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Unemployment Compensation—Spouse's Relocation Due to Employment Is a Compelling Person Reason Constituting Good Cause for Voluntary Termination—Ayers v. Department of Employment Security, 85 Wn. 2d 550, 536 P.2d 610 (1975)

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UNEMPLOYMENT COMPENSATION—SPOUSE'S RELOCATION DUE TO EMPLOYMENT IS A COMPELLING PERSONAL REASON CONSTITUTING GOOD CAUSE FOR VOLUNTARY TERMINATION—*Ayers v. Department of Employment Security*, 85 Wn. 2d 550, 536 P.2d 610 (1975).

Claimant Robert B. Ayers and his wife resided in Richland, Washington, where he held a temporary, seasonal job with a landscaping company, salaried at approximately $480 per month. Prior to the end of the company's work season and the forced termination of claimant's job,[1] Mrs. Ayers was offered permanent employment at a salary of $412 per month in Olympia, Washington, a distance of approximately 250 miles from their Richland residence. The couple agreed that Mr. Ayers would quit his job and that they would move to Olympia.[2] Unable to find work in the Olympia area, Mr. Ayers filed for unemployment benefits but was denied immediate eligibility because of failure to establish good cause for the voluntary termination of his employment, as required by R.C.W. § 50.20.050.[3]

On administrative appeal from the state Employment Security Department's denial of immediate benefits, the claimant alleged that his desire to preserve his marriage was good cause for his voluntary resignation and that the departmental policy requiring a husband to show actual threat to his marriage, while automatically finding good cause in the case of a wife who voluntarily terminated her employment to follow her husband to a new domicile,[4] violated the equal protection clauses of both the state and federal constitutions.[5] The

1. *See* Brief of Appellant at 4, Ayers v. Department of Empl. Sec., 85 Wn. 2d 550, 536 P.2d 610 (1975).

2. *Id.* at 4–5. Their decision was based on their weighing of the advantages of Mrs. Ayers' career opportunity in Olympia over those of Mr. Ayers' short-term employment prospects in Richland, their determination that they could neither afford to maintain two separate domiciles nor commute weekly, and a mutual desire to maintain their marital relationship.

3. WASH. REV. CODE § 50.20.050 (1974) provides:

> An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he has left work voluntarily without good cause and thereafter until he has obtained work and earned wages of not less than his suspended weekly benefit amount in each of five calendar weeks: *Provided*, That disqualification under this section shall not extend beyond the tenth calendar week following the week in which such individual left work.

4. *In re* Bale, 63 Wn. 2d 83, 385 P.2d 545 (1963) (legal duty of the wife to follow her husband to his chosen domicile was good cause for her voluntary termination of employment). *See* text accompanying notes 20–23 *infra*.

5. Although Ayers argued his case on equal protection grounds, the court sidestepped the constitutional issues, *see* note 9 *infra*, and declined to comment on the continuing validity of the *Bale* ruling that the legal duty of the wife to accompany her hus-

appeal tribunal rejected these contentions and upheld the departmental denial of immediate benefits.[6] The department commissioner and the Thurston County Superior Court both affirmed.[7] Upon transfer of the case from Division Two of the Court of Appeals, a divided Washington State Supreme Court reversed.[8] *Held*: Claimant's

band is good cause for her voluntary resignation. *See* 85 Wn. 2d at 552, 536 P.2d at 611. Whether a female claimant may now establish good cause for leaving work by merely alleging that she has a legal obligation to follow her husband is not clear. *Ayers* holds that either spouse has good cause as long as the decision as to which spouse should terminate employment is reasonable. 85 Wn. 2d at 552–53, 536 P.2d at 612. If a wife still has a legal duty to accompany her husband, this obligation alone may continue to be sufficient to render her resignation reasonable, and her burden of proving good cause therefore remains substantially less than that imposed on the husband.

The passage of the equal rights amendment (ERA), WASH. CONST. art. XXXI, however, suggests that a wife may no longer be legally bound to follow her husband. Section 1 of that amendment provides: "Equality of rights and responsibility under the law shall not be denied or abridged on account of sex." In discussing the proposed Federal ERA, it has been stated:

> The basic principle of the Equal Rights Amendment is that sex is not a permissible factor in determining the legal rights of women, or of men. This means that the treatment of any person by the law may not be based upon the circumstance that such person is of one sex or the other.

