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The Director of Unemployment and Sickness Insurance

The General Counsel

Your Memoranda of May 1 and 27, 1959
Disqualification under Section 4(a-2)(ii) of Railroad
Unemployment Insurance Act for Failure to Comply with
Instructions from Unemployment Claims Agent

In your memorandum of May 1, 1959, you ask whether a claimant for unemployment insurance benefits may be disqualified under Section 4(a-2)(ii) of the Railroad Unemployment Insurance Act if he fails, without good cause, to apply for suitable work to which he has been referred by an unemployment claims agent.

Section 4(a-2)(ii) provides that there shall not be considered as a day of unemployment, with respect to any employee,

"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". (underscoring supplied)

The underscored portion was added in 1940 (Public Law 833, 76th Cong., 3d Sess., approved October 10, 1940; 54 Stat. 1097). Prior to the 1946 amendments (60 Stat. 722) this Section was designated as Section 4(a)(ii).

Section 12(h) of the Railroad Unemployment Insurance Act authorizes the Board to enter into agreements or arrangements with railroads, and other employers covered by the Act, to secure the performance of services or the use of facilities in connection with the administration of the Act. Pursuant to this Section the Board has entered into agreements whereby various employers select some of their employees to act as unemployment claims agents for the Board. As a part of its employment service activities, the Board has provided for the active participation of these unemployment claims agents in the placement of claimants, both within and without the railroad industry. Under this

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program, the unemployment claims agents supplement the placement activities of the Board's field offices by endeavoring to find jobs for the claimants who are registering with them for unemployment benefits. Thus, they act as agents for the Board in the performance of an integral part of the Board's activities. Under these circumstances, it is clear that when an unemployment claims agent instructs a claimant to apply for suitable work such instructions must be regarded as "instructions from the Board" within the meaning of Section 4(a-2)(ii). Cf. General Counsel's Opinions L-46-22 and L-48-264.

The conclusion expressed above is supported by the legislative history of the 1940 amendments. Thus, Mr. Murray W. Latimer, then Chairman of the Railroad Retirement Board, in discussing S. 3920, which became, after some amendment, Public Law 833, 76th Cong., 3d Sess. (54 Stat. 1094, 1097), stated with regard to Section 14 of the bill:

"At the present time the disqualification is for failure to accept suitable work; and the Board is now developing employment offices, rather modest in size; but, more important than that, a great many men who come in to register with a claims agent and will receive offers of jobs or be told to go and apply for jobs, that it is known there are certain vacancies at a certain point that -- and we would want to make it clear that the disqualification applies to a man who refuses to look for work when we know that the work is there, as well as the man who refuses to accept it when it is actually offered to him." (underlining supplied)^{1/}

It is apparent that he had in mind situations of the type referred to in your memorandum. That is also clear from his testimony on H.R. 9706, the companion bill to S. 3920. With regard to Section 14 of H.R. 9706, the language of which was identical to that contained in Section 14 of S. 3920, Mr. Latimer stated:

"Section 14 would amend paragraph (ii) of subsection (a) of section 4 in order to disqualify an employee for 30 days if he fails 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. At present, the paragraph merely disqualifies for failure without good cause to accept

^{1/} Hearings before a Subcommittee of the Committee on Interstate Commerce, United States Senate, 76th Cong., 3d Sess., May 13 and 14, 1940, p. 111.

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suitable work available and offered to the individual.
This change is desirable because there are many instances
in which officers or supervisors of the railroads, acting
as claim agents for the Board, advise claimants to apply
for work but do not offer it to them." (underscoring
supplied) 2/

In view of the foregoing, it is my opinion that the disqualification provided for in Section 4(a-2)(ii) is applicable in the case of an individual who fails, without good cause, to apply for suitable work as directed by an unemployment claims agent.

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2/ Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 76th Cong., 3d Sess., June 14, 17, and July 8, 9, 1940, page 76.