

## **801 Provision of the Act and the Regulations**

### **801.01 The Act**

Section 1(k) of the Act provides, in part, as follows:

"... a day of unemployment, with respect to any employee, means a calendar day on which he is...available for work..."

## **802 Meaning of "Available for Work"**

### **802.01 Available**

A claimant is available for work if he or she is willing and ready to work.

### **802.02 Willing to work**

A claimant is willing to work if he or she is willing to accept and perform for hire such work as is reasonably appropriate to his or her circumstances in view of factors such as:

- a. The current practices recognized by management and labor with respect to such work;
- b. The degree of risk involved to the claimant's health, safety, and morals;
- c. The claimant's physical fitness and prior training;
- d. The claimant's experience and prior earnings;
- e. The claimant's length of unemployment and prospects for obtaining work; and
- f. The distance of the work from the claimant's residence and most recent work.

### **802.03 Ready to work**

A claimant is ready to work if he or she:

- a. Is in a position to receive notice of work which he or she is willing to accept and perform, and
- b. Is prepared to be present with the customary equipment at the location of such work within the time usually allotted.

## **802.04 Work**

Work means services for hire.

## **803 Consideration of Availability**

### **803.01 Initial proof**

When a claimant has registered for unemployment benefits in accordance with the Railroad Retirement Board's (RRB) regulations, he or she will, absent any evidence to the contrary, initially be considered available for work. Evidence to the contrary includes any evidence of unavailability provided by the claimant's base year employer(s) pursuant to section 5(b) of the Railroad Unemployment Insurance Act or by his or her current employer, if different than the base year employer.

### **803.02 Information indicating unavailability**

If the office of the RRB which is adjudicating an individual's claims for benefits receives information indicating that the claimant may not be available for work, the claimant will be required to submit evidence of his or her availability for work, and no benefits will thereafter be paid with respect to any day in the period of the claimant's unemployment, unless sufficient evidence of the claimant's availability for work on such day is presented.

### **803.03 Reasonable efforts to obtain work**

#### **a. Requirement**

A claimant may be required at any time to show, as evidence of willingness to work, that he or she is making reasonable efforts to obtain work which he or she professes to be willing to accept and perform, unless he or she has good prospects of obtaining such work or his or her circumstances are such that any efforts to obtain work other than by making application for employment service pursuant to section 325.13 of the regulations would be fruitless to the claimant.

#### **b. Failure to comply with requirement**

When the office of the RRB which is adjudicating claims for benefits has information that the claimant has failed to comply with the requirements set forth in the preceding paragraph, no benefits are to be paid with respect to any days in the period of the claimant's unemployment unless sufficient evidence of the claimant's availability for work on such days is presented.

#### **c. What constitutes "reasonable efforts"**

A claimant is considered to be making reasonable efforts to obtain work when he or she takes such steps toward obtaining work as are appropriate to his or her

circumstances. In determining what steps are appropriate to a claimant's circumstances, consideration will be given to actions such as:

1. registering with a union hiring or placement facility;
2. applying for employment with former employers;
3. making application with employers, including individuals and companies not covered by the Act, who may reasonably be expected to have openings in suitable work;
4. responding to appropriate "want ads" for work which appears suitable;
5. actively prosecuting a claim for reinstatement in his or her former work; and
6. any other action reasonably directed toward obtaining work.

#### **803.04 Unreasonable restriction on work**

A claimant who places unreasonable restrictions on the work he or she is willing to accept and perform for hire is not willing to work.

- a. Unreasonable restriction is to be determined from a consideration of all factors considered in determining good cause and suitability of work.
- b. It is not necessary that a claimant be willing to accept all suitable work he or she does not have good cause to refuse. The claimant is allowed some freedom of choice. However, as the length of unemployment increases and prospects of securing work diminish, a claimant may be expected to increase the sphere of work he or she is willing to accept.
- c. A claimant who is willing to accept work only with a particular employer or in a particular occupation, job, or location is not placing unreasonable restriction on his or her willingness to accept and perform work if:
  1. the claimant is so employed at substantial work, or
  2. the claimant has good prospects of being so employed within one month.

Work may be considered substantial if the claimant averages three days' employment per registration period during the over-all period in which availability is in question, although the substantiality of work will in part depend upon comparison with the income and security of work which can be obtained from other job opportunities.

- d. A claimant who has been discharged or suspended and who is seeking reinstatement may be considered willing to work, even though he or she is

not willing to accept other work until final action has been taken on his or her request for reinstatement.

1. If an employee's claim for reinstatement is being actively prosecuted, the employee is to be considered willing to work. A union official's statement that the union is seeking the employee's reinstatement is usually sufficient evidence that a claim for reinstatement is being actively prosecuted.
2. If efforts to obtain the reinstatement of an employee are based, not on a claim but on factors such as leniency, consideration must be given to: (1) whether efforts toward reinstatement are being made currently and (2) whether final action is likely to take place within a reasonable time. In such a case, an employee may be considered available for work if his or her union is currently engaged in efforts to obtain reinstatement. If there are no current efforts, and a request for the employee's reinstatement is to be made later, the employee is to be considered willing to work only if it is reasonable to expect his or her employer to take action within a reasonable time, for example three months, or if the employee is making reasonable efforts to get other work.

## **804 Action to be taken in Various Types of Cases**

### **804.01 Introduction**

In the absence of other evidence regarding availability for work, a claimant's certifications on Form UI-3 are sufficient to establish his or her availability for work on the days for which he or she registers. When there is other evidence regarding availability for work, it should be given consideration in accordance with the instructions of this article. Experience has shown, in general, when such evidence requires investigation and when such evidence furnishes sufficient basis for a determination. In this instruction, consideration has been given to the action to be taken on various types of evidence. However, it has been and will be impossible to provide a specific instruction for the facts in every case because the determination often depends upon the facts and circumstances of the particular case.

### **804.02 Ability**

#### **a. General statement of inability**

1. A claimant who makes a general statement that he or she is unable to work will be given an opportunity to make an explanation revalidating the certification that he or she is able to work. (See AIM-7.)

2. If the claimant gives an explanation showing that his or her certification that he or she is able to work is acceptable, there will ordinarily be no further question of availability.
3. If the claimant, after having had an opportunity to make an explanation in accordance with AIM-7, fails to furnish information showing that the certification that he or she is able to work is acceptable, an investigation of ability (see AIM-7) and also of availability is to be made. If the claimant persists in the statement that he or she is not able to work, the claimant will not be considered available for work.

