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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 526

ADELL H. SHERBERT, *Appellant,*

v.

CHARLIE V. VERNER, ED. H. TATUM, ROBERT S. GALLOWAY, SR., AS MEMBERS OF SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION AND SPARTAN MILLS, *Appellees*

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

REPLY BRIEF FOR APPELLANT

I. The Conditioning of Unemployment Compensation to Appellant upon Her Willingness to Work on Saturday Invalidly Coerces Her to Affirm Such Willingness Contrary to her Religious Scruples.

The appellees take as their basic proposition (Appellees Br., p. 13) the holding in *Braunfeld* v. *Brown,* 366 U.S. 599, 603 (distinguishing *West Virginia Board of Education* v. *Barnette,* 319 U.S. 624):

> ". . . the statute before us does not make criminal the holding of any religious belief or opinion, nor does

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> it force anyone to embrace any religious belief or to state or believe anything in conflict with his religious tenets.

However, the facts of the instant case cannot be forced into that mold (Appellees Br., pp. 10-14).

The appellees apparently concede that at least incidentally the unemployment compensation provisions here involved, as construed, subject claimant to economic inducement to make affirmation of willingness to violate the Sabbath by working (Appellees Br., p. 12).

But appellees urge that no constitutional right is affected because the statute as construed merely makes appellant's practice of her religious belief more expensive and involves no state-compelled disavowal of faith or belief (Appellees Br., p. 13). This in turn assumes that the burden imposed on practice of appellant's religion is indirect (Appellees Br., p. 11).

Of course, *Braunfeld* v. *Brown,* 366 U.S. 599, 607, does not hold that economic deprivation cannot constitute invalid impediment of the free exercise of religion. On the contrary it is specifically stated in that opinion (p. 607):

> "If the purpose or effect of a law is to impede the observance of one or all religions . . . that law is constitutionally invalid even though the burden may be characterized as being only indirect."

The burden on appellant's practice of religion in this case is direct. In the *Braunfeld* case this Court held the burden indirect because the economic penalty did not apply to all members of the Jewish Orthodox faith and the area of choice was not confined to the two alternatives of abandonment of the religious practice or the suffering of the economic penalty. *Braunfeld* v. *Brown,* 366 U.S. 599,

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605-606. As Mr. Justice Brennan epitomized the distinction that made the burden indirect (id., 613 (dissenting opinion)):

> "That is, the laws do not say that appellants must work on Saturday."

In contrast, here the South Carolina law, as construed, does say that appellant must be willing to work on Saturday. The penalty of withheld unemployment compensation applies universally and without exception to any Sabbatarian since the court below plainly holds that the test is "*unrestricted* availability for work" (R. 41) except on Sundays (R. 48). Under this statute the worker who believes his duty to God requires worship on the Saturday Sabbath has but the two alternatives: He must in repugnance to his religious belief affirm a willingness to work on Saturday and, if offered, accept a job requiring such work or forego the benefits of unemployment compensation.

It is unnecessary to determine whether appellant has an "absolute right" to unemployment benefits (Cf. Appellees Br., p. 12). Her coverage by the benefits is of dignity at least as great as the right or privilege of public employment [1] protected in *Wieman* v. *Updegraff,* 344 U.S. 183, 191-192, and *Slochower* v. *Board of Education,* 350 U.S. 551, 556-557.

Because the South Carolina law imposes a direct burden on the exercise of religion, i.e. penalizes the religious practice itself (as well as maintenance of the religious belief), it is not controlled by *Braunfeld* v. *Brown,* 366 U.S. 599, 606.

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[1] As pointed out in *Friedman* v. *American Surety Co.,* 137 Tex. 149; "All employees who labor or perform services for employers who are covered by the Act labor or serve in part for the right to enjoy the benefits of the unemployment fund."

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II. "Available for Work" as here Construed and Applied to Require "Unrestricted" Availability on the Saturday Sabbath of Appellant Serves no Purpose Germane to the Unemployment Compensation Program of the State.

The contentions of appellees under their Point II (Br., p. 14) cannot withstand scrutiny.