Brown, Emerson, Falk, & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 YALE L.J. 871, 889 (1971), cited for interpretation of the Washington State ERA in Singer v. Hara, 11 Wn. App. 247, 256–57 & n.9, 522 P.2d 1187, 1193 & n.9 (1974) (affirming denial of marriage license to persons of the same sex).

Sex classifications, valid under the equal protection clause of the fourteenth amendment to the Federal Constitution through application of the suspect classification and fundamental interest doctrines, may now be invalid under the Washington ERA. *See* Dybwad, *Implementing Washington's ERA: Problems with Wholesale Legislative Revision*, 49 WASH. L. REV. 571, 574 n.10 (1974); Darrin v. Gould, 85 Wn. 2d 859, 540 P.2d 882 (1975) (exclusion of students from athletic competition solely because of their sex violates Washington's ERA). Thus, the ERA may give the husband and the wife an equal right to select the family domicile, so that neither will have a legal duty to follow the other. *See* Brief of Respondent at 21–22, Ayers v. Department of Empl. Sec., 85 Wn. 2d 550, 536 P.2d 610 (1975); Gary L. Price, Review No. 20701, IV MANPOWER ADM'N, U.S. DEP'T OF LABOR, BENEFIT SERIES SERV.—UNEMPL. INS. VL–155.2–185 (Comm'r of Wash. Empl. Sec. Dep't, June 7, 1974), *rev'g* Dkt. No. 3–08310 (App. Trib., Feb. 14, 1974). The absence of such a legal duty would nullify the basis for the *Bale* decision and, under *Ayers*, the wife would be required to meet the same standard of reasonableness as the husband.

The effect of the ERA on the *Bale* holding was not at issue in *Ayers*, since the amendment was approved in November 1972, six months after claimant Ayers had filed his claim for unemployment benefits. The court's broad holding that one *spouse* may have good cause to quit work to follow the other *spouse* indicates that the court may have anticipated a future ERA challenge and chose to word the *Ayers* holding in language sufficiently broad to apply the burden of proof of "reasonableness" to wives as well as to husbands.

6. Robert B. Ayers, Dkt. No. 72–5252 (Aug. 17, 1972).

7. Robert B. Ayers, Review No. 10789–X (Dec. 28, 1972), *aff'd*, Ayers v. Employment Sec. Dep't, No. 47646 (Jan. 22, 1974).

8. Chief Justice Stafford, Justices Finley, Rosellini, and Hunter, and Justice Pro Tem Rummel joined Justice Wright in the majority opinion. Justice Hamilton, joined by Justices Utter and Horowitz, dissented.

In his dissenting opinion, Justice Hamilton—perhaps in response to the breadth of the

decision to follow his wife to the location of her work was a compelling personal reason for terminating his employment, establishing good cause within the meaning of R.C.W. § 50.20.050, and entitling him to benefits without an intervening period of disqualification.[9] *Ayers v. Department of Employment Security*, 85 Wn. 2d 550, 536 P.2d 610 (1975).

This note will analyze the impact of *Ayers* upon the traditional dual administrative test of "no alternative" and "preservation of employment"[10] used to determine whether, under the particular facts and circumstances, "compelling personal reasons"[11] meeting the statutory requirement of good cause for voluntary termination of employment exist. Although the Washington court did not discuss this test, the *Ayers* decision should not be construed as a rejection of its continued vitality. In addition, this note will analyze the factors which should be considered when applying the "no alternative" and "preservation of employment" standards to spouse relocation situations in the wake of *Ayers*. It concludes that a more careful adherence to established ad-

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majority's holding, *see* note 5 *supra*—stated that the existence of a compelling personal reason sufficient to justify voluntary resignation was "a factual question to be resolved, virtually on a case-by-case basis." 85 Wn. 2d at 554, 536 P.2d at 612. Although the dissent did not completely reject the majority's reasoning that separation of the family unit cannot be presumed to be a reasonable alternative to voluntary termination of employment, *see* text accompanying notes 47–48 *infra*, it concluded that on the facts of the case claimant Ayers had failed to carry his burden of proof by demonstrating that temporary separation would threaten his marriage adversely, affect any children involved, or otherwise cause unreasonable inconvenience.

The implication of the dissenting opinion that family separation may be presumed to be a reasonable alternative to unemployment in some circumstances merits further consideration. *See* note 50 *infra*. Such instances may be limited, however, to those few cases where separation will be relatively short in duration, since permanent or lengthy separation of the family will almost inevitably place stress on marital-familial relationships and strain upon family finances.