#### **b. Application for benefits based on disability**

1. A claimant who has made application for, or is receiving, benefits based on disability, such as a disability annuity under the Railroad Retirement Act, worker's compensation, or railroad relief association payments, will, unless a specific finding with respect to his or her ability to work has previously been made, be given an opportunity to apply for sickness benefits or to make an explanation revalidating the certification that he or she is able to work.
2. If the claimant's explanation is not sufficient for the purposes of revalidating his or her certification under AIM-7, an investigation of ability and also of availability is to be made.

#### **c. Period following inability to work**

If a claimant is found unable to work and a determination is made that his or her inability has ended, the claimant will be considered available for work from the day on which he or she became able to work until the end of the second registration period beginning after the date of determination that his or her inability has ended.

#### **804.03 Act of God, storm, blizzard**

A claimant who fails to take advantage of a job opportunity on a day claimed as a day of unemployment, because of a storm, blizzard, or other Act of God will be considered unavailable for work on all days on which he or she was so prevented from registering and on which he or she was, or would have been, prevented from taking advantage of any job opportunity, unless it is established that the storm, blizzard, or other Act of God would not have prevented the claimant from being ready to work.

#### **804.04 Eligibility of retired claimants**

A claimant who has retired voluntarily is presumed not to be eligible for unemployment benefits. District offices should promptly investigate to determine whether claimants have retired voluntarily. It is not necessary for the processing

office (OPNS-SUBD) to withhold the payment of benefits, as notice about days not to be paid will ordinarily be accomplished by district office coding on claims.

### **a. Voluntary retirement**

In determining whether a claimant has retired voluntarily, careful consideration must be given to any action on the part of the claimant tending to limit his or her access to the labor market. A claimant's application for an age and service annuity under the Railroad Retirement Act or for old-age benefits under the Social Security Act is considered as an indication of voluntary retirement. Similarly, a claimant's leaving work on or after attaining age 60 is considered as an indication of voluntary retirement.

1. Leaving work to get an annuity When information is received that a claimant left suitable work, in which he or she could have continued, for the purpose of getting an annuity, pension, or old-age benefits, the claimant is to be considered as having voluntarily retired.
2. Out of service pursuant to an agreement A claimant is to be regarded as having retired voluntarily if his or her not being in the active service of his or her employer is due to an agreement between the claimant's labor organization and the employer requiring retirement upon attaining a certain age. The presumption of ineligibility is applicable to all claimants in the classes of service covered by the agreement irrespective of whether they are members of the labor organization. The presumption applies in the case of claimants taken out of service pursuant to such an agreement. It also applies in the case of a claimant who is out of service at the time he or she attains retirement age and cannot be recalled because of the agreement.
3. Withdrawal from labor market Even though a claimant did not leave suitable work for the purpose of getting an annuity, pension or old-age benefits, or is not out of service due to an agreement between his or her labor organization and his employer, the claimant may retire voluntarily by withdrawing from the labor market.
4. Unilateral rule A claimant who was required by his or her employer in accordance with a unilateral rule (not an agreement) to leave employment at a certain age is not, on that account, to be regarded as having retired by withdrawing from the labor market.
5. Unemployed at time of application for annuity When a claimant applies for an annuity, pension or old-age benefits while unemployed (who did not for the purpose of applying, leave suitable work in which he or she could have continued), the application will be regarded as an indication of retirement. Such an application will not, however, be regarded as sufficient to show that the claimant has voluntarily retired.

## **b. Rebuttal of presumption**

The presumption that a claimant who voluntarily retired is ineligible for benefits may be rebutted. It is considered to have been rebutted if the claimant earns qualifying wages under the Railroad Unemployment Insurance Act after his or her voluntary retirement or a comparable amount of wages in non-railroad employment. It is also considered to have been rebutted if the character and extent of the claimant's efforts to get work are such as to demonstrate beyond question that he or she is doing what a reasonable person in similar circumstances would do to get substantial full-time employment.

### **804.05 "Bumping"**

A claimant who fails to "bump" or otherwise exercise seniority rights to displace another employee, is not thereby to be considered unavailable for work. Investigation of availability may be required in accordance with other instructions of this article. For instance, such investigation should be made when a claimant fails to exercise seniority rights to a job which appears suitable from the standpoint of location, rate of pay, and type of work. An employee who voluntarily accepts a furlough in case of a force reduction while junior employees continue to work should be considered not available for work unless it appears that the job he or she could have had was not suitable because of physical requirements, location, rate of pay, or other circumstances. In such a case an investigation should be undertaken to determine the suitability of the work.

### **804.06 Deceased claimants**

Death of a claimant does not require an investigation of availability for work.

### **804.07 Discharge, suspension or removal from service**

Discharge, suspension or removal from service does not require an investigation of availability for work, unless the reason for such action is given and requires an investigation in accordance with other instructions of this article. (The reason for a claimant's discharge may be such as to require investigation on some point other than availability; if disability was the reason for the discharge, for example, ability to work should be investigated. Similarly, a discharge for being absent without leave might require investigation to see whether the claimant had, in fact, left work voluntarily.)

### **804.08 Domestic or other personal circumstances**

Whenever information is received that a claimant failed to take advantage of a job opportunity because of domestic or personal circumstances, his or her availability for work is to be investigated. If the claimant is willing to work, readiness may be established:

- a. by showing that arrangements have been made or would be made to have someone else take over the responsibilities arising out of such circumstances if work were obtained; or
- b. by showing that he or she performed work in the past while affected by such circumstances; or
- c. by otherwise showing that such circumstances do not prevent him or her from being ready to work.

### **804.09 Draft status**

When information is received that a claimant has failed to take advantage of a job opportunity or has otherwise indicated that he no longer wishes to work because of his draft status, his availability for work will be investigated. He will be considered unavailable for work from the date with respect to which he was not ready and willing to work.

### **804.10 Employer requirements**

#### **a. Investigation of availability for work**

An investigation of availability for work will be made when information is received that a claimant has failed to take advantage of a job opportunity, has been suspended or discharged, or has voluntarily left work, because of an employer requirement such as the following:

1. Making of adequate provision for notification of work;
2. Undergoing a medical examination or securing a certificate of freedom from contagious disease;
3. Obtaining necessary tools and equipment;
4. Taking the steps necessary to become bonded or licensed.

#### **b. Determination of availability for work**

The claimant is considered unavailable for work from the date of his or her failure, discharge or leaving until the date on which he or she meets such requirement, unless it is established:

1. that it was unreasonable for the claimant to comply with the requirement or that there is other work for which no such requirement exists for which he or she is qualified and which is willing to perform; or
2. that the employer requirement was not a reasonable one. An employer requirement is to be considered reasonable if it does not require violation of

law and is provided for in an agreement between the employer and a bona fide labor organization, or is generally met by employees in the occupation in which it applies.

