

Approved

Date

Stephen R. Cloud 2-12-85

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Representative Stephen R. Cloud at  
Chairperson

9:08 a.m. ~~xxxx~~ on Tuesday, February 5, 1985 in room 522-S of the Capitol.

All members were present except:

Committee staff present:

Avis Swartzman - Revisor  
Carolyn Rampey - Legislative Research Dept.  
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Kevin Davis, attorney, Department of Administration

The meeting of the House Governmental Organization Committee was called to order at 9:08 a.m. by Representative Stephen R. Cloud, Chairman. The January 30 minutes were approved. The chairman introduced Mr. Kevin Davis, attorney, Department of Administration, who was present to give an agency report of unemployment compensation claims by the Department and the lack of disputed claims.

Mr. Davis, responding to the lack of disputed claims by the Department, stated that perhaps the Department has not been doing as good a job as it could but it has made significant improvements. A model or trial program has been initiated to assist state agencies. Kansas University Medical Center's claim history has improved substantially. Kansas State University and the Department of Administration has improved even more dramatically than the K.U. Medical Center. The primary problem is with the mailing addresses. Many were found to be incorrect. These are in the process of being updated. All claims filed come to the central office in Topeka. There are 17 area offices around the State of Kansas. By the time the area offices receive claims from the central office in Topeka, the time frame of 16 days in which to respond has expired. Mr. Davis gave a walk-through of what happens when a person outside the Topeka area fills out a claim. He used Hays, Kansas as an example. The person involved would go to the Human Resource office for assistance in filing for benefits. After this is done the claim would be keyed in by the area office to Topeka where the information is computerized; the claim is then forwarded to the Hays office. Questions were asked as to why the 17 area offices cannot be computerized so that they do not have to send their claims to Topeka. Mr. Davis replied that the Division of Accounts and Reports has to have this information to calculate benefits. Mr. A.J. Kotich, Assistant Secretary, Department of Human Resources, stated that there should be some way for the Division to acquire their information and still have the area offices in the computer system.

Mr. Davis was asked what incentive an agency has to submit these claims. It was commented that there probably is none but the employees own willingness to get the job done. The comment was made by a committee member that there is frustration on the part of people who fill out these claims. When asked if there was a brochure put out by the agency on unemployment claims, Mr. Davis replied that the attachment he distributed to the committee was what had been sent out, but it was not available in brochure form. (See Attachment A) Comments were made as to both state and private sector each doing its share to see that claims are processed. The question was asked about the annual review of key people in state agencies and if there is a special document prepared by personnel to evaluate a particular employee's claim performance. Mr. Kotich replied that, as far as he knew, there was not. This has not been a well-defined duty. It was asked if an agency can be researched to show if an employee is performing claim work. Leo Hafner, Legislative Post Audit, commented that in order to find that out, they would have to go back through the files and comb through the records. This would be time consuming if it was done in conjunction with a person's job evaluation. If it was in the job description, the question arises, is it specifically addressed or is it an 'all encompassing' duty. It was suggested to Mr. Hafner that Post Audit could do 10 or 15 very quick audits.

Vice Chairman Barr, referring to the 17 area offices, stated that it seems like a simple problem and we should see about getting the 17 areas integrated into the computer system. A time frame could be added so that the Kansas Integral Personnel Payroll System (KIPPS) could start on this as soon as possible.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION,  
room 522-S, Statehouse, at 9:08 ~~a.m.~~ ~~xxxx~~ on Tuesday, February 5, 19 85

Mr. Davis commented that the Department is trying a video awareness program at the K.U. Medical Center to stress the type of information needed in claim processing and why the information is needed to make it work. It is being stressed that it is of the utmost importance to respond to the claim process.

The space, or lack of it, on the claim form was mentioned and it would be possible to utilize the space more efficiently. The question was asked if it would be possible to designate some particular person within the Department to specifically handle state claims.

Mr. Davis said that the Department's funding comes from the federal government. The Department has to be in conformity with their procedure. Every suggestion or idea has to be run by them to see if it is acceptable.

The comment was made that we are trying to get the general fund at a high level and keep unemployment taxes at a low level. It seems that state agencies are not doing as good a job as private industry. Mr. Davis responded by saying that since the audit has come out, the state has made improvements in this area. The address issue is the major position.

A scope statement was asked for to be provided by Mr. Hafner and directed to the secretary of each division whereby they would make someone in each agency responsible to review claims.

Mr. Davis was also present to elaborate on what Secretary Wolgast has said about voluntary dismissals. These are approved by the appointing authority and the Director of the Division of Personnel Services. Human Resources is doing what all other on-line agencies are doing that have direct input into the KIPPS system. It is a procedural matter of how to sign off on this matter. The rules and regulations need to be amended to be in line with KIPPS.