9. As indicated earlier, *see* note 5 *supra*, Ayers argued his claim on the grounds of denial of equal protection; the Washington Supreme Court, however, framed the issue of the case as: "whether there were sufficient compelling personal reasons to constitute 'good cause' for appellant to quit his job." 85 Wn. 2d at 551, 536 P.2d at 611.

10. In general, this test requires the claimant to show that he or she had no reasonable alternative to voluntary resignation after making a reasonable effort to discover a solution enabling him or her to preserve the employment status. For further elaboration and for examples of the utilization of the test in Washington, see the text accompanying notes 18–25 *infra*.

11. Since the facts of the *Ayers* case did not involve voluntary termination due to unsuitable work-related factors as established by WASH. REV. CODE § 50.20.100 (1974), *e.g.*, risk to health or to safety or prior training in a different job, this note will not deal with the elements of good cause arising out of the claimant's employment situation. For discussion in this area, see Packard, *Unemployment Without Fault: Disqualifications for Unemployment Insurance Benefits*, 17 VILL. L. REV. 635, 638–44 (1972); Note, *Unemployment Insurance: Good Cause for Leaving Employment*, 20 CLEV. STATE L. REV. 597 (1971).

ministrative tests is necessary to ensure that awards of unemployment compensation benefits are made in accordance with the articulated objectives of the state unemployment compensation law.[12]

I. BACKGROUND

The Washington Supreme Court, prior to *Ayers*, had held that the elements of a showing of good cause necessary to justify voluntary termination of employment under R.C.W. § 50.20.050 are not limited to work-related bases[13] but may include "compelling personal reasons."[14] Although the court has found compelling personal reasons to exist under a variety of specific circumstances,[15] it has given little guidance as to the general nature of a compelling personal reason.[16] Administrative decisions, however, have been more helpful in stressing the need to differentiate compelling personal reasons from reasons of mere personal convenience.[17] The claimant who alleges that compel-

12. The majority and dissenting opinions in *Ayers* agreed that the purpose of the unemployment compensation system is to relieve "economic insecurity" and to protect "against this greatest hazard of our economic life." 85 Wn. 2d at 552, 553, 536 P.2d at 611, 612. The dissent, however, stressed that *involuntary* unemployment was the principal concern. *See* text accompanying notes 35–41 *infra*.

13. Twenty-six states have statutes or regulations which specifically restrict good cause to reasons related to work or attributable to the employer-employee relationship. *See* MANPOWER ADM'N. U.S. DEP'T OF LABOR, COMPARISON OF STATE UNEMPLOYMENT INSURANCE LAWS 4–6, 4–27, 4–28 (Rev. 1974 & 1975) [hereinafter cited as COMPARISON]. Courts in a number of states with statutes similar to WASH. REV. CODE §50.20.050, which do not expressly define good cause, have restricted good cause to work-related reasons. *See, e.g.*, Woodmen of the World Life Ins. Soc'y v. Olsen, 141 Neb. 776, 4 N.W.2d 923 (1942); Stone Mfg. Co. v. South Carolina Empl. Sec. Comm'n, 219 S.C. 239, 64 S.E.2d 644 (1951); Unemployment Ins. Comm'n v. Cochran Foil Co., 331 S.W.2d 903 (Ky. Ct. App. 1960). Moreover, statutes in twelve states expressly exclude marital, filial, or other domestic reasons, including moving with one's spouse, as possible bases for good cause. *See* COMPARISON, *supra*, at 4–44; *see generally* Annot., 13 A.L.R.2d 874, 876–80 (1950).

14. *In re* Bale, 63 Wn. 2d 83, 89–90, 385 P.2d 545, 548–49 (1963). Since 1945, the policy of the Washington State Employment Security Department has been to interpret good cause to include compelling personal reasons. *Id.* at 88–89, 385 P.2d at 548. *See also* text accompanying notes 20–23 *infra*.

15. The *Bale* court limited itself to the facts of that case, *viz.*, the wife left her job at Boeing Airplane Co. in Seattle, Washington, to join her husband in Oakville, Washington, where he had taken a teaching position. *See* 63 Wn. 2d at 91, 385 P.2d at 549, note 4 *supra*.