#### **804.11 Voluntary leaving of work and failure to take advantage of job opportunity**

A claimant who has voluntarily left work or failed to take advantage of a job opportunity is not necessarily unavailable for work but the reasons for the voluntary leaving or the failure should be considered in connection with other provisions of this article.

#### **804.12 Information on Form UI-1 (ES-1)**

If an entry on Form UI-1 (ES-1) indicates that the claimant may not be able to work, or if the claimant states he or she is unable to work, an investigation shall be conducted or determination made in accordance with instructions in AIM-7 and AIM-804.02.

#### **804.13 Intoxication**

When there is information that a claimant is intoxicated, he or she is to be considered unavailable for work on the days on which he or she was intoxicated. The claimant may later be considered available for work if he or she states that he or she could have performed some work on any part of such day.

#### **804.14 Jail, custody of government officials, parole**

A claimant who is confined in a penal institution or is in the custody of a Federal, State or local governmental unit or official is not to be considered available for work. A claimant is not considered confined or in custody if he or she is released on bail or placed on probation or parole. A claimant, however, released from custody under a program that permits short-term leave from custody and after which leave the claimant must return to custody, is not to be considered available for work with respect to those days on which the claimant is on furlough from confinement.

Examples:

- a. Claimant A is serving a prison term that permits periodic weekend furloughs. Claimant A is not available for work during his or her confinement or weekend furloughs.
- b. Claimant B is serving a prison sentence under terms permitting prisoners to report to their employer during the day, while requiring prisoners to return to jail each night. Claimant B is currently unemployed and therefore is confined 24 hours a day. The fact that the claimant would be released to work if he or she had a job does not make him or her available for work.

### **804.15 Jury duty**

A claimant who is on jury duty or is required to appear in court as a witness, is considered to be unavailable for work on each day on which he or she is required to be on jury duty or in court, unless it is established that the claimant is ready to work on such days.

### **804.16 Leave of absence**

When there is information that a claimant is on leave of absence, an investigation of availability for work is to be made. The claimant is considered available for work if it is established that he or she is willing to work and ready to work in accordance with the other instructions of this article. In determining willingness to work, consideration is to be given to the claimant's reasons for taking a leave of absence, prospects of getting other work while on leave, and efforts to obtain other work. A leave of absence taken because of personal circumstances or taken in order to perform activities not consistent with full-time work often indicates unwillingness to work. If the claimant took the leave of absence, and continues it, to protect seniority rights in order to look for other work or to engage in other work, or the work from which the claimant took leave of absence was, and continues to be, unsuitable, the leave of absence would not indicate unwillingness.

### **804.17 Locality of limited job opportunities**

A claimant who moves from a locality in which employment opportunities are relatively good to a locality in which employment opportunities are relatively poor or remains in such a locality of limited job opportunities is considered to be available for work, unless there is additional information showing:

- a. that work which the claimant is willing to accept does not usually exist and there is no prospect that it will exist, within the distance from his or her residence that he or she is willing to accept such work; or
- b. that the claimant is otherwise unduly or unreasonably restricting his or her willingness to work; or
- c. that the claimant may not be available for work in accordance with other instructions in this article.

### **804.18 Lodge or organization work, and electioneering or other political campaign work**

#### **a. Holding a position**

The fact that a claimant is holding a position in a lodge or other organization, electioneering or doing other political campaign work, requires no investigation of availability for work, unless there is additional information which indicates that the

position requires work that would interfere with the acceptance of suitable work. If there is such additional information, the claimant is to be considered available for work if he or she:

1. would be willing to give up the position, or
2. can arrange to have his or her work done by someone else, or
3. can change the days or hours of work if he or she obtains work; and
4. otherwise establishes that he or she is ready and willing to work.

#### **b. Attendance at meetings**

A claimant who is attending a lodge or other organization convention is to be considered unavailable for work on each day on which he or she is attending such convention, unless it is established that:

1. the claimant's responsibilities or obligations in connection with the convention would not interfere with the acceptance of other suitable work, or, if it would, that he or she is willing to leave the convention, can arrange to have his or her work done by someone else, or can change the days or hours of work if he or she obtains work; and
2. the claimant otherwise establishes that he or she is ready and willing to work.

#### **804.19 "Marking back" on extra-board and missing turns in pool service**

A claimant who is on an extra-board and "marks back" so as to cause his or her name to be placed in a lower position on the extra-list, will be considered unavailable for work from the date he or she marks back to the date with respect to which the circumstances which caused him or her to "mark back" have been removed and the claimant is ready to work and willing to work.

An employee in pool service is not available for work on any day the employee would have worked but for missing a turn. An employee is generally considered to be in pool service if he or she performs train and engine service as a regular member of a crew that works as a unit on a first in, first out basis.

#### **804.20 Marriage**

When a claimant voluntarily leaves his or her last work in order to marry, availability for work is to be investigated. The claimant is considered available for work if it is established, with respect to the days subsequent to the leaving, that he or she is ready and willing to work and if the apparent discrepancy between the claimant's unwillingness as indicated by the voluntary leaving and any statement of willingness to work is reconciled.

### **804.21 Military service**

A claimant who is in active military service is considered unavailable for work. If a claimant's address is preceded by "Camp", or indicates that he or she is stationed at a Military Reservation, an investigation is to be conducted to determine whether he or she is in active military service.

### **804.22 National Guard and Reserve service**

A claimant who is merely attending weekly military drills of the National Guard or Reserves is considered available for work unless there is other information to show that he or she may not be available for work in accordance with instructions in this article.

### **804.23 Notices of work**

#### **a. Failure to respond to notice of work**

A claimant's failure to respond to a notice or call for work from an employer, may require an investigation of availability. If the claimant refuses an assignment in his or her regular occupation with his or her employer for a specific day, the claimant should be considered not available for work on such day. Section 4(a-2)(ii) of the Act is not ordinarily applicable in such cases. A claimant is considered unavailable for work on each day with respect to which he or she is not in a position to receive notices of work from the employer from whom he or she could reasonably expect to receive a call or notice of work.

#### **b. Returned mail**

Return of a check or mail as undeliverable because of an improper or incorrect address furnished by a claimant will not, of itself, be considered as raising a question of availability for work.