The chairman told Mr. Davis that Mr. Wolgast had not provided the committee with a letter he had with him at his last appearance before the committee from the Department of Administration. The letter contains the approval from the Department to forego the filling out of the pertinent papers in a voluntary dismissal. Mr. Davis said he would get a copy of that letter to the committee. When asked by the chairman if Secretary Wolgast wanted to return to the committee for further audit response, Mr. Davis replied that the Secretary did want to return, but he would be unavailable on Thursday.

The chairman thanked Mr. Davis for appearing before the committee. He gave the date of February 27 for the committee and staff dinner given by Mr. Peterson. Members and staff are asked to notify the committee secretary if they will be attending the dinner.

The meeting was adjourned at 10:17.



AGENCY REVIEW OF UNEMPLOYMENT COMPENSATION CLAIMS  
OF FORMER AGENCY EMPLOYEES

A SUMMARY OF THE APPLICATION  
OF THE EMPLOYMENT SECURITY LAW

Department of Administration  
Legal Staff

September, 1983

2/5/85  
ATTACHMENT A

AGENCY REVIEW OF UNEMPLOYMENT COMPENSATION CLAIMS  
OF FORMER AGENCY EMPLOYEES

The purpose of this memorandum is to outline the general procedure for review of unemployment compensation claims under the Employment Security Act, K.S.A. 44-702 et seq., and to address methods by which the state can most efficiently follow that procedure in order to pay benefits that are due and avoid paying those that have not been earned. An outline of this procedure is also provided in the Kansas Department of Human Resources Employee Handbook available from Human Resources.

PAYMENT OF BENEFITS

When an employee is separated from his job for whatever reasons, then that person can apply for unemployment compensation. Application does not mean eligibility for benefits, however. A claimant must have (1) a valid claim and (2) no disqualifications under the statute.

INITIAL ELIGIBILITY - "THE VALID CLAIM"

After a claim is filed, a claims examiner initially determines whether the claim is a "valid claim." In order for a claim to qualify as a valid claim under K.S.A. 44-705, the following two requirements must be met:

(1) the claimant has earned thirty times the amount of benefits that he will receive each week, and

(2) the claimant had wages in more than one quarter of his base period. (See attached chart from Department of Human Resources handbook) for explanation of Base Period.

Next, the claimant must show that:

(1) he/she has been unemployed for a waiting period of one week during his/her benefit year;

(2) that he is able to perform the duties of his customary occupation or other occupations consistent with his prior training or experience; and

(3) he has registered for work and continues to report to an employment service office.

#### EMPLOYER RESPONSE

Once a claims examiner is satisfied that the above requirements are met, he then sends notice of the claim on a K-BEN form (see attached example) to the last employer and to any employer for whom the claimant worked during the base period. The last period employer has sixteen (16) days in which to respond with information related to the claimant's separation from his employment. Because of the sixteen (16) day time constraint, it is important that the notice be sent to the right address. Human Resources keeps an agency mailing list of addresses provided by each agency. These should be checked periodically by the agency and updated if necessary.

#### ACCURACY CHECK

Once the employer gets the notice, the individual responsible for checking claims should first inspect the notice itself for errors. The social security number is especially important, but dates of employment, amount earned and other information related to the amount of the claim are also important because they determine the amount available to be paid out.

#### DISQUALIFICATION

The claimant can be denied unemployment compensation if the employer responds demonstrating that any of the requirements of K.S.A. 1982 Supp. 44-705 (valid claim) are not met, or that the employee is disqualified for benefits under K.S.A. 1982 Supp. 44-706. The provisions of 44-706 provide varying disqualification periods for different situations. The provisions as interpreted and applied disqualify a claimant for benefits under the following conditions in the following amounts:

### Ten Week Disqualification

The claimant is denied and forfeits benefits for the week he applies and for the following ten weeks in three situations:

1. The Claimant Left Voluntarily Without Good Cause.

a. Voluntary.

Voluntary means truly independent action, not a quit after an employer request for a resignation. There are different ways "voluntary" can be interpreted. If an employee marries a fellow employee and is asked to leave because of company policy of which the employee was aware, this can be said to be a voluntary quit to get married. On the other hand, it is because of the company's policy so the employee is not really "choosing" to leave. Different states have interpreted this particular issue differently.

b. Good Cause.