A. Appellees first seek further to foster the misleading inference created by the opinion of the state court (R. 42, 43, 44, 48) that it was a "change" by appellant of her "personal circumstances" i.e. her religion, that occasioned the discontinuance of her employment (Appellees Br. 15-16). Looking to the record to ascertain the existence of any rational basis for this characterization of the evidence (*In re Sawyer,* 360 U.S. 622, 628; *Wood* v. *Georgia,* 370 U.S. 375, 386) it is plain that appellant became a member of the Seventh-day Adventist church 22 months prior to the Spartan Mills changeover to required Saturday work (R. 11, 5). The dissenting opinion spells out the record showing no change by appellant occasioned her discharge. It states (R. 54):

> "The appellant, in 1959, made no change in her religious faith which led to her discharge, nor did she attach any new condition to her stable employment of many years duration. The decision, the change, was made by the employer when it elected to no longer put a substitute in appellant's place on Saturdays, as it had done in the past. The only change or decision made by anyone at or near the time of appellant's separation from her employment was made by the employer and not by the employee. The employer simply elected not to continue to provide the particu-

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lar employee the stable employment which had been provided for years.

See also R. 52 and R. 59.

B. The principal argument under appellee's Point II is addressed to the contention that any impairment of religious freedom by the statute, as construed and applied, is outweighed by dominant public interest (Appellees Br., pp. 16-20). But this is merely a general attempt to justify the uniform requirement that all claimants be available for Monday-through-Saturday work on the ground that textile mills work six days when business is good (Appellee Br., p. 17).

The appellees thus ignore the frequently repeated warning that in areas touching First Amendment freedoms the broad-ax approach is suspect and precision of regulation is essential. *NAACP* v. *Button,* 31 U.S. L. Week 4063, 4069 (U.S., Jan. 14, 1963) and cases there cited.

In detail, the appellees' argument ranges widely:

(1) The decision below is sought to be sustained on the theory that appellant was not "available for work" because the record fails to show an active and unrestrictive endeavor on her part to locate suitable employment (Appellee Br., p. 17). But this Court will not affirm by postulating a non-federal ground not relied on below. *Raley* v. *Ohio,* 360 U.S. 423, 441.

(2) Appellees suggest appellant "should have known that any upswing in the textile business cycle would result in mandatory Saturday employment" (Appellees Br., p. 17). No Saturday work had been required since World War II (R. 5). This hardly affords a basis upon which to charge appellant such knowledge and notice.

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(3) The appellee next argues that to hold appellant "has not restricted her utility and desirability in the labor market (where all textile plants operate on a six-day basis)" frustrates the policy and purposes of the unemployment compensation law (Appellees Br., p. 17). Significantly, appellees do not contend that appellant's refusal to work on her Sabbath shows her unattached to the local labor market. Even as stated, the contention assumes, without support in the record, that textile plants offer the only jobs in the community. The contention also ignores the demonstrated existence of a labor market for those who, like appellant, entertain a religious belief in the Saturday Sabbath (R. 12). Furthermore, one who restricts her willingness to work to jobs requiring her highest skill would in some degree thereby restrict her market. Appellant is willing to take any "decent" job (R. 11).

(4) Appellees' argument is not advanced by assertion that appellant's refusal to work on the Sabbath is because of her religious belief and that practice of her religion is merely a "personal reason" (Appellees Br., 18-20). Freedom of religious belief and practice are also personal rights guaranteed by the First Amendment.

(5) Appellees (Br., p. 20-21) reargue the reasoning upon which the court below proceeded in construing the statutory requirement that in determining whether work is suitable for an individual the Commission shall consider the degree of risk involved to "his" morals (S.C. Code (1952) sec. 68-114(3); set out in Appellant's Brief, p. 4).

But appellant does not contest the state court's construction. The words of the South Carolina Supreme Court are the words of the statute. *Hebert* v. *Louisiana,* 272 U.S. 312, 317; *NAACP* v. *Button,* 31 U.S. L. Week 4063, 4067 (U.S. Jan. 14, 1963). We merely suggest (Ap-

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pellant Main Br., pp. 28-29) that a less rigid construction of the subsection, consonant with that found practical in other States, would probably eliminate the constitutional objections here raised.