### **804.24 Part-time work**

A claimant who is a part-time worker is considered available for work unless there is other information to show he or she may not be available for work in accordance with instructions in this article.

### **804.25 Pregnancy and childbirth**

#### **a. Before the birth of a child**

When there is information that a claimant for unemployment benefits is pregnant, an investigation should be made to determine her availability for work and to determine the expected date of normal delivery. She should not ordinarily be considered available for work after a date four weeks before the expected date of birth. The claimant should be fully advised concerning her rights to sickness

benefits based on pregnancy, miscarriage and childbirth and should be given Forms SI-1A and SI-1B, Application and Statement of Sickness.

**b. After the birth of a child**

Unemployment benefits should not be paid to a claimant after the birth of a child unless investigation shows that she is available for work or unless she has been employed since the child was born.

**804.26 Public office**

Whenever information is received that a claimant holds a public office, his or her availability for work is to be investigated. The claimant is considered unavailable for work on each day on which he or she is required to perform duties which require substantial time unless it is established:

- a. that the claimant can carry out the duties of his office at such times and on such days as to not prevent him or her from being ready to accept other suitable work, or
- b. that the claimant has performed work in the past while holding such office, or
- c. that the claimant can arrange to have his or her work done by someone else, or
- d. that the claimant would be willing to give up the office if he or she obtained work; and
- e. it is otherwise established that the claimant is ready and willing to work.

**804.27 Quarantine**

**a. Quarantine**

A claimant who is quarantined or whose residence is quarantined is to be considered unavailable for work from the date that the quarantine is established to the date the restriction is lifted, unless it is established that under the condition of the quarantine he or she is permitted to perform work.

**b. Infectious illness**

A claimant who is recovering from an infectious illness or who has remained at home on the advice of a physician or public health official is considered unavailable for work on each day on which he or she remains at home unless it is established that the claimant is ready and willing to work and is able to work.

### **c. Employer rule**

No investigation of availability for work need be made and a claimant is considered available for work if he or she is required to stay away from work because of an employer rule prohibiting employees from working while there is an infectious illness in their home.

#### **804.28 Religious or personal convictions**

A claimant who is not willing to work on the Sabbath Day of his or her faith, because of religious convictions, will not for that reason be considered unavailable for work on such day. In any other situation, unwillingness to work on a particular day because of religious or personal convictions would raise a question of availability and the case should be briefed to the RUIA, Internet and Support Section (RIS) in Policy and Systems.

#### **804.29 Restriction on area of employment**

A claimant is considered unavailable for work during the time he or she is willing to work only in an area where there is usually no work he or she is ready and willing to perform.

#### **804.30 School or training course**

##### **a. Technical school, trade school or vocational training program**

Enrollment in a technical or trade school or in a vocational training program is considered a reasonable effort to obtain work. A claimant who is attending or participating in such school or program is considered available for work if both of these conditions are met:

1. The claimant's current prospects for work are poor; and
2. The claimant's training can reasonably be expected to increase his or her prospects for work.

##### **b. High school or college: Presumption of unavailability**

A claimant who is attending regular day classes in a high school or college is presumed to be unavailable for work unless there is clear evidence, as indicated below, of availability. If such a claimant protests the determination that he or she is not available for work, detailed information should be obtained, through personal interview if at all possible, concerning:

1. The claimant's present circumstances, such as the hours of class attendance, and any special financial assistance or allowance he or she is receiving while in school.

2. The claimant's work history, particularly any previous work performed while attending school.
3. The claimant's efforts to obtain work.
4. The claimant's prospects for work.

#### **c. High school or college: Determination as to availability**

A student-claimant is to be considered available for work if both of these conditions are met:

1. There is clear and convincing evidence that the claimant is making reasonable efforts to get work or has good prospects of such work. In this connection, "work" means full-time work. A claimant should not be considered available for work on the basis of applications for part-time work such as students frequently perform.
2. It is clear that the claimant could perform full-time work while continuing in school or that his or her personal circumstances are clearly such that he or she would leave school in order to perform work. On this latter point, consideration may be given to the nature of the school work, the claimant's financial resources, and the amount of financial loss he or she would incur by leaving school.

#### **d. Employment on extra board**

A student who is on a rotating extra board should ordinarily be considered to be available for work. But if he or she "marks back" on the board, or misses calls for work because of school attendance, careful investigation must be made to ascertain whether the claimant is ready and willing to accept and perform regular full-time work.

#### **e. Voluntarily leaving work to attend school**

A claimant who voluntarily leaves work that he or she could have continued in order to attend school will be presumed not to be available for work. This presumption does not apply to a furloughed employee who begins attending school, because the employee does not have work to leave, although the employee's availability must still be evaluated in light of paragraph a, b, and c above. The presumption would apply, however, if the employee failed to respond to a recall in order to continue attending school.

### **804.31 Seasonal work**

A claimant who is customarily unemployed during certain seasons of the year is to be considered available for work unless there is other information to show that

he or she may not be available for work in accordance with instructions in this article.

### **804.32 Self-employed persons and farmers**

Whenever information is received that a claimant is substantially engaged in an activity or enterprise for earned income, his or her availability for work is to be investigated. (See .39 Salesperson.) The claimant's availability for work is not in question on days for which remuneration is payable or accrues because for this reason those days cannot be considered days of unemployment. The claimant will be considered unavailable for work on every day on which he or she is engaged in the employment or enterprise, which would otherwise be a day of unemployment, unless it is established that the claimant:

- a. could engage in the activity or enterprise at such times and on such days as would not interfere with his or her readiness to work.
- b. could arrange to have the work done by someone else, or
- c. would be willing to give up such activity or enterprise if he or she were offered work he or she is willing to perform.

In considering a claimant's willingness to work, knowledge of the amounts of his or her investment and income, and his or her work history while engaged in such activity and enterprise are material, since such knowledge will afford some insight into the claimant's reason for self-employment, i.e., whether for subsistence, as a stop-gap, or as a main source of income. The time spent in the enterprise (with due consideration given to seasons), and the arrangement the claimant may have made or would make for someone else to take care of the enterprise give indications of the claimant's readiness to work.

### **804.33 Strike or labor dispute**

A claimant, unemployed because of a strike or other labor dispute, will be considered available for work, unless there is additional information to show either:

- a. that the claimant is not available for work in accordance with other instructions of this article, or,
- b. that the claimant is not ready or willing, upon the termination of such strike or labor dispute, to return to the work at which he or she is not employed because of a strike or labor dispute.

