CHAPTER 3
REFUSAL

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2.3.1 ELEMENTS OF A REFUSAL

A claimant will be disqualified from receiving unemployment insurance benefits if, after applying for benefits, he or she refuses without good cause to accept a job for which he or she is reasonably fitted by training and experience and which pays the prevailing wage for that kind of work in the locality. A claimant may also be disqualified, if, after receiving 10 full weeks of benefits, he or she refuses without good cause to accept a job that he or she is physically and mentally capable of doing and that pays the prevailing wage[1] for such work and pays at least 80% of the claimant's base period high quarter wages.

In deciding cases under this statute, the ALJ must determine: (1) was the offer made to a "claimant"; (2) was there a bona fide offer of employment; (3) was there a refusal of the offer; and, if the first three questions are answered in the affirmative, (4) did the claimant have good cause to refuse the job.

IN BENEFITS

It is well-established that a claimant is not subject to a disqualification for refusals that occurred before the date the claimant filed a claim for unemployment benefits.[2] The date of the actual filing of the claim, not the effective date of the claim, is controlling if using the effective date would make the individual a claimant at the time of the refusal.[3] In other words, a claim cannot be backdated to a date that would subject the claimant to a refusal disqualification.[4]

OFFER OF EMPLOYMENT

Before a claimant can be disqualified for refusing an offer of suitable employment, the record must establish that there was a *bona fide* offer of employment. To constitute a *bona fide* offer, the

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[1] For more information on prevailing wage, see What Constitutes Good Cause, Prevailing Wage Requirement, below.

[2] *Matter of Foscarinis*, 284 A.D. 476 (3d Dep't 1954); Appeal Board No. 579339.

[3] Appeal Board No. 583117 (Claimant was found not to be in benefits at the time he refused an offer of employment on July 16 since he did not file a claim until July 17 even though the claim was made effective on July 14); Appeal Board No. 561409A ("It is a long held principal that the status of an individual as a claimant and a refusal of suitable employment must be concurrent."); compare *Matter of Franco,* 207 A.D.2d 577 (3d Dep't 1994) (claimant who refused an offer of employment on the same day she filed for benefits is considered to be in benefits at the time of the refusal).

[4] 12 NYCRR 473.1(b) ("Any such claim filed in accordance with this section shall be deemed filed as of the first day of the claimant's unemployment in the statutory week in which filed, excluding, however, any prior day on which a disqualifying condition would have existed if he had actually filed on such day").

employer must offer the claimant an available position with a specific start date, salary, location, and job duties.[5] It must also be an unconditional offer of employment.[6]

Additionally, under some circumstances, there may not be a *bona fide* offer if the evidence establishes that the employer only offered the claimant a position to avoid charges to its unemployment insurance account.[7]

THE REFUSAL

A claimant may not be disqualified for a refusal of employment unless he or she has actually refused the job offer. Where a claimant unequivocally states that he or she does not want the position, the refusal is obvious. In some cases, the refusal will not be as straightforward.

A claimant's action deliberately calculated to discourage an offer of employment may constitute a refusal. For example, the Board has held that a claimant's failure to timely respond to an employer's letter, voicemail or other communication which forestalls the prospective employer from providing all the necessary details about a job offer may constitute a refusal of employment.[8]

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[5] Appeal Board No. 572236 (no bona fide offer where a letter merely mentioned a new assignment, did not contain information regarding the specific job, rate of pay or start date and did not include an address where the letter was mailed); *Matter of Gibbons,* 120 A.D.3d 1516, *affirming* Appeal Board No. 569327 (e-mails from employer which used phrases such as "most likely" and "roughly" indicated that project details had not been finalized and did not constitute a bona fide offer of employment); Appeal Board No. 553319 (no bona fide offer and no refusal where claimant was only given an opportunity to go on an interview and declined); Appeal Board No. 575142 (no bona fide offer where employer called claimant and stated employer would offer him his old job back. Board held even if the claimant could infer his salary, location and job duties, no start date was specified); Appeal Board No. 561957 (no bona fide offer where it was contingent upon passing a background check, drug screen and attending orientation).

[6] Appeal Board No. 549816 (employer who offered claimant a job contingent on him taking a math test was not a bona fide offer of employment); Appeal Board No. 552059 (employer's offer of employment contingent upon successful completion of a training program did not constitute bona fide offer of employment).