(6) Appellee would justify the requirement of Monday through Saturday availability, with its disregard of the religious rights of the Sabbatarian, on the ground that to permit consideration of religious rights, such as those of claimant, would subject the unemployment compensation fund to fraudulent claims (Appellees Br., p. 22).

Substantially the same contention was made and rejected as insufficient to justify the impairment of the constitutional freedoms in *Schneider* v. *State,* 308 U.S. 147, 164 ("Frauds may be denounced as offenses and punished by law."); *Cantwell* v. *Connecticut,* 310 U.S. 296, 306 ("Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct."); *Martin* v. *Struthers,* 319 U.S. 141, 148.

Appellee fails to suggest any reason worthy of being balanced against the interests of the individual, the State and the United States in protecting her freedom of belief and freedom to practice her religion.

That there exists no such controlling reason is demonstrated by the almost universal recognition in most of the other United States (almost all of which have substantially identical laws) that refusal, because of religious or conscientious belief, to accept work on the Saturday Sabbath does not render the claimant ineligible or disqualified for unemployment compensation.[2]

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[2] See cases collected in Appendix.

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III. The Sunday Laws read into the Unemployment Compensation Law to grant Exemption from Willingness to Work on Sunday are Based Solely on Religious Considerations.

Appellees argument under their Point III (Appellees Br., 23-31) fails to meet appellant's contention that the Sunday laws, upon which the state court relied in holding willingness to work on Sunday not required (R. 48), make the unemployment law, as so construed, arbitrary and discriminatory in violation of the due process clause. As pointed out in our main brief (pp. 29-31) the same sections cited by the court provided an exception so as to permit Government contractors to operate on Sundays during emergencies but further provide that employees cannot be required to work on Sunday "who are conscientiously opposed to Sunday work".

The South Carolina Unemployment Compensation Law, is thus held not to require Sunday work because of the provisions of S.C. Code (1952), secs. 64-4, 64-5. But each of these, by its exception requiring the excusing of workers who are "conscientiously opposed to Sunday work", makes it manifest that the Sunday statutes, as so read into the unemployment compensation statute, are based on religious considerations and discriminate invidiously between religions since no similar exception is granted to those "conscientiously opposed to work on their Sabbath".

There is nothing in the record to support appellees' contention that appellant merely seeks a five-day week. Appellant is not unwilling to work on Sunday (R. 10, 11). Until 1962, violations of the general prohibition against worldly labor on Sunday were subject to a fine of only one dollar. S.C. Code (1952), sec. 64-2 (embodying without substantial

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change the "act" of the Lord Proprietors ratified December 11, 1691. *Mullis* v. *Celanese Corporation of America,* 234 380 (S.C. 1959)). In fact, many enterprises are now specifically excepted from the general prohibition against worldly labor on Sunday. Cf. S.C. Code (1962), sec. 64-2.1, added in 1962, 52 Stat. L. p. 2134.[3]

Even if, as appellees contend (Appellees Br. 23), the discrimination between religious groups may be regarded here as attacked only under the equal protection clause (cf. R. 33, 49), it is clear that the latter clause permits no classification based on religion or race. *Fowler* v. *Rhode Island,* 345 U.S. 67, 69; *Niemotko* v. *Maryland,* 340 U.S. 268, 272; *Missouri ex rel Gaines* v. *Canada,* 305 U.S. 337, 345, 351; *Brown* v. *Board of Education,* 347 U.S. 483, 495.

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[3] In any event, it is significant that the Supreme Court of South Carolina forbore to rely on section 64-2 penalizing anyone "who shall do or exercise any worldly labor, business or work of his ordinary calling upon Sunday". Instead, it read into the unemployment compensation law (R. 48) the prohibition against employers permitting work on Sundays in textile plants or work by women in mercantile or manufacturing establishments on Sunday (S.C. Code (1962), secs. 64-4 and 64-5) (Appellant's Br., pp. 34-36) that contain the exception recognizing conscientious objection to work on Sundays.

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Conclusion

The requirement of unrestricted willingness to work on Saturday, as read into the South Carolina Unemployment Compensation Act and as applied here unreasonably and unwarrantedly impairs her freedom of belief and freedom to practice her religion. There has been suggested no consideration that reasonably may be regarded as a compelling reason for countenancing the invasion of appellant's right of religious freedom, so direct and oppressive as substantially to nullify appellant's religious freedom. The judgment below should be reversed.