Once it has been determined that a quit is voluntary, then the issue of "good cause" arises. If the claimant had "good cause," then he is immediately eligible. The statutory definition of "good cause" is given in K.S.A. 1982 Supp. 44-706(a)(1) as leaving work voluntarily for better work related or personal reasons if:

"(1) After pursuing all reasonable alternatives, the circumstances causing the separation were of such urgent, compelling or necessitous nature as to provide the individual with no alternative but to leave the work voluntarily, or (2) the reasons for the separation were of such nature that a reasonable and prudent individual would separate from the employment under the same circumstances."

Good cause can be related either to personal or work problems, but the claimant has the burden of showing good cause for his voluntary separation.

(1) Urgent, compelling. A few of the situations in this class would be harassment of any kind including sexual harassment, a medical problem caused or aggravated by the work conditions, safety hazard or coercion to perform services against the employee's morals.

(2) Reasonable and Prudent Person. It is deemed to be good cause if an employee leaves for a better job since that would fall under the "reasonable and prudent" test. This would be tested by comparing the old and new jobs.

A complication is added to the good cause provisions by the denial of benefits to claimants who left work voluntarily for (1) domestic or family reasons, (2) self-employment, (3) retirement due to old age or poor health, or, (4) to attend school. Any employee leaving work for these reasons is denied benefits until that person is reemployed and earns eight (8) times his weekly benefit amount (see below).

The reason these particular situations are treated differently is because they are considered an intent to permanently withdraw from the labor market and, as such, it is considered that they should be dealt with more severely than other voluntary separations. This rationale was set forth in Shelton v. Phalen, 214 Kan. 54 (1974). The Court there found that in order for the eight times rule to apply the claimant must have had the intent to withdraw from the workforce. Evidence of intent to withdraw was based on how long the claimant was unemployed before looking for work or claiming benefits. In Shelton, supra, the claimant was a woman who quit to move with her husband to another state. She looked for work soon after moving and so could show she had no intent to withdraw from the labor market.

Once it is determined that the claimant does not fall under any of the four situations in which the eight times rule applies because there was no intent to withdraw from the workforce, then the good cause provision is applied. In Shelton, supra, the claimant was considered to have good cause because she did what "a responsible and prudent individual" would have done "under the same circumstances". If she could not have shown good cause, then she would have been denied benefits for the week of application plus ten weeks.



Under the statute, pregnancy is automatically excluded from the "domestic or family responsibility" disqualification, and the eight times provision. Even if it were not, it could be argued that in the case of pregnancy there was no intent to permanently withdraw from the labor market and there was "good cause" because a reasonable and prudent individual would do the same thing in a similar situation.

2. The Claimant was Discharged Because of a Breach of Duty.

Under K.S.A. 1982 Supp. 44-706(b), the claimant is denied benefits if he was discharged for "a breach of duty connected with the individual's work reasonably owed an employer by an employee. The employer must establish this by showing that an act in connection with the claimant's employment harmed the employer and was intentional on the part of the employee. The Civil Service Act, Article 29 of Chapter 29, Sections 75-2949(e) and 75-2949(f), are used as general guidelines in this area.

There are distinctions that need to be made in the intent behind the Civil Service Act and the Employment Security Act. The Civil Service Act is aimed at insuring that employees do not wrongfully or arbitrarily lose their jobs by requiring that certain procedures are followed by employers. The Employment Security Act on the other hand provides income to those who have lost their job if they meet certain eligibility guidelines. These eligibility guidelines often correspond with the Civil Service Act, but this is not necessarily the case.

The Employment Security Act has been interpreted to require the three things listed above before there is an actual breach of duty:

a. In connection with the employment - An example of the "In connection with the employment" requirement would be an employee discharged under K.S.A. 75-2949f(b) for a criminal act. If the criminal act was not part of the employment or of such a nature that it did not affect the employee's work performance, then that person could remain eligible if he met all the other requirements.

b. Showing of intent - The intent on the part of the employee must rise to at least a disregard of the employer's purpose. This is exemplified by the case in which an employee is released for inefficiency or incompetency. The employer has the right under the Civil Service Act to release the employee. However, the employee may have been performing at the top of his capacity and therefore did not have intent to perform poorly and thus did not breach a duty for purposes of the Employment Security Act.

c. Harm to employer - The final breach of duty requirement is that there was harm to the employer in some fashion. An employee may take frequent leave, but if this has been condoned, does not disrupt the office procedure, or does not affect an employee's performance, then it may not be a breach of duty.

### 3. The Claimant Failed to Apply For or Accept Suitable Work.

A claimant may also be disqualified under 44-706(c) from receiving benefits the week of application and for a subsequent period of ten (10) weeks if he failed:

"without good cause to either apply for suitable work when directed by the employment office of the secretary of human resources, or to accept suitable work . . ."