[7] Appeal Board No. 545888 (citing Appeal Board No. 473767); Appeal Board No. 562982 (no bona fide offer in circumstance where employer, who was highly dissatisfied with his job performance and attitude, discharged claimant for reading a book at work and then offered claimant the same job he had been previously doing after the claimant filed a claim for unemployment benefits since the evidence suggested that the employer only made the offer to avoid charges to their unemployment insurance account) (citing Appeal Board Nos. 274751, 271394 and 473767).

[8] Appeal Board No. 586335 (citing Appeal Board Nos. 549423, 499444, 544371 and 541170); Appeal Board No. 560732 (claimant's failure to check the mail resulting in his failure to respond to the employer's letter offering him employment constituted a refusal as claimants are obligated to regularly check mail during time period when they are in receipt of benefits) (citing Appeal Board No. 547494); Appeal Board No. 552447 (although the employer's letter did not contain all details of the offered employment, the claimant's failure to contact the employer about the letter prevented the company from providing full details, and the claimant's failure to respond to the letter was therefore tantamount to a refusal of employment); Appeal Board No. 552960 (claimant found to have refused an offer of employment when he failed to return the employer's telephone call regarding an open position); Appeal Board No. 574488 (claimant's actions considered tantamount to a refusal when employer contacted him to ask why he was not

The employer must have had a definite job available for the claimant for the failure to contact to constitute a refusal.

Even if the claimant asserts that he or she never received a letter from the employer, the claimant may still be found to have engaged in actions which forestalled the employer from making an offer, resulting in a disqualification based on a refusal. For example, when the evidence establishes that the communication was sent to the address provided by the claimant to the Department of Labor as his or her correct mailing address and the claimant did not make reasonable efforts to check or keep track of mail, the claimant's failure to respond to a letter may constitute a refusal.[9] This is because claimants are obligated to regularly check their mail during the time period when they are in receipt of unemployment insurance benefits.[10] However, the presumption that the claimant received a properly addressed letter is rebuttable and, where there is no evidence in the record tending to impeach the claimant's sworn testimony that he or she did not receive the offer letter, the claimant's testimony must be accepted.[11]

While a claimant's statements may be found to have discouraged an employer from making an offer of employment,[12] engaging in good faith discussion regarding concerns about the potential

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working, directed claimant to call dispatcher to schedule himself for driving assignments and claimant failed to contact dispatcher).

[9] Appeal Board No. 560732 (disqualifying the claimant on the basis of a refusal despite his testimony that he never received offer letter where evidence established that letter was sent to the correct address and claimant testified that no one in his household looks through the mail on a regular basis); Appeal Board No. 547494 (disqualifying the claimant on the basis of refusal when evidence established that the claimant represented to the employer and the Department of Labor that her post office box was her correct mailing address and did not receive offer letter because she failed to pick up her mail on a timely basis since the claimant was under an obligation to check her post office box regularly during the time when she was receiving Unemployment Insurance benefits);Appeal Board No. 568220 (the claimant's behavior, in failing to retrieve the mail or to accept telephone calls from the employer, is tantamount to a refusal of suitable employment without good cause)(citing Appeal Board Case No. 541170); *but see*, Appeal Board No. 570713 (claimant found not to have discouraged an offer of employment where evidence established that claimant's financial circumstances were reason he turned off cell phone service and had gone in to the workplace to speak with previous employer about potential employment prior to his relocation).

[10] Appeal Board Case Nos. 568220; 560732; 547494.

[11] Appeal Board No. 566688 (citing Appeal Board No. 497828).

[12] *Matter of Batih,* 51 A.D.2d 604 (3d Dep't 1976) (claimant was found to have discouraged offer of employment where she stated during the interview that she was not really interested in working, but had come for the interview because she had been sent by the employment service); *Matter of Zimmerman,* 30 A.D.2d 454 (3d Dep't 1968) (claimant discouraged offer of employment when he hesitated about accepting the job referral and agreed to the job interview only after being told that his rejection thereof would have to be reported to the insurance section and then told the prospective employer that he was not qualified for the job, that if he should be hired he would foul up the job and would unionize the employer's small plant, and that for seven years in another employment he was a union official, sitting at a desk looking at the window.); Appeal Board No. 546226 (claimant's actions deemed to be a refusal of employment where although the claimant was not provided with all the details of the position, she discouraged the employer's offer,

job is not a refusal even if it results in the employer declining to offer the position.[13] For example, a claimant may inform an employer that he or she may be recalled by a prior employer or that he or she may continue looking for a job with higher wages. Additionally, negotiations for better conditions or wages do not constitute discouragement of an offer, provided the claimant would have accepted the job under the original conditions offered.