Respectfully submitted,

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APPENDIX

State supreme court decisions have held unwillingness to accept work on Saturday not to render the applicant ineligible (*Swenson* v. *Michigan Employment Security Commission,* 340 Mich. 430 (1954); *In re Miller,* 243 N.C. 509 (1956)) or disqualified (*Tary* v. *Board of Review,* 161 Ohio St. 251 (1954).

Other decisions of lower state courts and administrative bodies are set out below.

ARIZONA

Ariz. A, No. 4473
Ben. Ser. Serv. U. I. AA-90-33 (May 9, 1956)

Held, that the first moral obligation of a person is to remain true to his religious convictions. Job requiring work between sundown Friday and sundown Saturday is unsuitable for claimant and refusal does not disqualify.

ALABAMA

App. Bd. Dec. No. 5330, June 6, 1956
1 CCH Unempl. Ins. Rep. ¶ 8210

Refusal of worker to accept job on Saturday or Sunday where based solely on her religious belief is not a refusal of suitable work requiring disqualification. Relying on *Swenson* v. *Michigan Unemployment Compensation Commision,* 340 Mich. 430; *Tary* v. *Board of Review,* 161 Ohio St. 251

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CALIFORNIA

Calif. No. R-889-8756-42 (May 8, 1942)
5 Ben. Ser. No. 10, p. 184

Refusal to work on Saturday for reasons of conscience does not constitute a refusal of suitable employment.

Calif. App. Bd. Ben. Dec. No. 5775
CCH Unempl. Ins. Rep. ¶ 1975.12

Seventh-day Adventist who quit work when her employer requested her to work on Saturday held to have left work under compelling circumstances amounting to good cause.

COLORADO

Colorado A, No. RD-7545-54 (Sept. 7, 1954),
Ben. Ser. Serv. U. I. VL-90-13 (Sept. 7, 1954)

A Seventh-day Adventist who, after he became extremely interested in his religion, was unwilling to work a shift which occurred between sundown Friday and sundown Saturday and who at the foreman's suggestion quit when it was not possible to arrange his hours as he desired, held to have voluntarily quit work with good cause.

"The prevailing opinion, as evidenced by decisions here and in various States across the country, is that an individual who in good faith refuses or leaves employment on ethical or religious grounds has good cause for so doing. The Unemployment Compensation Benefit Series reports many such cases, a few of which are listed below: California 7543, D. C. 11372, Georgia 11931, Illinois 7381, Indiana 2197, Iowa 8017, Kentucky 9596, Maryland 11705, New York *A-90-1, North Carolina 9007, Pennsylvania 13753, Tennessee 12796, Wisconsin 10154.

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Colorado No. RD-8737-55 (Sept. 22, 1955)
Ben Ser. Serv., U.I. MC-255.303-3 (Sept. 22, 1955)

Seventh-day Adventist claimant who had worked for employer for two years without being required to work on her Sabbath, her religious scruples being known to her employer at time of original hiring, was discharged when she refused to work on Saturday as requested. Held, refusal must be held not misconduct connected with her work but practice of her religious belief. Not subject to disqualification.

CONNECTICUT

Conn. No. 277-B-54
Ben. Ser. Serv. U. I. SW-90-17

A claimant who refused her former job (after lay-off for lack of work) because she was not granted permission to take off two nights monthly so as to observe her Sabbath, in her new faith which began on Friday at sundown and ended on Saturday at sundown, held not to have refused suitable work when the job would have interfered with her religious belief in which she had demonstrated her sincerity by her willingness to work on Sunday and by attending classes so as to become an enrolled member of the sect, and was available for work when she did not unduly restrict her availability.

DELAWARE

Del. Comm. Dec. App. Dkt. No. 11332-A (Aug. 21, 1961) reversing Ref. Dec. App. Dkt. No. 11332 (June 13, 1961).
CCH Unempl. In. Rep. ¶ 8121.07

The claimant was offered a job which involved work seven days a week for the period of time it was necessary to process certain perishable food products. The claimant refused the job, stating that she was available for work only six days a week and wished to go to church on Sunday.

