

1401 Provisions of the Act

1401.01 Section 4(a-2)

of the Act provides, in part, that:

"There shall not be considered as a day of unemployment, with respect to any employee...(ii) any of the thirty days beginning with the day with respect to which the Board finds that he failed, without good cause, to accept suitable work available on such day and offered to him, or to comply with instructions from the Board requiring him to apply for suitable work or to report, in person or by mail as the Board may require, to an employment office;..."

1401.02 Section 4(c)

of the Act provides that:

"No work shall be deemed suitable for the purposes of section 4(a-2)(ii) of this Act, and benefits shall not be denied under this Act to any otherwise qualified employee for refusing to accept work if --

- "(i) the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- "(ii) the remuneration, hours, or other conditions of work offered are substantially less favorable to the employee than those prevailing for similar work in the locality, or the rate of remuneration is less than the union rate, if any, for similar work in the locality;
- "(iii) as a condition of being employed he would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;
- "(iv) acceptance of the work would require him to engage in activities in violation of law or which, by reason of their being in violation of reasonable requirements of the constitution, by-laws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization; or
- "(v) acceptance of the work would subject him to lose of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act, and any other employer."

1401.03 Section 4(d) of the Act

provides that:

"In determining, within the limitations of section 4(c) of this Act, whether or not any work is suitable for an employee for the purposes of section 4(a-2)(ii) of this Act, the Board shall consider, in addition to such other factors as it deems relevant, (i) the current practices recognized by management and labor with respect to such work; (ii) the degree of risk involved to such employee's health, safety, and morals; (iii) his physical fitness and prior training; (iv) his experience and prior earnings; (v) his length of unemployment and prospects for securing work in his customary occupation; and (vi) the distance of the available work from his residence and from his most recent work."

1402 Analysis of Section 4(a-2)(ii)

1402.01 Disqualification applies even if benefits not claimed

The disqualification provided in section 4(a-2)(ii) of the Act may be applicable even though an employee does not claim benefits on the date or previous to the date of a failure to accept or apply for work or failure to report to an employment office.

1402.02 Employment office

An employment office is, as provided in section

325.11 of the regulations of the Railroad Retirement Board (RRB), any office or other facility selected by an unemployment claims agent for the registration of unemployed employees, or any employment office maintained by a State or by the Federal government.

1402.03 Failure to accept an offer of work

a. Conditions

The disqualification provided for failure to accept an offer of work applies only if it is established that all the following conditions exist:

- 1 An offer of suitable work was made to the claimant, by a person authorized to hire persons for the work offered, and in such a manner that it was understood or should have been understood that an offer was made.
- 2 The offer was of such a nature that it could have resulted in employment if the claimant accepted and if he met the conditions of employment laid down by the employer.
- 3 The claimant failed, without good cause, to accept the work offered or failed to take whatever steps were reasonably required in order to obtain the work. Failure to exercise a right to displace an occupant of a position is not a failure to accept an offer of work (L-39-568).

b. Date

The disqualification dates from the first day on which the claimant could have worked had he accepted the offer. It shall be considered in the absence of evidence of the specific date on which the claimant could have worked that such date is the date on which he stated he would not accept the work, or the date on which he failed to take whatever steps were reasonably required to obtain the work, whichever is earlier.

1402.04 Failure to comply with instructions from the RRB

a. Conditions

Except in the circumstances described in .05 (Conditional finding of failure to report), the disqualification provided for failure to comply with instructions from the Board requiring a claimant (a) to apply for suitable work or (b) to report to an employment office applies only if it is established that all the following conditions exist:

- 1 An instruction was brought to the claimant's attention. If a claimant states that he did not receive an instruction which was mailed to him and not returned undeliverable, the determination whether an instruction shall be considered to have been brought to the claimant's attention shall be made as follows:
 - (a) If there is no information of a previous instance in which the claimant stated that he failed to receive a similar instruction, it shall be considered, in the absence of affirmative evidence to the contrary, that an instruction was not brought to his attention.
 - (b) If there is information of a previous instance in which the claimant stated he failed to receive a similar instruction, it shall be considered, in the absence of evidence to the contrary, that the instruction was brought to his attention three business days after mailing, Affirmative evidence to the contrary may consist of: (1) evidence of carelessness in the handling of the claimant's mail by persons other than the claimant, or (2) the demonstrated interest of the claimant in job opportunities.
- 2 Such instruction was given by the RRB that required the claimant to apply for suitable work or to report to an employment office in person or by mail.
 - (a) It is not necessary that the work to be applied for was available or that the employment office had any work to offer.
 - (b) An instruction to "apply if interested", to "report if interested", "it is suggested that you apply", or other similarly qualified instruction cannot be considered to be an instruction to apply or to report to an employment office.