Further, although it has previously been held that failure to keep an appointment for a job interview may constitute a refusal under the theory of forestalling an offer of employment[14], subsequent cases find that an interview is not a job offer and a claimant who declines to attend an interview is not deemed to have refused an offer of employment.[15]

A refusal may also be found where a claimant accepts an offer of employment and thereafter fails to report to work on the scheduled start date. In developing the record on this issue, the judge must address whether the claimant, who otherwise intended to accept the offer, had a compelling reason for his or her failure to report to work on that day, whether he or she made attempts to contact the employer to alter the start date and whether the employer withdrew the job offer because of the claimant's absence.

GOOD CAUSE

The final element for a refusal addresses the claimant's reason for refusing the offer of employment. A claimant may only be disqualified from receiving benefits on the basis of a refusal of suitable employment if he or she does not have good cause to refuse the position.

2.3.2 THE INFORMED CLAIMANT

Claimants are entitled to know the "rules of the game" and should not be disqualified for a refusal as the result of the application of rules or procedures which were not disclosed to them in a meaningful and understandable manner. Additionally, in those cases where a claimant was not made aware of the applicable rule or procedure, the claimant must be given an opportunity to "cure" any violation of the rule or procedure prior to being disqualified from receiving benefits.

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cutting off any potential discussion of the details of the position, by immediately stating she was unavailable for the position).

[13] *Matter of Pereira,* 72 A.D.2d 832 (claimant found not to have refused a position where he informed potential employer that he would soon be recalled from a temporary layoff with another employer which resulted in employer withdrawing offer of employment).

[14] *Matter of Baehr,* 177 A.D.2d 904 (3d Dep't 1991); *In re Claim of Powell,* 1 A.D.3d 749 (3d Dep't 2003); Appeal Board No. 543947.

[15] Appeal Board Nos. 565697; 553319 (citing Appeal Board Nos. 530657 and 505958).

Specifically, a claimant must be informed that after receiving a full ten weeks of benefits, there is a requirement to accept work he or she is capable of performing, even where he or she does not have any experience or training so long as it pays the prevailing wage and pays at least 80% of the claimant's base period high quarter wages. Additionally, a claimant must be informed that he or she must seek and accept work within a reasonable distance (i.e. one hour by private transportation or 1 ½ hours by public transportation). A claimant must also be informed that he or she must be willing to accept offers that pay the "prevailing wage," even if the wage is less than what the claimant previously earned and must be informed of where the prevailing wage for particular occupations can be found. A claimant must also be aware that he or she can be disqualified for refusing a job because it is temporary, it utilizes skills lower than what the claimant possesses, or because he or she expects to be recalled by a prior employer.

All of this information is covered in the Claimant handbook. If a claimant has received a handbook or has knowledge that a handbook is available for review online, a claimant is charged with the knowledge of its contents and no further advice need be given by the Department of Labor.

2.3.3 TYPE OF EMPLOYMENT OFFERED

SUITABLE EMPLOYMENT

Within the first ten weeks of benefits, a claimant is required to accept employment for which he or she is reasonably fitted by training and experience. After establishing that an offer of employment has been made, it must be determined whether the position is suitable for the claimant. This requires an evaluation of the job duties and of the claimant's educational and work history. Although the duties of the proffered job need not conform exactly to those of the claimant's previous job, or utilize all of the claimant's skills or specialized training, there must be a reasonable matching of the claimant's qualifications to the job requirements.[16]

