

DICK DANIELS -Originator  
HAGGERTY )  
SAGARINO ) Concurred  
KENNEDY )

January 30, 1962  
Opinion No. 62-10

REQUESTED BY: JAMES A. BEAMAN, Chairman,  
Employment Security Commission  
of Arizona.

OPINION BY: ROBERT W. PICKRELL,  
The Attorney General.

QUESTION: Are claimants who participate  
in full-time or part-time occu-  
pational training or retraining  
as a result of State Employment  
Service guidance precluded from  
receiving unemployment benefits  
under the requirements of Section  
23-771, A.R.S. ?

CONCLUSION: Yes, generally. (See body of  
Opinion).

Section 23-771, A.R.S., contains the eligibility require-  
ments that unemployed individuals must meet before they are  
entitled to receive unemployment insurance benefits. Para-  
graph 3 of this Section reads:

"3. He is . . . available for work."

Nowhere in the statutory law are the words "available for work"  
amplified.

The case of Beaman vs. Safeway Stores, 78 Ariz. 195, 277  
P. 2d 1010 (1954), in commenting on availability for work  
says this:

"Generally, the courts test whether one is  
available for work by whether the claimant  
is able, willing and ready to accept suit-  
able work which he does not have good cause  
to refuse and is genuinely attached to the  
labor market".

The case of SchorNSTein vs. Board of Review, 171 Pa. Super.  
162, 90 A. 2d 255 (1952), was a situation involving an unemploy-  
ment compensation claimant who voluntarily enrolled and attend-  
ed a training course with the Underwood Corporation in order to  
qualify for a position with it. He attended classes five days  
each week from 9:00 a.m. to 5:00 p.m. He filed a claim for

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

benefits for the period of his training although admittedly he made no attempts to obtain employment. The Pennsylvania Superior Court held the claimant unavailable, saying:

"The test of availability requires claimant at all times to be ready, able, and willing to accept suitable employment, temporary or full time."

Further, the court said that "it cannot be said that he was actually and currently attached to the labor force."

In Cornell vs. Schroeder, 114 N.E.(2d) 595 (Hamilton Co.Ct.of App. 1952) a fifty-three year old claimant who had just recently entered the employment market enrolled in a business school. She had an understanding with the school that she would be permitted to investigate any potential employment available, and the school agreed to change her hours of schooling to coordinate with any employment obtainable. The evidence showed that during claimant's attendance at day school she constantly investigated potential employment. The administrative agency held that she had proven her availability under the statute. In commenting on the availability finding, the Court of Appeals said this:

"Claimant's enrollment in the business school inevitably affected her freedom of effort to find suitable employment, reflecting adversely on whether or not she was available for work under the statute, and this Court is critical of the finding of the referee that she was sufficiently available under the statute."

A later Ohio case, Cornell vs. Dalpiaz, 128 N.E.(2d)132, (Marion Co. Ct. of App. 1952) involved a claimant, while unable to find employment, enrolled in a G.I. refrigeration course. He attended five classes a week, either day - 8:00 a.m. to 1:00 p.m., or night - 6:00 p.m. to 11:00 p.m. The evidence showed that he had changed his schedules at least four times. Further, the claimant testified that when he was attending school he was actively seeking work on either a day or night shift. The court held that the claimant was available during the period in question.

The recent case of Cramer vs. Employment Security Commission of Arizona, No. 7367, Sup. Ct. Ariz., January 10, 1962, says:

"Availability is an eligibility requirement found in the unemployment compensation law of every state. Although it has never been and probably cannot be precisely defined, . . . it 'is said to be satisfied when an individual is willing, able, and ready to accept suitable work which he does not have good cause to refuse, that is, when he is genuinely attached to the labor market.' . . . There being no hard and fast rule as to when a claimant is actually 'available for work', such must be determined from and in light of the circumstances of each case.

. . . . .

". . . As of 1958 the laws of 27 states required applicants for unemployment compensation to be 'actively seeking work or making a reasonable effort to obtain work.' And this requirement of active search for work has been read into the availability requirement law by court decisions as well. . . . We think the actively seeking work requirement is inherent in the very meaning of 'available for work.'"

It is the opinion of this office that whether or not a claimant for unemployment compensation insurance who participates in full-time and/or part-time occupational training or retraining as a result of State Employment Service guidance is available for work is a question of fact to be resolved in each individual case. It is further the opinion of this office that if a claimant is not genuinely attached to the labor market by virtue of his participation in a training or retraining program as a result of State Employment Service guidance, said individual is not available for work as required by Paragraph 3, Section 23-771, A. R. S.

RICHARD J. DANIELS  
Assistant Attorney General

*Robert W. Pickrell*  
ROBERT W. PICKRELL  
The Attorney General

RJD:e  
62-10