Oregon, Delaware, Rhode Island, and West Virginia—have dwindled to a point where they too may need federal loans."

1. U.S. Const. art. VI, par. 2; U.S. Const. amend. IX-X, The Federalist Nos. 32 (Hamilton), 33 (Hamilton), 36 (Hamilton), 45 (Madison), and 46 (Madison).

2. U.S. Const. amend. X: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

3. "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or