### **804.35 Accumulated rest days**

Under the provisions of certain collective bargaining agreements, when it is not practical for an employee in a given position to take his or her rest days each

week, the rest days may be allowed to accumulate and taken in a block. A claimant will ordinarily be considered not available for work on such accumulated rest days. If in any case it appears that the claimant may be available for work on the accumulated rest days, the question whether remuneration is attributable to the rest days will be considered. In some cases, investigation has disclosed that provisions of the agreements are such that remuneration is attributable to the accumulated rest days.

Note: Compressed work schedules are becoming more common among railroad workers. These consist of an employee working a block of days in a row followed by the accumulated rest days. When adjudicating these claims for availability, the key issue to be determined is the reason a claimant is unemployed on a particular day.

1. If the reason is that the day is an “extra” rest day resulting from a compressed workweek or schedule, the day should be denied based on availability.
2. If the reason is furlough or lay off, the “extra” rest day should be allowed as a day of unemployment. (A claimant on furlough does not have rest days).

Any questionable case should be routed through channels to the RUIA Internet and Support section in Policy and Systems (P&S-RIS).

#### **804.36 Equivalent of full-time work**

A claimant who is continuously employed in work providing the equivalent of full-time employment is not to be considered available for work with respect to any rest day, holiday or other non-work day within a 14-day registration period. Examples of such cases follow. Any questionable case should be routed through channels to RIS.

- a. An employee regularly receives remuneration for 40 hours per week by working 10 hours on each of four days in the week. Consequently, the claimant has six rest days, instead of the usual four, in a 14-day registration period.
- b. An employee who is employed in a position with a compressed work schedule during only part of a registration period is to be considered unavailable for work on extra rest days resulting from the compressed work schedule. An "extra" rest day is a day on which the employee would have worked under a conventional schedule of five consecutive 8-hour workdays.

For example, the claim of an employee who is recalled from furlough on the eighth day of a registration period to a job requiring four 10-hour workdays per week is coded as follows:

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- c. An employee changes from one regular assignment or shift to another which has different rest days, with the result that in one 14-day registration period he or she has five rest days.
- d. An extra board employee works under an agreement providing that the daily rate of compensation is the weekly rate divided by the number of working days in the week. In a week containing a holiday, the daily rate is one-fourth the weekly rate. On a claim the employee shows employment on all days in the registration period except a holiday and four rest days. The claimed days are to be denied because the claimant is being paid the same amount as if he or she had worked full-time.

### **804.37 Extra-Board**

A claimant who is on a rotating extra board will ordinarily be considered available for work. The amount of work a claimant may be likely to get by being on a seniority extra board or seniority list is to be considered along with other factors in determining whether the claimant is available for work. A claimant who chooses to work on an extra board in preference to holding a regular assignment will not on that account alone be considered unavailable for work. However, if there is an indication that the claimant did not have good prospects of getting full-time work by choosing the extra board, availability for work is to be investigated. If the investigation discloses that the claimant did not have good reason to believe that he or she would get the equivalent of full-time work, the claimant will be considered not ready and willing to perform full-time work and consequently not available for work on non-work days.

### **804.38 Union membership requirements**

If information is received indicating that a claimant may have been discharged for failure to meet union membership requirements, an investigation is to be made to determine whether he or she is available for work. If it is found that the claimant has been discharged for failure to meet union membership requirements, he or she will be considered unavailable for work until demonstrating a willingness to work despite his or her failure to meet union membership requirements.

### **804.39 Salesperson**

A claimant who is spending substantially full time as a salesperson on a commission basis receives remuneration attributable to the days on which sales are made, and for other days is generally not available for work. If such a

claimant contends that he or she is willing to discontinue the selling job to accept other employment, he or she may be available on days on which no sales are made. In such cases the circumstances surrounding the termination of the claimant's last employment, his or her prospects of getting other work and the amount earned from sales should be taken into account in arriving at the determination. A salesperson who is getting substantial earnings will generally not be likely to abandon the endeavor in favor of accepting other full-time work, and hence, is not available.

#### **804.40 Failure to work in anticipation of maximum mileage**

An employee in train and engine service who voluntarily lays off work on any day to avoid reaching maximum mileage, hours or earnings permitted under a labor-management agreement providing for work restrictions is not to be considered available for work with respect to such day.

#### **804.41 Foreign Residency**

Unemployment benefits may be paid to a person residing outside of the United States if he or she is available for work and otherwise eligible. While a claimant may establish a presumption of availability by registering for benefits, the RRB's inability to verify availability is grounds for terminating benefits. The Bureau of Field Service (BFS) is to consider the circumstances that resulted in foreign residency, whether the claimant has any required work permit, prohibitions or limitations on the employment of immigrants, work seeking efforts as monitored by questionnaire or other means and any other material evidence in determining availability. (Reference L-95-13)

### **805 Determinations as to Availability**

#### **805.01 Determinations by field offices**

District offices are authorized to make determinations on availability. If it appears to the district office that benefits have already been paid for one or more days included in a period of unavailability that is identifiable, BFS is to be notified. In such case, BFS will determine whether benefits already paid are erroneous. (Such a case should occur infrequently. Example: claimant marked off the extra board for one or more days but still claimed the days. The claimant's certification that he or she was available for work on such days would presumably have been false.)

#### **805.02 Determination of unavailability for indefinite period**

When a claimant is held unavailable for work for an indefinite period with no identifiable beginning date, no further unemployment benefits are to be paid without evidence of availability. (Benefits already paid should not ordinarily be disturbed.) Thus, a claim received in the field office on or after the date of an

adverse determination will ordinarily be denied even though some or all of the days are on or before the date of the determination. The determination will be considered applicable with respect to each day after the date of determination until the claimant obtains substantial employment or there is other information showing that he or she became available for work. If evidence is presented to the effect that the claimant became available for work after the date of determination, such evidence will be considered and a determination will be made concerning the claimant's availability for work on the days with respect to which such evidence is presented. During or after any period of substantial employment, the claimant is to be considered available for work, in the absence of any evidence to the contrary, on the basis of the certifications on his or her claim forms.

#### **a. Gap in registration**

If a claimant who has been held not available for work stops registering and later begins to register again, it may be considered that he or she has become available for work if:

1. There is evidence that the claimant worked during the gap in registration, or,
2. The first day claimed is 60 or more days after the last day previously claimed.

#### **805.03 Reconsideration of field office determination**

When BFS receives information which appears to furnish grounds for a reconsideration of a field office determination, BFS will make a re-determination if appropriate.

