

arise in the present case. We are not certain whether this concession was made on the ground that the claimant's restriction was reasonable or on the ground that it was immaterial since she would not have obtained clerical employment for the period in question even if she had been willing to work full-time. As, however, there was in our view no real prospect of an employer being ready to employ the claimant as a clerical worker for the period in question on the only conditions upon which the claimant was willing to work, the question whether those restrictions were reasonable is not in our opinion material to the decision of this appeal. There is authority to be found in the Umpire's decisions for the view that if a claimant restricts his offer to part-time work without good reason, that fact may be evidence that he was not available for work if part-time employment suitable in his case is not readily obtainable. See, for example, Umpire's Decision 8872/30. We must not be taken to dissent from this view, but we think it best to refrain from expressing a concluded opinion upon it as it is unnecessary that we should do so for the purposes of the present appeal.

11. In the circumstances of this case we must hold that at the time in question the claimant was not and cannot be deemed to have been available for employment.

12. We must dismiss the appeal of the claimant's association.

29.4.52

## UNEMPLOYMENT BENEFIT

R(U) 13/52

A claimant left his employment because he considered it to be beyond his ability although the employer was not dissatisfied with his work. He also produced some evidence of physical disability.

*Held just cause not shown.* Commissioner gives guidance as to nature of evidence required to establish just cause on grounds of physical disability.

1. My decision is that the claimant voluntarily left his employment without just cause and that he be disqualified for receiving unemployment benefit for one week from and including the 10th November, 1951.

2. The claimant, who is 38 years of age, was employed as a clerk from the 15th October to the 9th November, 1951, when he voluntarily left his employment. His first expressed reason for leaving was that he had had no previous experience of book-keeping, which he said was very much out of his scope. He said that he could not see his way clear to carry out the position to the best of his ability, and that the ledger book work was causing a nervous disability and making him a nervous wreck. He also said that the man who was employed in this position had had 30 years' experience. I understand that he means that his predecessor had had this experience.

3. The local Insurance Officer disallowed the claimant's claim and disqualified him for unemployment benefit on the ground that he had voluntarily left his employment without just cause. The claimant appealed to the Local Tribunal from that decision and, in his grounds of appeal, for the first time suggested that the travelling to and from work and walking

around the factory made the situation unsuitable for him. In support of this contention he produced a medical certificate to the effect that he was unable to follow his usual occupation, owing to old fracture of the right hip joint. In his certificate the doctor states that the claimant is registered as a partially disabled person and that he is fit for work that does not entail much walking at work or getting to work. The walking round the factory of which the claimant had spoken was problematical, the Insurance Officer said, and would not be beyond the claimant's powers, as his time would be mainly spent in the office and stores.

4. I here observe that there is no suggestion that the claimant's employer ever complained of the quality of the claimant's work or that the claimant ever approached the employer about his difficulties. He told the Tribunal that he was unable to get bus travel, and that when he did he had to stand. He had to walk to the bus, which was about 300 yards from his home.

5. The Tribunal dismissed the claimant's appeal. They were satisfied that "the job was within his capacity" and that, making due allowance for his disability, he should have found alternative employment before voluntarily leaving. The claimant has appealed from that decision, and has submitted a further medical report to the effect that, owing to the condition of his right hip joint—an old malunited fracture of the femoral head—probably a displaced capital epiphysis with advanced secondary O.A. changes and destruction of the acetabulum—it is impossible for him to do work that necessitated standing for any length of time or travelling long distances to work.

6. The question to be determined is whether the claimant had just cause for leaving his employment when he did. On the evidence before me I am not satisfied that he had. The Local Tribunal gave full consideration to all the evidence, apart from the last medical report which is now before me, and the Tribunal expressed a view with which I am in agreement.

7. In my view, the substantial reason why the claimant relinquished his situation was because he was worrying about his ability properly to perform his duties. I think that his physical disability was really a secondary consideration. I cannot accept it that he always had to stand on the omnibus, and I cannot say that the evidence supports the view that he was not physically capable of doing the journey. That he was genuinely troubled about his capacity to perform his work I have no doubt and, in all the circumstances I think the period of disqualification for benefit under Section 13 of the Act should be limited to one week.

8. In the circumstances the Insurance Officer who is now concerned with this case has asked for guidance as to how far and under what conditions ill-health will constitute just cause for leaving a position. I do not think that the Statutory Authorities should be limited in any way in dealing with this type of case by attempting to lay down any hard and fast rules as to the nature and strength of the evidence which a person should be required to adduce to show that he has just cause for leaving a situation, or good cause for refusing an offer of one, on the grounds of ill-health. The Statutory Authorities, as they have done in this case, will be guided by any available evidence, preferably medical, as to the person's state of health and by the known facts of the case, and each case must depend largely upon its own circumstances.

9. The Statutory Authorities, in some cases, may be justified in finding, without medical evidence, that the state of a person's health afforded just cause for his leaving a situation but doubtless they would be very chary of accepting the word of a claimant unsupported by such evidence, especially if it can be obtained, and in the absence of any non-medical evidence. When a person leaves employment or refuses an offer of it and at the time does not suggest that the state of his health was the reason for his so doing, subsequent evidence, whether medical or non-medical, has not the same force as it would have had if reasons of ill-health had been given in the first instance.

10. Subject to reduction in the period of disqualification the appeal of the claimant is dismissed.

## 1.5.52

## UNEMPLOYMENT BENEFIT

R(U) 14/52

A claimant, aged 61, worked and lived 70 miles from his wife, aged 68, who lived alone and did not enjoy good health. His efforts to find her accommodation with him or to get employment near her were unsuccessful, and as she required care and attention he left his employment.

*Held* that on the facts just cause for leaving the employment was established.

1. My decision is that the claim for unemployment benefit is allowed.

2. The question in this, the appeal of the claimant, is whether he had just cause for leaving his employment when he did. The claimant's late employers said that he left his employment on the 28th September, 1951, but the claimant says it was on the 26th September, 1951. The correct date, however, is not material in view of the conclusion at which I have arrived.

3. The claimant was employed as a temporary architectural and civil engineering assistant at a place distant some 70 miles from his home. The reason for his leaving is really a domestic one. The claimant is 61 years of age, and his wife, who is 68 years old, had a major operation some years ago as a result of which she does not enjoy good health. She was living alone, whilst the claimant was away living in lodgings, and being unable to make other arrangements it became increasingly worrying for the claimant to be living where he was and to be out of touch with his wife, who needed his care and attention. He made efforts, it would appear, to obtain lodgings where she could reside with him, but he met with no success, and he therefore decided that he must relinquish his employment and go home and get employment in his own locality, so that he could be with his wife at night. Before he left his situation he communicated with his local employment exchange, with a view to being offered employment near his home. He had no offer of such employment, however, and when he left his situation he had no alternative employment. It is in these circumstances that the question arises whether in his case the claimant had just cause for leaving when he did.

4. In Decision C.W.U. 19/48 (not reported) it was said that "so far as the administration of unemployment benefit is concerned a man is not, in general, justified in giving up his employment, if he is not reasonably assured of obtaining other employment without appreciable loss of time . . ."