16. *See* Matison v. Hutt, 85 Wn. 2d 836, 838–39, 539 P.2d 852, 853–54 (1975), in which the court declared that good cause cannot be defined with exactness but must be determined on a case-by-case basis. *Accord*, *Ayers*, 85 Wn. 2d at 554, 536 P.2d at 612 (Hamilton, Utter, & Horowitz, JJ., dissenting).

17. *See, e.g.*, Judith G. Bird, 8 Comm'r Dec. No. 814 (Feb. 19, 1970), *aff'g* Dkt. No. 70–754 (App. Trib., Dec. 5, 1969) (inability to visit friends and relatives due to increased working hours was noncompelling personal inconvenience); Brian L. Butcher, Dkt. No. 70–9943, 10 UNEMPL. INS. REP. (Wash.) ¶ 8483 (App. Trib., May 4, 1971), *pe-*

ling personal reasons have led to voluntary termination of employment must manifest a sincere desire to protect his or her employability.[18] To do so, he or she must meet the dual test of "no alternative" and "preservation of employment:"[19]

> Compelling personal reasons imply circumstances of such a nature that [afford an individual] *no alternative* but to leave his employment. . . . [I]t must be established that the individual made every reasonable effort *to preserve the employee-employer relationship.*

Accordingly, to establish good cause in pre-*Ayers* cases in which one spouse quit work to follow the other to a new location, the claimant had to prove that no viable alternative to termination of employment existed. For the wife, this was a relatively simple matter, in view of the Washington court's decision in *In re Bale.*[20] There the court upheld a long-standing administrative policy[21] that the legal duty[22] of the wife

titions for review dismissed, Review No. 9441 (Comm'r of Empl. Sec. Dep't, July 20, 1971) *and* No. 741703 (Wash. Super. Ct., King County, Mar. 20, 1972) (inability to attend school due to distance of school from job site was mere personal reason).

Utilization of the distinction between compelling personal reasons and reasons of personal convenience is important to effectuate the unemployment compensation system's goal of alleviation of suffering caused by *involuntary* unemployment. An individual who voluntarily resigns and remains unemployed for mere personal convenience is not *involuntarily* unemployed. *See* text accompanying notes 34–41 *infra*; *Ayers*, 85 Wn. 2d at 553–55, 536 P.2d at 612–13 (Hamilton, Utter & Horowitz, JJ., dissenting).

18. *See, e.g.*, Ernest R. Fields, 7 Comm'r Dec. No. 756, 10 UNEMPL. INS. REP. (Wash.) ¶ 8429 (July 11, 1968), *rev'g* Dkt. No. 68–2399 (App. Trib., July 2, 1968) (claimant established sincere desire to protect his employability when, faced with imminent dismissal because of wage garnishment, he discussed his problem and its possible solutions with his employer).

19. Franklin H. Jensen, Dkt. No. 3–10259 at 2, IV MANPOWER ADM'N, U.S. DEP'T OF LABOR, BENEFIT SERIES SERV.—UNEMPL. INS. VL–360–115 at 115–16 (Wash. App. Trib., Jan. 16, 1974) (emphasis added), *petition for review dismissed*, Review No. 20593 (Comm'r of Empl. Sec. Dep't, Feb. 8, 1974) (admitted alcoholic had compelling personal reason to resign where job duties might have caused him to resume drinking). *See also* Casey v. Employment Sec. Dep't, No. 736576, 10 UNEMP. INS. REP. (Wash.) ¶ 8503 (Wash. Super. Ct., King County, Nov. 20, 1972) (claimant who needed medical assistance held to have left work without attempting to preserve his employment where he could have obtained such assistance in the vicinity of his employment); Carl E. Buxton, 7 Comm'r Dec. No. 799 (Wash. Empl. Sec. Dep't, Sept. 3, 1969), *rev'g* Dkt. No. 69–2206 (App. Trib., July 3, 1969) (claimant had no alternative but to quit work where his wife's health required that she move to a different locality).

20. 63 Wn. 2d 83, 385 P.2d 545 (1963).

21. *See, e.g.*, Mary L. Crepeau, 5 Comm'r Dec. No. 510, 10 UNEMPL. INS. REP. (Wash.) ¶ 8342.05 (July 19, 1962), *aff'g* Dkt. No. A–46601 (App. Trib., May 31, 1962); Kathleen D. Seeley, 1 Comm'r Dec. No. 165 (Wash. Empl. Sec. Dep't, Feb. 8, 1955), *rev'g* Dkt. No. A–26669 (App. Trib., Jan. 10, 1955); Clara A. Hopper, Dkt. No. A–14992, 10 UNEMPL. INS. REP. (Wash.) ¶ 1975.054 (App. Trib., Apr. 5, 1949).