#### **805.04 Review of field office determination**

If, in the opinion of BFS, information received raises a question whether a field office determination was correct when made, BFS should request the field office file for the claimant and review the evidence. In the event that BFS finds that the field office determination was correct when made, the field office file will be returned to the field office with a memorandum affirming the determination or with information needed for reconsideration in accordance with subsection .03 of this section. In the event BFS finds that the field office determination was not correct when made, BFS will make a re-determination, and, when returning the field office file, furnish the field office an explanation of the action taken and request the field office to inform the claimant.

#### **806 Notice**

Notice of determination that a claimant is not available will be sent in each case in which benefits are denied on the basis of such determination and in each case

where a period of unavailability extends beyond the latest day claimed as a day of unemployment.

## Appendices

### Appendix A - Expression Of Policy On Availability For Work

(Body of Letter from RRB's General Counsel to General Chairman of a Labor Organization)

According to your letter, Mr. \_\_\_\_\_ stated that the Railroad Retirement Board's (RRB) district manager there had issued circular letters to all unemployed railroad men and women, advising them that they would lose benefits unless they appeared at his office and showed that they had made an honest effort to find "any kind of work."

Our district manager at \_\_\_\_\_ advises us that he has not issued any circular of the type described in your letter. It would appear that Mr. \_\_\_\_\_ was referring to certain letters which have been sent out to individuals whose claims for unemployment insurance benefits have been denied. These letters contain spaces for the insertion of the reasons for denial. A copy of a typical letter of this sort is enclosed for your information; this was used in a case in which it had been found that the claimant was not "available for work", as required by the Railroad Unemployment Insurance Act.

You will note from the enclosed letter that evidence of effort to find work is required only if the claimant does not have good prospects of getting work soon. Such evidence is not required if, for example, the claimant is on an extra board. In such cases, the claimant would be regarded as satisfying the "availability" requirement of the Act. Under the RRB's adjudication policy, even a claimant who does not have good prospects of being called back to work and is not on an extra board is not required to look for "any kind of work." All that is required of him is that he make reasonable efforts to obtain work. What constitutes "reasonable efforts" is determined on the basis of all the facts of the particular case. No claimant would, of course, be expected to seek, or to accept, work which would not be suitable for him. The Act itself prescribes certain standards regarding the suitability of work, and the RRB's policies in this connection are intended to effectuate the purposes of the Act.

Policies similar to those discussed above in connection with the "availability" requirement are also followed by the Board in applying the provisions of section 4(a-2)(ii) of the Act, regarding a thirty-day disqualification for failure to accept suitable work, or to comply with instructions from the Board to apply for suitable work or to report to an employment office.

## **Appendix B - Availability For Work**

### **Introduction**

This appendix provides an overview of the basic concepts of the availability for work requirement.

#### Basic Meaning of "Available for Work"

The meaning of the phrase "available for work" is spelled out in the Board's regulations:

- A claimant for unemployment benefits is available for work if he or she is willing and ready to work.
- A claimant is "willing to work" if he or she is willing to perform work reasonably appropriate to his or her circumstances.
- A claimant is "ready to work" if he or she is in a position to be notified of work and is prepared to go to work when the call comes.

### **Initial Proof of Availability**

The great majority of claimants for unemployment benefits are ready and willing to work. Recognizing this, the regulations provide that a claimant who has complied with the registration requirements is initially to be considered available for work, provided there is no evidence to the contrary.

Specific evidence as to a claimant's availability for work is required when the district office receives information indicating that he or she may not be available. Such information may be provided, for example, by the claimant on the claim form or by the employer in the prepayment verification process.

### **Readiness to Work**

Many of the claimants who are found to be not available are not "ready to work." Some personal circumstance keeps them out of the full-time labor force. The claimant attending school full-time is the prime example of an individual who is not ready to work and hence not available for work. Persons who have to care for small children often are not "ready to work."

It is important for field office personnel to be on the alert for any personal circumstances which indicate a claimant's lack of readiness to work.

### **Willingness to Work**

Whether a claimant is "willing to work" is, of course, an intangible matter, much more difficult to determine than whether he or she is ready to work. It is

reasonable to assume that a claimant is willing to work unless there is a clear signal that he or she is not. Refusal of an offer of suitable work without good cause may be such a sign. Failure to make reasonable efforts to obtain work is a more frequent and more reliable indication of unwillingness to work. The RRB's regulations provide that a claimant may be required to show, as evidence of willingness to work, that he or she is making reasonable efforts to obtain work unless he or she has good prospects of obtaining work or the circumstances are such that any efforts would be fruitless. If the claimant fails to make such a showing benefits are not thereafter to be paid unless evidence of availability for work is presented.

But it must be said, with emphasis, that a finding of unavailability based on the claimant's lack of efforts to obtain work is to be made after the claimant has been fully advised and has had an opportunity to establish availability for work. An exception is made, however, in the case of an employee who has voluntarily retired, and thus may be determined immediately to be unavailable for work.

### **Reasonable Efforts to Obtain Work**

Information about a claimant's efforts to obtain work is normally obtained in a claimant interview. Most of the time the interview discloses the claimant is making reasonable efforts or has good prospects of work. If not, it becomes the interviewer's responsibility (1) to make sure that the claimant understands the "reasonable efforts to get work" requirement and (2) to help him or her find work. The interviewer should discuss with the claimant in detail

- The types of jobs he or she might obtain.
- Specific applications for work which the claimant has made.
- Additional places where the claimant might look for work.

The interviewer should try to reach an understanding with the claimant as to what the latter is going to do to try to find work. The interviewer should explain that if claimant's efforts are not successful he or she will be interviewed about the matter again within 30 to 60 days.

Discussions in a subsequent interview with a claimant about his or her job-seeking efforts should center on

- Results of applications for work.
- Whether he or she followed through on suggestions made at the previous interview and, if not, why.
- Mapping out a continuing campaign to get a job.

If claimant interviews are skillfully conducted, a finding of failure to make reasonable efforts to get work will occur only when it is clear that the claimant really is not willing to work.

### **Suitable Work**

The above presupposes a reasonable, thoughtful approach to what constitutes suitable work. Some jobs - generally those with sub-standard wages or working conditions - are not suitable for anyone. Others may or may not be suitable for the individual claimant. In making such individual determinations the key considerations include:

- The claimant's experience, training and education. A claimant is not expected to apply for work for which he or she obviously is not qualified.
- Claimant's physical fitness, age and other personal factors. Lack of physical fitness for a job makes the work unsuitable. Age may be a limiting factor - realistically, older claimants do not generally have as wide a choice of job opportunities as younger ones.