There are exceptions if the opportunity occurs due to a strike or if membership or non-membership in a union is a condition of employment.

In addition, a claimant need not accept a job if it "has significantly less favorable conditions for the claimant than those prevalent in the locality." In order to determine whether this applies, there is a two-prong test considering:

(1) the suitability of the employment to the claimant's training and experience.

(2) whether the claimant had good cause for his refusal. Factors affecting this determination include travel distance or salary. The claimant's right to make these demands decreases the longer he has been unemployed.

## Full Disqualification

Under K.S.A. 1982 Supp. 44-706(b), a claimant is disqualified for benefits and must be reemployed and have earned eight (8) times his weekly benefit amount to qualify for benefits under the following conditions:

### 1. Gross misconduct

Gross misconduct is defined in 44-706(b) to be:

"conduct evincing willful and wanton disregard of an employer's interest or a carelessness or negligence of such degree or recurrence as to show an intentional or substantial disregard for the employer's interest."

In order for an employee's act to be considered "gross misconduct," it must generally be a deliberate act, harming the employer substantially. Again, this may generally follow the Civil Service Act requirements, but not rigidly.

The major forms of gross misconduct are dishonesty in all forms and blatant disregard of authority.

a. Dishonesty would not include errors due to poor judgment. A dishonest act must be of such a severe nature that it is clearly "gross misconduct." Taking a pencil would not of course qualify, but several boxes a week over a long period would become gross misconduct. Fraud, such as falsifying work records, would be another form of dishonesty. For instance, if an employee is expected to report the hours worked, and reports a greater number than were worked it could be found to be dishonesty amounting to gross misconduct.

b. Disregard of Authority - The other form of gross misconduct is disregard of the authority structure and procedures of the employer leading to disruption of the work environment. This can be either physical or verbal. Physical violence is much more likely to be gross misconduct. In either case, however, the conduct is taken in light of the entire work environment. If the employee had been harassed or "ridden," perhaps the conduct was justified. The issue is whether the conduct was aggravated by the employer's behavior.

## 2. Family or Domestic Responsibility

As discussed above, the claimant is also denied benefits until he has been reemployed and earned eight (8) times his weekly benefit amount if the employee leaves by choice because of family or domestic responsibilities (other than pregnancy), self-employment, retirement because of disability or old age, or to attend school.

### Week at a Time

Under 44-706(d), a claimant is denied benefits for any week in which:

1. he is unemployed due to a labor dispute (with certain exceptions);
2. he claims or receives unemployment benefits from another state;
3. he is receiving Workman's Compensation for permanent or temporary total disability;
4. he is receiving military unemployment allowance or compensation in recognition of former service;
5. he is unemployed because of regular breaks in the academic cycle of an educational institution and has a contract of reasonable assurance of reemployment;
6. his benefits are based on services he performed while he was an illegal alien; and
7. he is unemployed due to the seasonal nature of athletics and is reasonably certain of being reemployed in the next season.

### DETERMINATION BY CLAIMS EXAMINER

Once the claims examiner receives an employer's response he reviews it along with the claim submitted by the claimant. If the information from the employer is significantly different or contradictory to that of the claimant, the claimant is given an opportunity for "rebuttal." Based on the total information from the employers and the claimant, a claims examiner then decides whether the claim should be paid.

It is crucial that employers submit any information bearing on the claim, especially if there is some discrepancy or evidence that indicates the claimant is not eligible for benefits. Therefore, the employer must have and provide adequate documentation of its position. This documentation should include details. For instance, a response should not say simply "excessive absenteeism," but should give the number of days absent, how this affected the employee's performance and the number of warnings given the employee. This requires that records be kept. Copies of the records themselves provide the best documentation of the employer's case. The confidentiality of records provided in unemployment benefits cases is mandated by the Social Security Act, Section 303(a)(1) and K.S.A. 44-714(f). A summary of the records is also appropriate.

Either party may appeal an adverse decision in person or in writing to the District Job Insurance Office within sixteen (16) days of the mailing date of the examiner's determination. If an appeal is not made within the sixteen (16) day limit, the right of appeal is lost unless excusable neglect can be shown. "Excusable neglect" is an extremely narrow exception and is based on factors such as claims examiner or agency error, rather than employer or claimant neglect.

The final administrative appeal is to the Board of Review. From there, any appeal goes to the District Court. There it is reviewed on the sole issue of whether the decision of the Board of Review was "arbitrary or capricious." There is no de novo review.

For additional information, questions or comments, please contact:

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