- (c) An instruction or request that the claimant notify the RRB whether he will or did apply to an employer or report to an employment office cannot be considered as an instruction to report to an employment office. However, if a claimant does not notify the RRB after being instructed to do so, a conditional finding may be made that he did fail without good cause to apply for work or report to an employment office. (Section 1402.05.)
- (d) The work for which he was instructed to apply must have been suitable. However, it is not necessary that the instruction to report to an employment office contemplate a referral to suitable work. But if referral to work was contemplated and the claimant knows of the work and what he knew about the job was enough to show it was unsuitable, he had good cause for failing to report.
- (e) Form ES-21, the referral prescribed for referring individuals to the State Employment Service, contains the following provisions:

This is notice that you are to report in person to the State Employment Service (SES) office shown above and apply for work to which you may be referred by that office. Give this notice and the enclosed postage paid envelope to the SES representative when you report. After having the SES representative complete item 1 below, please sign and date the form in item 3 and return this page to us at the address shown above in the enclosed postage due envelope. The SES representative should complete the second page of this notice and return it to us in the postage paid envelope.

If you fail to report to the SES office or to comply with the office's instructions, you may be disqualified from receiving unemployment benefits for a period of 30 days. If you do not report to the SES office, complete items 2 and 3 and return this notice to us no later than the date you are to report.

In issuing such a referral notice, the RRB incorporates in its instructions such directions as may be given to the individual by the SES. Accordingly, the disqualification provided for in section 4(a-2) (ii) would be applicable in the case of an individual who receives such a referral notice, who reports to the SES, but who fails, without good cause, to apply for suitable work as directed by the SES, or who fails, without good cause, to report back to the employment office as instructed by the SES.

3. The claimant failed, without good cause, to comply with the instructions in the manner specified in the instructions or failed to take whatever steps were reasonably required in order to obtain the work. The claimant's statement

that he will apply is not evidence that he applied, but his statement that he did apply is sufficient evidence in the absence of evidence to the contrary.

b. Date

The disqualification dates from the day the claimant was required to apply or report as provided in the instructions. The following table shows the beginning date of the disqualification with respect to various instructions:

Disqualification

<u>Instructions state</u>	<u>dates from</u>
1. One specified date	1. The specified date
2. "between ____ and _____," or "not later than _____".	2. The last date given
3. "immediately"	3. First business day after instruction is received
4. "as soon as possible"	4. No disqualification

1402.05 Conditional finding of failure to comply with instructions

in the absence of evidence to the contrary, section 4(a-2)(ii) shall be applied conditionally in any case in which:

- a. a claimant fails to report to a RRB representative at an employment office in accordance with instructions mailed to him and fails to inform the Board why he did not report; or
- b. a claimant has been instructed by the RRB to apply for work or to report to a state employment office, and he fails to inform the RRB whether he complied with such instructions.

Such a finding shall be made when an office of the RRB receives a claim form showing registrations for any of the thirty days beginning with the day on which the claimant was to comply with instructions given him, except in a case where a field office gives instructions to a claimant whose claims are not transmitted through the field office. In such a case a finding shall be made not later than five days after the date when the claimant was to comply with the instructions.

1402.06 Redetermination of conditional finding

If, after section 4(a-2)(ii) has been applied conditionally, evidence is presented showing that the claimant did comply with the instructions or had good cause for failure to comply with the instructions, a finding shall be made that section 4(a-2)(ii) is not applicable. As indicated in section 1402.04a2(c), a claimant's failure to give information whether he did or did not comply with instructions does not in itself constitute failure to comply with instructions.

1403 Distinction Between Good Cause and Suitable Work

The term "suitable work" refers to the conditions and terms of employment and the personal factors relating to them; among such factors are those specifically mentioned in section 4(c) and section 4(d) of the Act. Good cause generally refers to a determination made by the Board on the basis of personal factors not related to the conditions and terms of employment.

1404 Determining Suitable Work

1404.01 Position vacant due to strike, lockout, or labor dispute

Work is not suitable if the position offered is vacant due directly to a strike, lockout, or other labor dispute.

1404.02 Remuneration

Work is not suitable if the rate of remuneration for such work (a) is substantially less favorable to the employee than that prevailing for similar work in the locality; (b) is less than the minimum wage rate provided in federal or state legislation applicable to such work; or (c) is less than the union wage rate, if any, applicable to such work.

1404.03 Hours or other conditions of work

Work is not suitable if the hours or other conditions of the work are substantially less favorable to the employee than those prevailing for similar work in the locality.

1404.04 Union membership

Work is not suitable if, as a condition of being employed, the employee would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. Work is not unsuitable by reason of a requirement that the employee join, or maintain membership in, a railway labor organization pursuant to an agreement under Section 2, Eleventh, of the Railway Labor Act requiring union membership under certain conditions.

1404.05 Violation of law or of requirement of labor organization

Work is not suitable if it would require the employee to engage in activities in violation of law, or, by reason of their being in violation of reasonable requirements of the constitution, by-laws, or similar regulations of a bona fide labor organization of which he is a member, would subject him to expulsion from such labor organization.