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Held, that the claimant did not refuse to accept an offer of work for which she was reasonably fitted. "It is the Commission's opinion that the Delaware law does not require a conscientious Sabbath observer to be available for work on the Sabbath in order to be eligible for benefits. . . . On the evidence presented before the Commission it is decided that the claimant is a conscientious Sabbath observer; her Sabbath is Sunday.

DISTRICT OF COLUMBIA

Dist. of Col. No. 11372-A, App. Ex'r No. 1859 (Sept. 18, 1946)
10 Ben. Ser. No. 4, p. 28 (Sept. 18, 1946)
3 CCH Unempl. Ins. Rep. ¶ 1965.57

Jewish kosher meatcutter held to have had good cause for refusing job involving Saturday work. Held, not disqualified.

"In a similar case this tribunal decided on June 19, 1941, that a claimant who had genuine religious scruples against working on Sunday, which was the Sabbath day according to her religious faith, was justified in refusing a referral to a job that required her to work on Sunday. (See Appeal No. 1188)."

Dist. of Col. No. 6765-A, App. Ex'r No. 1188 (July 19, 1941)
4 Ben. Ser. No. 12, p. 235
3 CCH Unempl. Ins. Rep. ¶ 1965

GEORGIA

Georgia A, 11931, App. Ref. No. 6325 (May 12, 1947)
10 Ben. Ser. No. 11, p. 20
3 CCH Unempl. Ins. Rep. p. 14,180, ¶ 1975.137

Textile worker on day shift, laid off after he refused to report on Saturday night for extra work which would have required him to continue into Sunday, who stated he had previously refused to work on Sunday because religiously opposed to such employment, although he

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had performed Sunday work during the war emergency and who 6 weeks later applied for work with another employer, and while waiting to be hired, was unwilling to accept employment elsewhere, held not disqualified for leaving, when he had placed the employer on notice that he would not work on Sunday, except in emergencies, and when he had a record of 9 years of good service for this employer, but to be unavailable for work during the period he restricted himself to one employer.

IDAHO

Idaho A, No. 12661 App. Ex'r No. UC-1481 (July 17, 1947)
11 Ben Ser. No. 8, p. 43

Radio operator held to have left employment but with good cause where station force was put on rotating basis and he resigned because it would require him to work on Saturdays contrary to religious belief. "Although the Idaho law does not specifically mention religious beliefs among the things which should be considered as constituting good cause, the legislature in passing the law no doubt was taking into consideration the fact that the Constitution of the United States, as well as that of the State of Idaho, guarantees to an individual the right to pursuit of his individual religious beliefs. To rule otherwise would be placing a restriction upon a claimant's right to exercise this freedom of worship."

ILLINOIS

Illinois R, 10325, No. 45-BRD-441 (July 26, 1945)
9 Ben. Ser. No. 3, p. 45

Refusal of 48-hour week job because of desire to observe Saturday Sabbath is good cause for refusal of work and does not render claimant ineligible as not "available."

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HAWAII

Hawaii Ref. Dec. No. R-713 (April 10, 1956)
CCH Unempl. Ins. Rep. ¶ 1950.10

Claimant who had left his last job because he lacked seniority as a bus driver adequate to enable him to adjust his shifts to meet the religious belief that Sabbath begins at sundown Friday night, was first held unavailable for work on the ground that the work week in the community was on a Monday to Saturday basis. The Referee, in holding the claimant able and available for work, found that claimant could meet a six-day work week starting Sunday and ending Friday evening.

KANSAS

10451—Kans. A, App. Ref. No. 1589 (Oct. 2, 1945)
9 Ben Ser. No. 4-5, p. 73

Adventist refused referral to Saturday work. Held, "In the instant case it is the considered opinion of the appeals referee that the Constitution of the State of Kansas guarantees to each individual the right of religious liberty, and the claimant is within her rights in refusing to accept work on Saturday since to do so would violate the principles of her religion."

Kans. Comm. Dec. No. AC-1460 (October 13, 1955)
4 CCH ¶ 1965.27

Claimant who refused recall to work that would require her to change from first shift to a multiple shift plan involving Friday evening work on some occasions, held not to have refused suitable work since such work would be risk to her morals.