[16] Appeal Board No. 574742 (Board found that claimant, as a skilled craftsman, with no experience as a yogurt packer (and no evidence that he had experience as any kind of packer), was not reasonably fitted by training and experience to the job offered by the employment agency and therefore not subject to a refusal disqualification); *In re Feldman,* 13 A.D.3d 713 (3d Dep't 2004) (court found legal secretary job offered to claimant was not one in which she was reasonably fitted by training and experience where evidence established her educational background from foreign country was equivalent to a law degree and she had previously worked as a paralegal which had more extensive duties and required different skills than that of a legal secretary); *Matter of Yule,* 52 A.D.3d 1062 (3d Dep't 2008) (Court upheld Board decision finding claimant had good cause to refuse position where evidence established that while the position of clinical supervisor offered to claimant was comparable in salary and benefits to her prior position, the new position entailed different responsibilities and duties – most notably in the area of direct patient care – and would have subjected claimant to the grievance and arbitration procedure governing faculty members); *In re Claim of Ransom,* 243 A.D.2d 800 (3d Dep't 1997) (motor equipment operator, assigned to operate and train others to operate cranes, was eligible to receive unemployment insurance benefits after his employment ended, despite his failure to accept employer's subsequent offer of work as snowplow operator, since he was 60 years old, he had never operated snow-plowing equipment, he was concerned that his doing so would pose public safety hazard, and there was no evidence that training in use of

EMPLOYMENT THE CLAIMANT IS CAPABLE OF PERFORMING

A claimant who is still unemployed after receiving 10 weeks of benefits, has no recall date, and does not obtain employment through a union hiring hall, must be willing to accept any work he or she is capable of performing. The analysis is on whether the claimant is capable of doing the work. His or her total lack of experience in a particular type of work is not, in and of itself, a compelling justification for a refusal. Additionally, the fact that the skills required for a job may be below claimant's actual skills, is not a relevant consideration.

If a claimant is capable of performing the work that was offered, he or she may decline the job if the employment would result in quarterly wages less than eighty percent of the claimant's high calendar quarter base period wages and/or be substantially less than the wage prevailing for similar work in the locality. The analysis of whether the offered wages equate to eighty percent of the claimant's high calendar quarter wages only applies to refusals that take place after the first 10 weeks.[17]

For example, if the claimant has historically been employed as a machine operator, after 10 weeks, the claimant is required to accept any offer of work he or she is capable of doing, including for example, an assembler position so long as it meets the prevailing wage for similar work in the locality and so long as the claimant would make at least 80% of his or her high calendar quarter wages.

2.3.4 WHAT CONSTITUTES GOOD CAUSE

STATUTORY GOOD CAUSE

There are five statutory good cause reasons for refusing employment under Labor Law §593.2. They are: (1) acceptance of such employment would either require the claimant to join a company

such potentially hazardous equipment was ever offered by employer); Appeal Board No. 553607 (claimant had good cause to refuse job as a packer where evidence established his educational background was in management and mathematics and his work experience was in banking and insurance even though he had taken summer jobs as a packer several years earlier for a brief period).

[17] Appeal Board No. 566123 ("The claimant's argument that she was not required to accept the job because the wage was below 80% of her high quarter wages is unpersuasive given that the statute requires a claimant to accept any employment to which she is suited by training and experience so long as the wage offered is not substantially below the prevailing wage for similar work in that locality. The clause relied on by the claimant is not written as an exception to that rule. Rather, it is a limitation on the requirement that after [ten] weeks of unemployment a claimant is required to accept any job she is capable of performing. Given that the claimant had previously performed these same duties for the employer, the eighty percent limitation does not apply and the lower wage offered did not provide the claimant with a statutory basis to refuse the offer").

union or would interfere with his joining or retaining membership in any labor organization;[18] or (2) there is a strike, lockout, or other industrial controversy in the establishment in which the employment is offered; or (3) the employment is at an unreasonable distance from his residence, or travel to and from the place of employment involves expense substantially greater than that required in his former employment unless the expense is provided for; or (4) the wages or compensation or hours or conditions offered are substantially less favorable to the claimant than those prevailing for similar work in the locality, or are such as are likely to depress wages or working conditions; or (5) where the claimant has historically and is still seeking part-time work and the offer of employment is not comparable to his or her historical part-time work.[19]

TRAVEL TIME/COSTS

The Board and Court have determined that generally travel of over one hour by private transportation or one and one-half hours by public transportation for employment is unreasonable.[20] In metropolitan areas, it has been held that travel of one and one-half hours is reasonable.[21] A claimant is not required to accept employment if the travel time is in excess of those parameters. This is true even if the claimant had previously been employed at a location more than that distance from his or her home. However, where an employer has a policy or

[18] Appeal Board No. 571597 ("Further, the owner acknowledged that union members who he had hired had either lost seniority or otherwise had their union membership adversely affected. Labor Law §593(2)(a) specifically provides that no claimant will be disqualified for refusing an offer which would interfere with the claimant's right to join or retain membership in any labor organization. Hence, the claimant, an apprentice in a union program, would have had good cause to refuse an offer of employment from this objecting employer."); *but see, Matter of Russell,* 33 A.D.2d 592 (3d Dep't 1969) (Refusal of employment because it would have required claimant to join a union was held to be without good cause).