1404.06 Loss of seniority rights

Work is not suitable if acceptance of it would subject the employee to loss of substantial seniority rights under any collective bargaining agreement between a railway labor organization, organized in accordance with the provisions of the Railway Labor Act, and any other employee. In determining whether seniority rights are "substantial", consideration shall be given to the employee's years of seniority, his relative position on the seniority roster, the duration of employment currently held or expected as a result of the seniority rights, and a comparison of the rights which would be lost with the rights which could be expected to accrue from the work offered.

1404.07 Current practices of management and labor

Current practices of management and labor with respect to a job include provisions of any collective bargaining agreement entered into by the employer and a bona fide labor organization, and any other practices with respect to the job developed and commonly recognized by the parties. Work is not suitable solely because, as a condition of employment, the employee is required by such agreement or practice to furnish certain tools or equipment, to take a medical examination, or to comply with any other reasonable job requirement.

1404.08 Risk to employee's safety

Risks normally inherent in an occupation do not render work in that occupation unsuitable except as such risks are related to a particular employee's fitness for the work. In determining the degree of risk involved to an employee's safety, consideration shall be given to his statements with respect to the work, and to supporting information regarding his physical and mental condition, age, experience, and training, as these factors relate to the job requirements.

1404.09 Risk to employee's health

Work is not suitable for an employee if it would adversely affect his health and well-being. On this point, consideration shall be given to the employee's statements with respect to the effect of the work on his health and to supporting information regarding his physical condition and personal qualifications as these factors relate to the job requirements.

1404.10 Risk to employee's morals

Personal convictions must be considered in determination of degree of risk to an employee's morals. Thus, work is not suitable for an employee if it would require him to work on the Sabbath Day of his faith when he is not willing, because of religious convictions, to work on such day.

1404.11 Physical fitness

Work is not suitable for an employee whose physical fitness does not conform to the job requirements. A finding on this point shall be based on the employee's statements with respect to his physical condition as related to the work, and to supporting information.

1404.12 Training and experience

Work is not suitable for an employee who is not reasonably qualified, by training, education, and experience, to meet the essential job requirements.

1404.13 Length of unemployment and work prospects

Work which is not suitable for an employee at the outset of his unemployment in view of his qualifications, prior earnings, and prospects for obtaining more favorable work, may subsequently become suitable for him. The area of jobs considered suitable for an employee broadens as his unemployment lengthens and his prospects of getting work in his customary occupation, or other work of his choice, dwindle.

1404.14 Distance of work

Work is not suitable for an employee who has no means of transportation to the work or who would be required to travel an unreasonable distance. In determining what would be reasonable for a particular employee, consideration shall be given to the distance of the work from his residence, the distance he has customarily traveled to work, and any change in his circumstances supporting his decision to hold himself out for work closer to home.

1405 Determining Good Cause for Failure to Accept or Apply for Suitable Work

Some of the circumstances in which an employee has good cause for failure to accept or apply for suitable work are:

1. The employee received the instructions to apply too late for him to apply at the time specified.
2. Acceptance of the work would result in financial loss to the employee.

3. Acceptance of the work would require the employee to be away from his home when his presence at or near his home was required, and other arrangements could not be made.
4. The employee had good prospects of returning within one month to work in his customary occupation or to work in an occupation more acceptable to him.

1406 Determining Good Cause for Failure to Report to an Employment Office

An employee has good cause for failure to comply with instructions from the RRB requiring him to report to an employment office if:

1. He did not receive the instructions or received them too late to report in time; or
2. He had a misunderstanding of the instructions and he complied with the instructions as he understood them; or
3. He was working or expected a call to work, he had no means of transportation, he was sick, or other circumstances were such that he could not reasonably be expected to comply with the instructions.

1407 Notice

Notice of determination of the applicability of section 4(a-2)(ii) shall be sent in each case in which benefits are denied on the basis of such determination.

1408 Determinations by Field Office

Field offices are authorized to make determinations as to whether claimants have good cause for failure to accept or apply for suitable work or to report to an employment office.

1409 Reconsideration and Review

1409.01 Reconsideration of field determination

When Field Service (FS) receives information, which appears to furnish grounds for reconsideration of a field office determination, FS shall send the information to the field office. The field office will make a redetermination if appropriate.

1409.02 Review of field office determination

If, in the opinion of the network manager, information received in FS raises a question whether a field office determination was correct, the network manager

shall request the field office file for the claimant and review the evidence. In the event the network manager finds that the field office determination was correct, the field office file shall be returned to the field office with a memorandum affirming the determination or with information needed for reconsideration in accordance with subsection .01 of this section. In the event that the network manager finds that the field office determination was not correct, the network manager shall make a redetermination, and, with return of the field office file, shall furnish the field office an explanation of the action taken and request the field office to inform the claimant.

1410 Form Letters Prescribed

The following form letters are prescribed:

ID-14 (07-92)
ID-14a (07-92)