22. The Washington court has held that the husband has the right to select the family domicile, that the wife has a duty to accompany and live with him in his chosen home, and that failure of the wife to carry out her duty to live with her husband constitutes

to follow her husband to the domicile of his choice was a compelling personal reason for the voluntary termination of her employment and therefore constituted good cause within the meaning of R.C.W. § 50.20.050.[23] Whether a husband could properly claim that following his wife was good cause for his voluntary resignation was not at issue in *Bale*; however, administrative policy indicated that the husband could establish good cause in such a situation only where the separation of the spouses would result in "a real threat to the marital relationship."[24] Absent such a threat, the husband could not immediately

abandonment. Buell v. Buell, 42 Wash. 277, 84 P. 821 (1906). Prior to 1973, abandonment for one year was specific grounds for divorce in Washington. *See* ch. 215, § 2, [1949] Wash. Laws 698, *repealed by* ch. 157, § 30, [1973] Wash. Laws, 1st Ex. Sess. 1228. *See generally* Annot., 29 A.L.R.2d 474 (1953). Since the passage of WASH. CONST. art. XXXI, § 1, the equal rights amendment, the continued imposition of this legal duty upon the wife has become doubtful. *See* note 5 *supra*.

23. Decisions in Massachusetts under a statute similar to Washington's are in accord. *See, e.g.*, Raytheon Co. v. Director of Div. of Empl. Sec., 346 Mass. 733, 196 N.E.2d 196 (1964); Raytheon Co. v. Director of Div. of Empl. Sec., 344 Mass. 369, 182 N.E.2d 293 (1962). In Bliley Elec. Co. v. Unemployment Compensation Bd. of Review, 158 Pa. Super. 548, 45 A.2d 898 (1946), a Pennsylvania superior court also found, under a statute similar to WASH. REV. CODE § 50.20.050 (1974), that the wife's legal duty to follow her husband was good cause for voluntary termination. The *Bliley* decision was superseded by legislation responding to this per se rule, PA. STAT. ANN. tit. 43, § 802(b)(2) (Prudon's Supp. 1975), disqualifying a claimant who leaves work to join his or her spouse in a new locality. *See Raytheon, supra*, 196 N.E.2d at 198 n.1. *See also* notes 41 & 50 *infra*.

In other states with similar statutes, courts have not found good cause, despite acknowledgment that the wife has a legal duty to follow the husband, on the grounds that good cause is restricted to work-related rather than personal reasons and that the unemployment compensation law does not relieve the husband of his reciprocal legal duty to support his wife. *See, e.g.*, note 13 *supra* and cases cited therein.

24. *Ayers*, Dkt. No. 72–5252 at 3 (App. Trib., Aug. 17, 1972). Administrative decisions dealing with a husband's termination of work to join a wife who has established new employment elsewhere are few. In Gary L. Price, Review No. 20701, IV MANPOWER ADM'N, U.S. DEP'T OF LABOR, BENEFIT SERIES SERV.—UNEMPL. INS. VL–155.2–185 (Comm'r of Wash. Empl. Sec. Dep't, June 7, 1974), *rev'g* Dkt. No. 3–08310 (App. Trib., Feb. 14, 1974), benefits were denied after claimant and his wife agreed to and did move to her place of employment. The commissioner found that the circumstances influencing claimant's decision to terminate lacked "sufficient compulsion" to constitute good cause. Because the husband was required to show actual danger to his marriage, the commissioner viewed the mutuality of the decision as an indication that claimant's personal reasons for leaving his job were not "compelling personal reasons." This reasoning is reflected in Justice Hamilton's dissent in *Ayers*: "Based upon this mutual agreement, and without any kind of ultimatum from his wife, claimant quit his job . . . ." 85 Wn. 2d at 555, 536 P.2d at 613. *Cf.* Tobe Nettles, 4 Comm'r Dec. No. 490 (Wash. Empl. Sec. Dep't, Dec. 12, 1961), *rev'g* Dkt. No. A–44379–T (App. Trib., Nov. 28, 1961), where benefits were granted after claimant's wife refused to accompany him to his new place of employment. The commissioner decided that claimant quit work for good cause because his only alternative was to retain employment at the cost of initiating divorce proceedings. *See also* LeRoy C. Seeley, 1 Comm'r Dec. No. 166 (Wash. Empl. Sec. Dep't, Feb. 8, 1955), *rev'g* Dkt. No. A–26668 (App. Trib., Jan. 10, 1955), in which claimant established good cause for voluntarily terminating his employment, where, after his wife initiated divorce

qualify for unemployment benefits, even if his only alternative to leaving work was a lengthy, if not permanent, physical separation from his wife.[25]