[19] Labor Law §596(5) "Part time work. Notwithstanding any other provisions of this article, a claimant who for reasons personal to himself or herself is unable or unwilling to work full time and who customarily worked less than the full time prevailing in his or her place of employment for a majority of the weeks worked during the applicable base period, shall not be denied unemployment insurance solely because the claimant is only seeking part time work. For the purposes of this subdivision, "seeking part time work" shall mean the claimant is willing to work for a number of hours per week that are comparable to the claimant's part time work during the majority of the base period." *See also,* Appeal Board No. 590522 ("While the claimant had worked full-time in the past, that was not his current job market (Appeal Board Nos. 559485, 543326). We find that the claimant's labor market is that of part-time work. The claimant, therefore, could refuse this [full-time] job with impunity and we need not reach his reasons for doing so (Appeal Board No. 543326)").

[20] Appeal Board Nos. 573470, 570998 and 549742, (commute by private transportation, such as a car, of more than one hour is considered unreasonable); Appeal Board No. 546393 (commute by public transportation of 95 minutes found to be unreasonable); *see also,* Unemployment Insurance Claimant Handbook, October 2016 edition, pg. 28 ("You must be willing to travel a reasonable distance to get to work. Generally, reasonable distance is travel of one hour by private transportation or one-and one-half hours by public transportation").

[21] *Matter of Ruggilo,* 51 A.D.2d 838 (3d Dep't 1976) (travel time to place of employment of up to 90 minutes each way is not excessive in metropolitan areas).

practice of paying for travel or otherwise compensating a claimant for the otherwise unreasonable distance or expense, a claimant may not have good cause for refusing the employment.[22]

It has also been held, in situations where the claimant is a seasonal worker living out of the area and is called back to work prior to the expected date of return, the claimant may have good cause to refuse the offer of earlier work.[23] Additionally, where a claimant is in the process of relocating, he or she may have good cause to refuse an offer of employment located at an unreasonable distance from the area to which he or she is relocating.[24]

PREVAILING WAGE REQUIREMENT

A claimant is not required to accept employment at a wage that is substantially less favorable than that prevailing for similar work in a locality. The Court has held that the prevailing wage, within the meaning of the statutory requirement, is the weighted average of the middle half of wages paid to all persons employed in the occupation in the geographic locality of the employment. “Substantially less” is defined as being greater than 10% below the prevailing wage.[25]

Jobs are classified using a system formulated by United States Department of Labor. The New York State Department of Labor prepares an occupational survey containing categories set by the federal government in the standard occupational classification system ("SOC"). The survey lists the specific classification (called an SOC code) by region, a description of the duties that fit within the classification, the prevailing wage, and the cutoff wage (the amount which is 10% below the prevailing wage).[26]

In circumstances where there has been no prevailing wage survey for the position being offered in the geographical region involved, the Board has held that the claimant's prior wage in an occupation may be considered some evidence of prevailing wage.[27]

If the wages offered do not meet the prevailing wage cutoff, then the claimant must prevail.

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[22] Appeal Board No. 545918 (claimant did not have good cause to refuse job where employer had provisions in handbook for compensating claimant for out of state travel by providing a per diem and hotel expenses).

[23] Appeal Board No. 576551 (claimant, a resident of Puerto Rico, who worked as a seasonal farm worker for employer for three years, had good cause to refuse offer of employment with earlier start date as he was an unreasonable distance from the job at that time).

[24] Appeal Board No. 517471 (claimant who was in the process of relocating to Florida had good cause to refuse a job offer from a former employer located in New York).

[25] *Matter of Marsh,* 13 N.Y.2d 235 (1963); Appeal Board No. 541240.