KENTUCKY

9597—Ky. A, No. 5772 (Feb. 19, 1945)
8 Ben. Ser. 7, p. 70

Claimant who refused job referral involving a few hours on Sunday held not disqualified where his refusal

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was based on religious grounds. Work held not suitable. "Freedom of worship is one of the cardinal rights preserved to an individual by our Constitution."

LOUISIANA

La. B, Bd. of Rev. Dec. No. 114-BR-50 (Sept. 12, 1950)
Ben. Ser. Serv. U. I. AA-90-3

Claimant, a Seventh-day Adventist, as business of employer increased, was told she would have to work Saturdays or be replaced. Held, "This claimant was undoubtedly sincere in every word of testimony she gave, and the Board feels that in a case of this kind she should be able and available for work."

MAINE

Maine Comm. Dec. No. 40-CD-6 (March 5, 1940)
5 CCH Unempl. Ins. Rep. ¶ 1965.10

Seventh-day Adventist was discharged by his employer because of his refusal to work on Saturday. Claimant was held eligible for benefits.

MARYLAND

11705—Maryland R, UCB Dec. No. 2625 (Jan. 16, 1947)
10 Ben. Ser. No. 8, p. 60
5 CCH Unempl. Ins. Rep. ¶ 1975.13

A claimant who left employment because of tenets of his church that forbade him to perform work on Saturday held to have left work voluntarily but for good cause and therefore not disqualified.

Sisler v. *Board of Appeals, Department of Employment Security,* Superior Ct., Baltimore City, Md. (July 16, 1962)
5 CCH Unempl. Ins. Rep. ¶ 8284.

Claimant who had worked in industry but most recently as drug store clerk and cashier, registered solely as a retail sales clerk, having left her employment because

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the handling of alcoholic beverages violated the tenets of her church. She was unwilling to accept employment requiring Saturday work because of her religious belief. Held, not available for work within meaning of Maryland statute because eligibility provisions of section 4 of the Maryland statute may not be read to include "suitable" or the requirement that in determining suitability of work, the degree of risk to claimant's morals be considered (Art. 95A, § 6(d)(1)). Furthermore, her restriction of availability to the retail sales field, where 95% of employers require Saturday work, coupled with her refusal to handle alcoholic beverages, justified conclusion that claimant was not attached to the retail sales labor market.

MASSACHUSETTS

Mass. Bd. of Rev. Dec. No. 7724
5 CCH Unempl. Ins. Rep. ¶ 1950.111

Officer worker who limited her employability to 6 days a week, excluding Saturday, because of religious convictions against working on that day, is unavailable for work inasmuch as Saturday is within the normal working week.

Bd. of Rev. Dec. No. H-1519 (January 4, 1951)
5 CCH Unemply Ins. Rep. ¶ 1975.641

Where employee failed to notify his employer or his union of his change of habits of religious living to that of Seventh-day Adventist so as to prevent his working on a day (Saturday) normally accepted as part of the work week, he is held to have left his job voluntarily.

Massachusetts A, No. H-15933 (Dec. 20, 1954)
Ben. Ser. Serv. U. I. AA-90-21

A claimant who, subsequent to his lay-off on October 26, stated that he was unwilling to work Saturdays because of strong religious convictions, but who on the following November 19 ceased to apply this limitation, held unavailable for work during the weeks ending

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October 30 through November 20, but available thereafter.

Mass. Bd. of Rev. Dec. No. H-27103 (April 10, 1959)
5 CCH Unempl. Ins. Rep. ¶ 8224.03

Claimant who refused an offer of work because she would have to work on Saturday contrary to dictates of her religion, is held to have refused the offer of work with good cause. As to her availability, her classification as an assistant bookkeeper offers a reasonable opportunity for her to obtain work on a five-day week basis since many firms in the Boston area who hire assistant bookkeepers have a five-day work week. Claimant is entitled to benefits.

Mass. Bd. of Rev. Dec. No. H-27174 (April 10, 1959)
5 CCH Unempl. Ins. Rep. ¶ 8224.03

Where claimant's prolonged unemployment was due to her failure to make an active search for work and also to her unwillingness to work on Saturday (because she is a Seventh-day Adventist) which is required in the occupations in which she has had experience, it is held that claim does not meet the availability requirement.