### **Length of unemployment and work prospects**

Work which the claimant could perform but which differs substantially from the types of work he or she has performed, or requires substantially less skill, may or may not be suitable. Good judgment is essential in this area. The length of unemployment is an important factor. The area of suitable jobs broadens as the individual's unemployment lengthens and his or her prospects lessen for getting a job in his or her customary occupation.

### **Appendix C - Guidelines For Requiring Work-Seeking Efforts Of Claimants**

The purpose of this appendix is to summarize guidelines to be considered in deciding which claimants are required to make reasonable work-seeking efforts and in making related availability determinations.

Because of the limited resources available, it is important that the time allocated for placement activities be spent where it will do the most good. In general terms, district offices should differentiate between three groups of claimants:

1. claimants who are not required to make work-seeking efforts in order to be considered available,
2. claimants for whom active placement assistance would not likely be useful, and
3. claimants who are required to make reasonable work-seeking efforts and who we can help find work through active placement assistance. District offices should concentrate their placement efforts on the third group.

## **Regulations**

The RRB's regulations regarding availability for work are contained in Part 327.

Section 327.15 Reasonable efforts to obtain work.

- (a) Requirement. A claimant may be required at any time to show, as evidence of willingness to work that he is making reasonable efforts to obtain work which he professes to be willing to accept and perform, unless he has good prospects of obtaining such work or his circumstances are such that any efforts to obtain work other than by making application for employment service by filing Form UI-1(ES-1) . . . would be fruitless to the claimant.
- (b) What constitutes reasonable efforts. A claimant shall be considered as making reasonable efforts to obtain work when he takes such steps toward obtaining work as are appropriate to his circumstances.

## **What Are Good Prospects?**

Generally a claimant is considered to have "good prospects of obtaining work" if he or she expects to be recalled within a reasonable time. The claimant may be unemployed due to adverse weather conditions (seasonal unemployment) or due to some other factor affecting his or her job. The underlying principle in determining "good prospects" is whether the period of unemployment can be clearly attributed to a temporary situation.

There is no specific time period that may be considered reasonable. Seasonal layoffs in northern areas are often longer than those in more moderate climates, but still may be reasonable for the area. In fact, the duration of a reasonable seasonal layoff in a particular territory may differ from one year to the next because of a very harsh or mild winter. Likewise, there is no absolute definition of a reasonable time of layoffs caused by non-weather factors. It is the responsibility of the district manager to maintain contact with local railroad officials to be aware of prevailing conditions in the industry. The district office staff should then use this information to help determine if a claimant's expectations are reasonable and based on valid assumption about probable recall.

Note that AIM 804.31 specifically states:

A claimant who is customarily unemployed during certain seasons of the year is to be considered available for work unless there is other information to show that he or she may not be available for work in accordance with instructions in this article.

Thus, a seasonally unemployed claimant with good prospects for recall is not required to give evidence of work-seeking efforts in order to prove availability. Of course, such claimants may be encouraged to seek interim employment while laid off, and they may be referred to appropriate job orders. For example, a seasonally unemployed track laborer could be referred to a short-term snow clearing job, and could be disqualified for 30 days for failure to report to or apply for the job without good cause.

The case record of each claimant whose availability is based on "good prospects" should be flagged to indicate the expected date of recall. If more than one claim is received covering days after a claimant's expected recall date, the claimant's availability should be reconsidered. Such claimants should be re-interviewed if necessary to determine if they are available for work.

### **When are Work-Seeking Efforts Fruitless?**

Based on the knowledge of local labor markets and considering the rate of unemployment, district managers have the authority to determine when work-seeking efforts can generally be considered fruitless for certain classes of claimants in a particular area. District managers may make such a decision on a group basis and apply it to an entire occupational group and/or to a specific geographic territory, as appropriate. For example, in a depressed area with high unemployment, the district manager may determine that no work-seeking efforts other than registering with a state employment service are required of unskilled or semi-skilled claimants. In such cases, it is mandatory that Form UI-35a, Field Office Record of Claimant Interview, be so documented for each affected claimant. It is not intended that district offices should abandon job placement efforts in economically depressed areas. Rather, emphasis should be placed on developing job orders and on providing claimants with specific work-seeking advice whenever possible.

On an individual basis, work-seeking efforts may be considered fruitless in the case of a furloughed claimant without good prospects who is approaching retirement age, and whose work experience is primarily in occupations unique to the to the railroad industry. There are other claimants whose work experience may be limited to railroad occupations, but who are expected to remain in the labor market for some time. Such claimants without transferable skills may be informed that enrollment in a technical or trade school or a vocational training program can be considered to be a reasonable effort to obtain work (See AIM 804.30).

### **What Are Reasonable Efforts?**

There is no single explanation of what constitutes reasonable efforts, since the circumstances of the individual claimant must be taken into account. What is reasonable for one claimant may not be for another, and it may be necessary to redefine reasonable efforts for a particular claimant as the length of his or her

unemployment increases. Claimants who have been unable to find the type of job they want after several months may be encouraged to widen the scope of what they consider acceptable employment, and to increase their job search efforts.

District offices should not establish arbitrary work-seeking effort quotas, such as requiring all claimants without good prospects to file two or three job applications per week. Such quotas are not productive and do not accurately indicate whether a claimant is truly making reasonable efforts to find work. There may be cases, however, where the district office has reason to believe that a particular claimant is not making reasonable efforts. In such a case, an individual claimant may be required to make a specific number of efforts, and the district office may require the claimant to furnish proof of such efforts at regular intervals.

When counseling a claimant about work-seeking efforts, it is important for the Board representative to consider the quality of efforts the claimant has made or will make, not just the quantity. A claimant's efforts should reflect inquiries for jobs that he or she would be qualified and willing to perform. Here are issues that may be relevant in judging the character and extent of the claimant's work-seeking efforts.

Character:

1. Are the claimant's expectations regarding wages, hours, location and duties realistic in view of the local labor market?
2. Do the jobs for which the claimant applies match his or her training, experience and qualifications?
3. Does the claimant apply for "any work" or target inquiries and applications for specific jobs or job categories?
4. Do the job contacts consist only of telephone inquiries or do they include personal visits?
5. Were the telephone inquiries preceded or followed by a resume?
6. Does the scope of inquiries expand to additional employers or is it confined to repeated contacts with the same employers?
7. Does the claimant request to leave an application on file with the prospective employer?
8. Does the claimant prepare for contact with the company by learning about it?