[26] This information is available online at https://labor.ny.gov/stats/uiwages.shtm

[27] Appeal Board No. 546077 (citing Appeal Board No. 328324).

Practice Tip:

At the hearing, the judge must develop the record to determine that the job offered was in the correct region to which the prevailing wage is applied and that the job duties fit within the SOC description. There may be occasion where one or both parties contend that the SOC description in the file does not match the job duties of the position offered to the claimant.

When this occurs, the judge must review the file to determine whether the Commissioner of Labor was put on notice of the actual job duties prior to the hearing. When the employer or claimant offers new or additional information regarding job duties at the hearing, the Commissioner of Labor must be given the opportunity to respond and determine whether a different SOC code more properly represents the job the claimant was offered. Under those circumstances, the judge should adjourn the hearing and direct a Commissioner of Labor representative to appear at the subsequent hearing. If, however, the documents in the file make clear the Commissioner of Labor was put on notice of the job duties and no new information is offered at the hearing, the judge does not have to adjourn to allow the Commissioner of Labor another opportunity to provide another SOC code.

OTHER REASONS FOR REFUSING EMPLOYMENT

HOURS / WAGES

A claimant who prefers one particular shift over another must establish a compelling reason for such a refusal. For example, a claimant who cannot work the night shift because of a lack of child care would have good cause for refusing the position.[28] However, a claimant who simply prefers particular hours due to prior work schedule,[29] school schedule,[30] or other personal reasons[31]

[28] Appeal Board No. 577760 (claimant had good cause to refuse shift where she lacked child care for her daughter); Appeal Board No. 561376 (claimant had good cause to refuse offer of reemployment for afternoon shift because although she had previously been able to work those hours, she had a change in personal circumstances and no longer had child care during the hours offered).

[29] *See, e.g., Claim of Krieger,* 279 A.D. 681 (3d Dep't 1951).

[30] Appeal Board No. 542686 (claimant did not have good cause to refuse offer of employment on the basis that it conflicted with her night school schedule) (citing *Matter of Newman,* 43 A.D.3d 592) (3d Dep't 2007)); *but see,* Appeal Board No. 555616 (In finding the claimant had good cause to refuse a position because it conflicted with his school schedule, the Board noted that the claimant had already paid for his enrollment and had been attending these classes for over six months. The Board also found significant that at the time of the offer, the claimant sought to work with the employer by seeking out other shifts and other hours, to no avail).

[31] *Claim of Tosto,* 249 A.D.2d 672 (3d Dep't 1998) (claimant did not have good cause to refuse night shift security guard position despite his contention that he was afraid to return home late at night due to a mugging that had happened 11 years earlier since the claimant had prior employment and training as a police officer and security guard).

does not have good cause. Additionally, a personal preference to not work weekends does not constitute good cause to refuse a job.[32]

In the absence of any circumstances which would cause an undue hardship (either economic, domestic, or related to one's health), a claimant does not have good cause to refuse a job because it may require overtime.[33] Further, a claimant may not refuse part time work solely because he or she is seeking full time work.

Claimants cannot refuse a job because of a dissatisfaction with the wage so long as the job meets the prevailing wage requirements. The fact that a salary offered was less than that previously earned does not constitute good cause for refusing the offered position.[34]

An exception to this is that a disqualification for a refusal cannot be imposed if the wages offered are less than the claimant's benefit rate. This principle was established in a 1961 Board decision, affirmed without opinion, by the courts.[35] In its decision, the Board noted that the intent of the Unemployment Insurance Law was to assure that claimants would receive a weekly amount commensurate with the average weekly earnings and concluded the Legislature had recognized that the benefit rates established by the Unemployment Insurance Law were the "minimum amounts required to effectuate the purposes for which the Law was enacted." Consequently, the Board concluded, to disqualify a claimant because he refused employment which would result in a decrease in the amount established as his minimum requirement would defeat the purposes of the law.[36]

TEMPORARY JOB

It is well-settled that a claimant's desire or efforts to obtain permanent full-time employment do not constitute good cause for refusing an offer of temporary employment.[37] This is true even where a claimant refuses a temporary one-day assignment to attend a scheduled job interview

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[32] *Claim of Honness,* 253 A.D.2d 964 (3d Dep't 1998).