II. *AYERS* AND ITS IMPACT ON THE DUAL TEST FOR COMPELLING PERSONAL REASONS

The *Ayers* court eliminated the requirement that the husband show an actual threat to the marriage by declaring that as long as employment for both spouses is not available in the same vicinity, "it *is* a compelling personal reason and, therefore, good cause for one of the spouses to leave employment and go to the place of employment of the other spouse . . . ."[26] Thus, the mere fact that jobs for both the husband and wife are not available in the same area is sufficient as a matter of law to bring a spouse's voluntary resignation within the realm of good cause, if it is necessary to keep the family together and the decision to resign is reasonable.[27] In so holding, the court was silent on the utilization of the "no alternative" and "preservation of employment" standards in this context.[28] The *Ayers* decision should not, however, signal an end to the utility of these standards in ascertaining compelling personal reasons constituting good cause or in maintaining the integrity of the unemployment compensation system. A repudiation of these standards would make claimants eligible for unemployment compensation immediately after resignation without attempting to arrive at an accommodation of their personal problems in order to continue employment. This result would clearly contravene the purpose of the unemployment compensation system to aid

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proceedings against him, claimant persuaded her to move away with him in order to be free from local pressures which were destroying their marriage. The commissioner stated:

> It would appear beyond any question of doubt that where the husband and wife manifest *a desire* to protect their marriage from impending dissolution, that such a desire, in fact, constitutes a personal compelling reason for taking any and all necessary lawful measures to so preserve the marriage.

1 Comm'r Dec. No. 166, at 3 (emphasis in original).

25. The requirement that the husband show "a real threat to the marital relationship" indicates that mere physical separation of the spouses was not a sufficiently compelling reason to justify voluntary resignation. *See* cases cited in note 24 *supra*.

26. 85 Wn 2d. at 552, 536 P.2d at 611–12 (emphasis added).

27. *Id.* at 552–53, 536 P.2d at 612. *See* text accompanying notes 52–54 *infra*.

28. The court had notice of the "no alternative" and "preservation of employment" standards. *See* Brief of Respondent at 11–12, *Ayers*, 85 Wn. 2d 550, 536 P.2d 610 (1975).

only those who are involuntarily unemployed.[29] That the dual test is valuable in preserving the integrity of the unemployment compensation system is demonstrated by the following cases of resignation for domestic reasons other than spouse relocation.

In *Ivy L. Winberg*,[30] the claimant voluntarily quit work to spend more time with her asthmatic children. The appeal tribunal found that she had not established good cause for resignation because she had not discussed her problem with her employer. According to administrative policy, where an individual's domestic obligations create unusual problems, that person has a responsibility[31] to approach the employer and attempt to arrive at a mutually satisfactory solution.[32]

In *George S. Liapis*,[33] claimant's wife left home, leaving him to care for their two young children. Claimant voluntarily quit work to move to New Hampshire, where he had relatives who could provide him with the necessary child care. The appeal tribunal determined that since the claimant had not made sufficient attempts to obtain child care in the area of his employment, he had failed to establish a compelling personal reason for leaving his job.

In the *Winberg* and *Liapis* decisions, the dual test served to ensure that the claimants had explored all reasonable alternatives to unemployment before arriving at the ultimate decision to resign. Moreover, the test ensures in all cases that benefits will not be paid unless the reason for a claimant's voluntary resignation is, in fact, compelling. The need to determine that, despite a sincere desire to remain employed, a claimant had no alternative but to resign is consistent with the purpose of the Employment Security Act,[34] which provides for a

29. *See* text accompanying notes 34–41 *infra*.

30. Dkt. No. 68–104, 10 UNEMPL. INS. REP. (Wash.) ¶ 8445 (App. Trib., Aug. 24, 1967), *aff'd*, 7 Comm'r Dec. No. 731 (Sept. 21, 1967), *aff'd*, No. 56805 (Wash. Super. Ct., Grays Harbor County, Aug. 1, 1969).