MICHIGAN

Michigan A, No. B59-4424 (Sept. 22, 1959)
Ben. Ser. Serv. U. I. VL-90-25

Worker joined Seventh-day Adventist church and thereafter notified employer he could not work, for religious reasons, on the Saturday Sabbath. Held not discharged for misconduct connected with his work and entitled to benefits.

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MONTANA

Montana App. Trib. Dec. No. 658 (Aug. 21, 1950)
6 CCH Unempl. Ins. Rep. ¶ 1950.27

Claimant had done laundry and chambermaid work. After she became Seventh-day Adventist she quit her laundry job because it could not arrange to let her off on Saturdays. She registered for work as a chambermaid but such jobs also required Saturday work. Held, "The fact that the claimant desires to observe Saturday as the Sabbath does not in itself render her unavailable for work, but inasmuch as the labor market wherein claimant resides does not by custom and usage permit a Saturday day-off to persons employed as chambermaids, the claimant has rendered herself unavailable for this particular work [apparently the only work for which she had made application].

NEBRASKA

11638—Nebr. R, App. Trib. No. 143, Vol. IX (Jan. 3, 1947)
10 Ben Ser. No. 7, p. 72

Claimant who for religious reasons was unwilling to accept work on Saturday and set minimum wage at an amount higher than general starting wage for women without previous experience in sales and general factory jobs (she having been employed in a steel mill during the war). Held, ineligible for benefits because not available in that she did not make good faith attempt to locate work. "The claimant's restriction as to Saturday work is valid and cannot be held to be a disqualifying factor in a country where religious freedom exists."

Nebr. App. Trib. Doc. No. 65, Vol. XXV (June 12, 1959)
6 CCH Unempl. Ins. Rep. ¶ 8123.09

Refusal of claimant to accept referral to grocery store job that required work on Sunday held a refusal with good cause since this would have required him to per-

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form his regular duties on Sundays contrary to his religious beliefs. Claimant held available for work and eligible for benefits.

NEVADA

Nev. App. Ref. Dec. No. A-7809 (August 31, 1960)
Ben Ser. Serv. U. I. SW-90-31
6 CCH Unempl. Ins. Rep. ¶ 8093

Refusal of offered position in local store did not disqualify claimant where it would have required work on Sunday contrary to her religious convictions. But her narrowing of her field to retail selling and refusal to diversify her work search to other fields constituted an unreasonable and unnecessary availability restriction.

NEW JERSEY

New Jersey No. BR-5275
7 CCH Unempl. Ins. Rep. ¶ 1965.261

Refusal to consider Saturday work because of religious scruples by a claimant who had adhered to such principles did not constitute refusal of suitable work.

NEW YORK

10197—New York A, No. 537-114-45R (June 5, 1945)
9 Ben. Ser. No. 1, p. 68.

Refusal to work on Saturday Sabbath held not to make claimant unavailable for work. Claimant first filed for benefits from city in Georgia against New York as the liable state.

Referee refused to assume that in a metropolitan area in Georgia, there were no job opportunities for a 5-day work week or for a Sabbath observer such as claimant. Initial determination that claimant was not available for work overruled.

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OHIO

Ward v. *Board of Review, State of Ohio, Bureau of Unemployment Compensation,* Court of Common Pleas, Franklin County (Dec. 11, 1959)
Ben. Ser. U. I. (1960) SW-90-27

Rejection of offer of work as night watchman and janitor because it involved Sunday work in violation of religious beliefs held not to disqualify claimant.

OREGON

Ore. Bd. of App. Doc. No. 62-AB-132 (June 8, 1962)
8 CCH Unempl. Ins. Rep. ¶ 8169.02

Claimant whose only work experience was that of grocery clerk and who was unwilling to accept work on the Saturday Sabbath held unavailable for work and not eligible for benefits.

PENNSYLVANIA

13563—Pennsylvania R, No. 44-99-G-2840 (Mar. 21, 1949)
12 Ben. Ser. No. 7

Jewish bookeeper's refusal of proffered job because it required Saturday work, in violation of her religious principles, held a rejection for good cause; work was not suitable. Further, she was eligible because this limited restriction left her still attached to the Philadelphia labor market.