[33] *See* Appeal Board Nos. 11730-45 and 8951-43 (*see* Interpretation Service at https://labor.ny.gov/ui/aso/interpservice.shtm)

[34] *Matter of Heller*, 240 A.D.2d 791 (3d Dep't 1997); Appeal Board No. 545949.

[35] *Matter of Scranton,* 12 N.Y.2d 983 (1963), *affg*. 14 A.D.2d 953 (3d Dep't 1961).

[36] Appeal Board No. 548582 (claimant found to have refused job offer with good cause where his net weekly income for part-time work would have been less than his benefit rate); Appeal Board No. 571476 ("The Court has long held that a claimant is not required to work part-time and earn less than his weekly benefit rate.") (citing *Matter of Scranton*, 12 N.Y.2d 983 (1963)).

[37] *Matter of Ruggieri,* 273 A.D.2d 723 (3d Dep't 2000); *Matter of Zimmerman,* 252 A.D.2d 648 (3d Dep't 1998); *Matter of Cancellieri,* 231 A.D.2d 769 (3d Dep't 1996); *Matter of Walls,* 26 A.D.2d 883 (3d Dep't 1966).

for full-time employment. [38] However, in most cases when a claimant indicates an unwillingness to work a one-day assignment because of a conflicting engagement, the Department may view the issue as one of availability and not a refusal.

SKILLS

It is well-settled that in determining whether a claimant is reasonably fitted by training and experience for a job, the offer of employment need not match the claimant's skills with exact precision.[39] In other words, a claimant may not have good cause to refuse a job because the job offered only requires some of the claimant's job skills rather than a utilization of his or her entire skill set. However, the job requirements should still reasonably match the claimant's qualifications.[40] Additionally, if the evidence establishes that the employer is prepared to provide the claimant with necessary training to perform a job with which he or she is unfamiliar, there may not be good cause to refuse the position.

LACK OF TRANSPORTATION

A claimant has good cause to refuse an offer of employment where he or she does not have private transportation and the job site cannot be reached by public transportation.[41]

EMPLOYER'S PRIOR CONDUCT

In circumstances where a claimant previously worked for the employer offering work and the employer's prior conduct gave the claimant good cause to quit, the claimant may have good cause to refuse the offer of employment.[42] Additionally, a claimant could potentially have good cause for

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[38] *Matter of Livingston,* 268 A.D.2d 665 (3d Dep't 2000).

[39] *Matter of Strazza*, 278 A.D. 1036 (1951) (claimant, a baker of Italian and French breads and cakes, did not have good cause to refuse a position making American style breads and rolls since the employer indicated a willingness to train the claimant); *Matter of Greaser,* 279 A.D. 702 (3d Dep't 1951) ("the full utilization of all skills is not the effective test to be applied under the statute, but rather the availability of work for which the claimant is fitted by training and experience"); Appeal Board No. 549712 (In finding the claimant, a certified elementary school teacher, refused without good cause suitable offer of employment as an adolescent summer school teacher, the Board held that teachers cannot limit themselves to teaching only in areas for which they are licensed) (citing Appeal Board Nos. 285227 and 523912).

[40] *See* Suitable Employment, *supra*.

[41] Appeal Board Nos. 565727 and 546293; *but see,* Appeal Board No. 550140 (claimant did not have good cause to refuse position based on lack of transportation where he had traveled with a friend out of his local area for a vacation and was not the one who drove so he did not have access to a vehicle in order to accept offer of employment).

[42] Appeal Board No. 579548 (remanding for further hearing to determine whether claimant's allegations of verbal abuse and Labor Law violations on behalf of the employer actually occurred and whether such acts gave the claimant good cause to refuse subsequent offer of employment), *but see,* Appeal Board No. 547567 (claimant did not have good cause to refuse employment over his concern that the employer might not make timely payments to the child support collection center after deducting funds from his wages where evidence showed that the claimant never harmed by employer's prior late payments on claimant's behalf).

refusing a job from a prior employer where the claimant has valid health or safety concerns and/or objections to matters of conscience. The general analysis in these cases is the same as in cases determining whether there is good cause to a voluntarily quit a position.

PARTICIPATION IN DEPARTMENT OF LABOR APPROVED TRAINING PROGRAM

Participation in a training program approved under Labor Law §599(1) is good cause to refuse employment that would be concurrent with the training.[43]

[43] Appeal Board No. 513297.