

# MAINE STATE LEGISLATURE

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March 26, 1963

Honorable Harvey Johnson  
Chairman, Committee on Labor  
Senate Chamber  
Augusta, Maine

Dear Senator Johnson:

We have your letter of March 22, 1963 in which you ask our official opinion with respect to an interpretation of Chapter 29, section 15, subsection I. Your question is:

"1) Does the present Section 15, I, make it mandatory that the commission disqualify an employee for benefits who has left his employment due to illness or disability not associated with his employment and upon returning to his place of employment immediately upon recovery, finds that his former job has been filled or that work is not available to him?"

The pertinent section reads as follows:

"Sec. 15. Disqualification for benefits. An individual shall be disqualified for benefits:

"I. Voluntarily leaves work. For the period of unemployment subsequent to his having retired, or having left his regular employment voluntarily without good cause attributable to such employment, or with respect to a female claimant who has voluntarily left work to marry, or to perform the customary duties of a housewife, or to leave the locale to live with her husband, or to a claimant who has voluntarily removed himself from the labor market where presently employed to an area where employment opportunity is less frequent, if so found by the commission, and disqualification shall continue until

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claimant has earned fifteen times his weekly benefit amount. In no event shall disqualification for voluntarily leaving regular employment be avoided by periods of other employment unless such other employment shall have continued for 4 full weeks;"

A 1961 amendment deleted the following sentence from the section in question:

"A separation shall not be considered to be voluntary without good cause when it was caused by the illness or disability of the claimant and the claimant took all reasonable precautions to protect his employment status by having promptly notified his employer as to the reasons for his absence and by promptly requesting reemployment when he was again able to resume employment;"

It was because of this amendment that the Maine Employment Security Commission changed its interpretation of the section. In an Administrative Letter #UC-388, dated September 11, 1961, Subject: Effect of Amendments to the Law and Regulation on Operations and Procedures, the Commission stated at page 4, referring to Section 15, I :

"In the light of this amendment, separations due to illness or disability will have to be considered as being voluntary without good cause attributable and the requalifying requirement imposed--unless the illness or disability is unquestionably job connected in which case it could be found to be with good cause attributable and allowed."

We respectfully disagree with this interpretation. Looking at the section as it reads today, the key words are: ". . . or having left his regular employment voluntarily without good cause attributable to such employment, . . ." The present interpretation seems to disregard the meaning of the word "voluntarily." "Voluntarily" refers to a free exercise of the will; something done intentionally without interference of another's influence. Where illness or a disability is the reason for an individual's leaving

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his work, under circumstances where it can be said, as a matter of fact, he had no choice, it cannot and should not be said that he left his work "voluntarily" within the meaning of the phrase. Emphasis must be on the word "voluntarily" before consideration of the words "without good cause attributable to such employment."

We do not believe that the amendment of 1961 necessarily changed the meaning of the act. Buzynski et al. v. County of Knox, et al. 158 Me. \_\_\_\_ (1963). It is our opinion, therefore, that the present section 15, subsection I, does not make it mandatory upon the commission to disqualify an employee for benefits who has left his employment due to illness or disability not associated with his employment.

We answer your question in the negative.

Respectfully yours,

Frank E. Hancock  
Attorney General

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