TENNESSEE

Tennessee B, Bd. of Rev., No. 54-BR-78 (Mar. 11, 1954)
Ben. Ser. Serv., U. I., AA-90-19

Observer of Saturday Sabbath, not Adventist, held "available for work" despite refusal of Saturday work for religious reasons. Restrict is found not serious enough to limit availability so as to remove him from the labor market.

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Tennessee Bd. of Rev. Dec. No. 45-BR-64
9 CCH Unempl. Ins. Rep. ¶1950.101

Seventh-day Adventist who work when her employer changed from a five-day to a seven-day week on a super-priority Government contract and she was asked to work on Saturday, held available for work when her restriction did not remove her from the labor market, as she found employment. But found to have left without good cause considering the employer's critical circumstances.

VIRGINIA

11273—Virginia A, No. D-1397; AE-609 (Nov. 24, 1945)
10 Ben. Ser. No. 2, p. 147

Recent convert to Seventh-day Adventist church who quit her job because new religion forbade her working on Saturday was held to be "available for work" because Saturday work was not "suitable". There were some plants in the area that operated on a five-day week but she had been unable to locate a job.

Virginia Dec. No. S-8694-8525 (January 21, 1960)
10 CCH Unempl. Ins. Rep. ¶ 49,571

Seventh-day Adventist gave up Fuller Brush sales because he was unable to collect from his buyers. Filed claim because unable to get work. Held, he had good cause for quitting his self-employment and not subject to disqualification.

As to restriction due to his religious beliefs against working on his Sabbath, "it has been repeatedly held that a claimant's refusal to work on his Sabbath is not a restriction in itself that would justify the denial of unemployment compensation on the ground that he is not available for work. The restriction with regard to Saturday work would not take him out of the general labor market inasmuch as there are a large number of places where he could find work that would not inter-

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fere with his Sabbath day. However, . . . he has not shown a genuine attachment to the labor market by conducting an active and diligent search for work. He is, therefore, held not available for work during the period in question.

WASHINGTON

9107—Washington R, Comm'r No. 540 (Aug. 31, 1944)
8 Ben Ser. No. 1, p. 140

Seventh-day Adventist who was unwilling to work on Saturday and had obtained work that did not require it, both before and after period subject of his claim, held to be available for work and not disqualified by her restriction against Saturday work.

Many firms will accommodate workers of this lady's religious beliefs and will adjust their schedule of hours to fit such requirements. "Freedom of religion is guaranteed under our constitution and any creed or church is entitled to one Sabbath day per week whether it be Sunday, Saturday, or some other day."

Washington B, Comm'r No. 3692 (October 26, 1955)
Ben. Ser. Serv. U. I., AA-90-23

Seventh-day Adventist filling station worker held not to have adversely affected availability for work by restriction against Sabbath work. Individual willing to work on Saturday evening and Sunday is a distinct asset since most service station attendants desire that time off.

Betts v. *Giovine,* Superior Court, Kings County (April 12, 1957)
Washington Ct.
Ben. Ser. Serv. U. I., AA-90-35
10 CCH Unempl. Ins. Rep. ¶ 8276

Holding that charwoman was not available for work because of her restriction against work on the Seventh-day Adventist Sabbath, reversed. Unwillingness to

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work on Friday nights and Saturdays was unwillingness to make herself available only as to work that was not suitable. Plaintiff was available for suitable work.

The freedom of religion guaranteed by the First and Fourteenth Amendments as well as the state constitution make unconstitutional any construction of the available for work provision of the state statute that "would make ineligible, and deny benefits to, a claimant because of his unwillingness to accept employment requiring him to work on his Sabbath where such unwillingness is based on his individual and sincere belief in, and adherence to, a religious tenet of his church."

WISCONSIN

10154—Wis. A, App. Trib., No. 45-A-79 (June 1945)
10 CCH Unempl. Ins. Rep. ¶ 1965.812
8 Ben Ser. No. 12, p. 156

Sweeper-cleaner who refused jobs involving Sunday work because she would be unable to attend Sunday church services as she had been doing for a number of years, held to have refused suitable employment with good cause.

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