

2. Claimant has been married for about 27 years, during which there was a major separation from her husband of duration of about 15 years. There was a reconciliation in the early 1990's, which was not successful. She has been permanently separated from him since relocating to another state over Thanksgiving weekend 1994.

3. The interested employer is part of the institutions of higher education in Washington, but there is no formal transfer policy from one college and university to another. Claimant quit her job without advance notice, to flee from her spouse following abuse which resulted in his arrest.

4. Over the years, claimant had become accustomed to a certain level of violent outburst and association with members of the drug and/or criminal sub-culture because of her husband's activities. She had previously had contact with law enforcement, but knew her husband could gain access to a locked residence if he wanted, without being caught. She knew her previous efforts at using the justice system to assist her were limited in their effectiveness. Despite these facts, the escalation of violent outbursts in the Fall of 1994 were unusual. Claimant has never been so afraid in her life. She felt paralyzed with fear.

5. During Fall 1984, claimant's husband came onto the college campus to harass her. He also made numerous telephone calls and left nuisance messages.

6. On the last evening of confrontation with her husband, at which her daughter and friends both female and male were included, claimant felt fearful regarding his verbal threats. Screaming, he said he was going to "get her", to "kill her", and tried to intimidate by reminding her she couldn't "be surrounded all the time" with supportive friends.

7. Claimant had been seeing a counselor recommended by her family doctor. She contacted her doctor that weekend, since the counselor was unavailable for the holiday. She also contacted her minister. Only after careful evaluation did claimant believe that her safety and freedom could only be assured if she removed herself from the state.

CONCLUSIONS OF LAW:

1. The provisions of RCW 50.20.050 and WAC 192-16 are attached hereto and by this reference incorporated herein. An individual is disqualified from receiving unemployment benefits for leaving work voluntarily without "good cause." RCW 50.20.050.

2. A claimant may establish good cause for voluntarily leaving work because of illness or disability if it is shown that:

(1) the claimant left work primarily because of such illness or disability; and

(2) the illness or disability necessitated the quit; and

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- (3) the claimant took reasonable measures prior to quitting to preserve employment such as requesting a leave of absence, or a transfer to more suitable work, unless it is shown that it would have been futile to do so. RCW 50.20.050(2)(b).

Competent medical evidence describing the illness or disability and whether or not it impacted the claimant's ability to continue in employment is necessary, when the adverse effects of an illness or disability are not readily apparent. In re Eickmever, Empl. Sec. Comm'r Dec. 2d 670 (1981). Claimant argues that the effect of domestic violence resulted in a disability, which necessitated that she quit her job.

3. This is a case of first impression before the undersigned. The classification of the impact of domestic abuse as a "disability" has not previously been considered. Absent a statutory or regulatory definition, the common meaning should be given the term "disability." Webster defines the term as the condition of being disabled, which is to deprive of right, qualification or capacity, to make incapable or ineffective, to deprive of physical, moral, or intellectual strength. *Webster's Seventh New Collegiate Dictionary, 1972*, p. 236. The evidence establishes that claimant was disabled due to the effects of long term domestic violence.

4. The next legal issue is whether the disability necessitated a quit. The source of the disability was claimant's husband. He was located in Washington, and was familiar with the work environment. There was no opportunity to transfer elsewhere in the state. Claimant did not immediately quit and flee. She took her final drastic action only after years of abuse, failed counseling and other attempts to find support and remedy through support groups, family, friends and law enforcement and the justice system. Good cause within RCW 50.20.050(2)(b) is established.

Now therefore it is ORDERED:

The Decision of the Employment Security Department under appeal is **SET ASIDE**. There is no evidence upon which to redetermine the claimant's eligibility under the availability statute, RCW 50.20.010(3) during the weeks at issue. The claimant is not subject to disqualification pursuant to RCW 50.20.050.

Dated and Mailed on August 16, 1996 at Yakima, Washington.



Johnette Sullivan
Administrative Law Judge
OFFICE OF ADMINISTRATIVE HEARINGS
32 N. Third St, Ste 320
Yakima, WA 98901

NOTICE OF FURTHER APPEAL RIGHTS

This Initial Order is final unless a Petition for Review is filed in person at a Job Service Center of the Employment Security Department, or postmarked and mailed to Agency Records Center, PO Box 9046, MS-6000, Olympia, Washington 98507-9046 on or before **September 16, 1996**. All argument in support of the Petition for Review must be attached to and submitted with the Petition for Review. The Petition for Review, including attachments, may not exceed five (5) pages. Any pages in excess of five (5) pages will not be considered and will be returned to the petitioner. The docket number from the Initial Order of the Office of Administrative Hearings must be included on the Petition for Review. A Petition for Review need not be filed on an official form, but such form may be obtained from a Job Service Center of the Employment Security Department.

JS:js

Attachment A

Mailed to the following:

Claimant-Appellant

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Staff Personnel Office
4045 Brooklyn Ave NE JA-10
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Employer

Columbia Legal Services
1006 5th AVE SW
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Claimant Representative

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