9. Does the claimant request an interview with a person who has the authority to hire or limit contacts to acquaintances without authority to hire?
10. Does the claimant ask or determine the reasons why he or she is not hired or permitted to submit an application, and take steps to correct the deficiencies where appropriate?
11. Does the claimant organize and record his or her job search?
12. Does the timing of the work-seeking efforts indicate they were made only to satisfy UI eligibility requirements?

Extent:

1. What is the number of job contacts?
2. Does the claimant show persistence in making contacts?
3. What is the geographic range of the contacts?
4. How large is the scope of job types considered acceptable?
5. How broad is the range of job and referral sources utilized?

**Who Should be Given Work-Seeking Advice?**

All claimants without good prospects of obtaining work, including those indefinitely furloughed, those who voluntarily quit, and those who are discharged and are not actively pursuing a claim for reinstatement, should be given specific and detailed work-seeking advice, unless it has been determined that work-seeking efforts would be fruitless. The work-seeking advice given a claimant is to be fully documented on Form UI-35a, Field Office Record of Claimant Interview.

The individual conducting the interview should assist the claimant in identifying his or her job skills and prospective employers. The interviewer should recommend specific actions such as:

1. Registering with a union hiring facility;
2. Applying for employment with former employers;
3. Filing job applications with non-railroad employers who may reasonably be expected to have suitable openings;
4. With the assistance of a RRB representative, checking the office's file of open job orders and the railroad job vacancies list;

5. Responding to suitable job advertisements in local papers;
6. Registering with a state employment service office and regularly reviewing their vacancy files;
7. Attending job search or career change workshops or clinics sponsored by community organizations;
8. Any other action reasonably directed toward obtaining work.

## **Appendix D - Availability Of Employees Who Take Separation Allowances**

### **General**

The employee who has given up an employment relationship in order to receive a substantial cash payment may drop out of the labor market. This is particularly true in the case of a person approaching retirement age, or a married person who is not the sole support of the family. Accordingly, the availability of employees who take separation allowances should be checked with great care at the outset if they claim days for which the disqualification for separation allowance does not prevent payment. Perfunctory inquiries by the interviewer as to the claimant's work-seeking efforts would be far from adequate. The claimant should not be held to be available unless the evidence clearly supports such a finding.

### **When availability should be investigated**

In cases in which the disqualification for separation allowance has elapsed and thus does not prevent payment of benefits, the claimant's availability should be looked into. When the evidence indicates the claimant has not left the labor market, the claimant should be allowed a reasonable length of time in which to find other work. Such evidence would be substantial employment since accepting a separation allowance. Investigation should be made promptly if there is a question.

The claimant's first claim for unemployment benefits after the end of the disqualification period calls for close scrutiny of availability, and, if necessary, an investigation to develop information sufficient for a determination. Evidence of a substantial amount of work in the disqualification period, considered with other circumstances of the case, may, of course, indicate that the claimant is still in the labor market.

### **Circumstances of claimant's election**

The circumstances under which a claimant resigned to take a separation allowance may give a clue to his or her intention with respect to continuing in the job market, or suggest what aspects of availability should be explored. If necessary, officials of management and labor should be contacted for

information as to the options that were available at the time the claimant elected separation, and for information as to claimant's long-term prospects with the employer had he or she not resigned. A careful distinction should be made between the type of case where the claimant who took a separation allowance did not give up a job or a guarantee of employment, and the type of case where the claimant actually gave up guaranteed employment of several years' expected duration. The following types of information and issues may be relevant to the availability determination.

**Information from the claimant:**

- how he or she learned about the separation offer
- what party initiated the offer
- what options the carrier offered
- the claimant's understanding of his or her prospects for continued employment or wage guarantee
- the claimant's understanding of how the separation program was being administered
- how much time the claimant had to investigate alternatives/options and what actions he or she took to do so
- the names and titles of carrier and labor officials the claimant contacted about his or her prospects and options
- the claimant's personal circumstances at the time the offer was made
- the claimant's understanding of the area labor market and his or her chances for other employment at the time the offer was made

**Information from the carrier:**

- the separation offer and the claimant's prospects
- information made available to the claimant concerning continued employment and workforce reductions
- changes in job duties or assignments affecting the claimant
- whether relocation or reclassification were alternatives

**Circumstances of claimant's new situation**

Information regarding the claimant's personal circumstances and his or her prospects for finding suitable work in the new situation created by the resignation

and receipt of a cash settlement should be developed and documented unless it is already a part of the record:

- the claimant's age, number of service months, number of dependents, health (as it may affect prospects for obtaining and performing full-time, meaningful employment);
- the claimant's education, training, experience, and customary rate of pay;
- the size of the town in which the claimant resides;
- the job opportunities there in work that is suitable;
- the claimant's work-seeking activities since resignation and whether they are consistent with the claimant's qualifications, and the claimant's statements as to the work he or she is willing to accept and perform;
- any claimant actions limiting access to the labor market.

### **Voluntary retirement**

If the claimant who resigned to take a separation allowance is near retirement age, the question regarding voluntary retirement should be resolved in accordance with the detailed instructions given in AIM-804.04. Careful consideration should be given to the evidence developed regarding the circumstances under which the claimant took the separation allowance, and the facts of the claimant's new situation. If the claimant could have remained in the same job, in the same location with prospects for future employment not substantially diminished, or if circumstances are otherwise such that, by resigning to take the separation allowance the claimant effectively left the job market, the claimant should, at the outset be considered to have voluntarily retired and thus presumed not eligible for benefits. Some of the factors to be considered in cases where there is a question of voluntary retirement are discussed in the following excerpt from a decision of the RRB in a case where the appellant resigned after almost 40 years of employer service to accept a severance allowance. It should be especially noted that superficial efforts on the part of a claimant to find work will not establish eligibility--the efforts must be such that they leave no doubt regarding the genuineness of his or her efforts and of his or her desire to find and perform suitable work.

"Appellant argues that he did not retire but merely resigned voluntarily. All of the circumstances, however, point to the conclusion that his resignation was in effect a retirement. He became 64 years of age ... and states that he had always intended to quit work at age 65. The offer of a large cash payment for his resignation by the Railroad obviously made an earlier retirement more attractive to him. And in view of his age, his limited education, his specialized experience as a railroad engineer and fireman with practically no other experience, and his

residing in a rural area with limited work opportunities even for young men, the only realistic conclusion is that by accepting the Railroad's offer he took himself out of the job market and in effect retired. The efforts made by him to obtain employment are obviously not of a character to rebut the presumption of his retirement or to establish his availability for work; they are of a kind more indicative of a person seeking only to establish his eligibility for unemployment benefits."