31. 7 Comm'r Dec. No. 731 at 2, 10 UNEMPL. INS. REP. (Wash.) ¶ 8445 at 50,693 (Sept. 21, 1967).

32. Such a solution might be in the nature of a leave of absence or a change in working hours. *See also* James H. Anderson, Review No. 6938, 10 UNEMPL. INS. REP. (Wash.) ¶ 8386.07 (Comm'r of Empl. Sec. Dep't, Nov. 10. 1964), *setting aside* Dkt. No. A–53335 (App. Trib., Oct. 5, 1964), denying claimant benefits pursuant to WASH. REV. CODE § 50.20.050 because claimant had not informed his employer of a physical condition which required him to move from Seattle to a drier climate. The commissioner found that the employer, which maintained installations in areas suitable to claimant's condition, was entitled to an opportunity to transfer him to a more healthful work situs.

33. Dkt. No. A–17412, 10 UNEMPL. INS. REP. (Wash.) ¶ 1975.052 (App. Trib. of Empl. Sec. Dep't, Apr. 14, 1950).

34. WASH. REV. CODE tit. 50 (1974).

compulsory reserve of funds "to be used for the benefit of persons unemployed *through no fault of their own* . . . ."[35] Compensable unemployment under this scheme is divided into two categories:[36] (1) unemployment, the initial cause of which is beyond the control of the employee,[37] and (2) unemployment which, regardless of its initial cause, continues through no fault of the employee.[38] The fact that these categories of unemployment are insured reflects the basic principle of unemployment compensation "that the only unemployment whose cost industry should not be called upon to bear is unemployment which is the worker's fault, i.e., unemployment caused by the worker's own unreasonable act . . . ."[39] Whether the worker has been unreasonable is based, at least in part, on whether his conduct is consistent with a sincere desire to maintain his employability or whether his actions indicate a desire to "take it easy" at the expense of contributing employers.[40] Allowing claimants to draw benefits when they could have continued employment without unreasonable inconvenience would undermine the fundamental tenet of the unemployment compensation laws: that only those persons *involuntarily* unemployed should be compensated.[41]

35. *Id.* § 50.01.010 (emphasis added).

36. Reply Brief of Appellants at 12–13, *In re* Bale, 63 Wn. 2d 83, 385 P.2d 545 (1963). *See generally* WASH. REV. CODE §§ 50.20.045–.110 (1974).

37. *E.g.*, unemployment due to layoff by the employer may be compensable. WASH. REV. CODE §§ 50.20.010 *et seq.* (1974).

38. *E.g.*, unemployment due to discharge for misconduct or to voluntary resignation without good cause may be compensable beyond the tenth calendar week following the week in which the individual became unemployed. *See* WASH. REV. CODE §§ 50.20.050, .060 (1974).

39. BUREAU OF EMPLOYMENT SECURITY, U.S. DEP'T OF LABOR, BES No. U–212, UNEMPLOYMENT INSURANCE LEGISLATIVE POLICY 62 (1962). *See generally* Harrison, *Forenote: Statutory Purpose and "Involuntary Unemployment"*, 55 YALE L.J. 117 (1945); Kempfer, *Disqualifications for Voluntary Leaving and Misconduct*, 55 YALE L.J. 147, 148–59 (1945).

40. *See* Kempfer, *supra* note 39, at 150–51. *Cf.* WASH. REV. CODE § 50.20.080 (1974).

41. This notion follows generally-accepted social policy. *See* Kempfer, *supra* note 39, at 150. *Cf.* WASH. REV. CODE § 50.01.010 (1974). In addition to pressure from employers to proscribe payments to those who have contributed to their own unemployment, general public dissatisfaction with liberal eligibility requirements can and does lead to the enactment of stricter disqualification provisions. *See* L. ADAMS, PUBLIC ATTITUDES TOWARD UNEMPLOYMENT INSURANCE 69–74 (1971). In New York, for example, N.Y. LABOR LAW § 593 (McKinney 1965), which disqualifies a claimant who follows his or her spouse to another locality, was enacted in reaction to Shaw v. Lubin, 6 App. Div. 2d 354, 177 N.Y.S.2d 1 (1958), *aff'd*, 5 N.Y.2d 1014, 158 N.E.2d 128, 185 N.Y.S.2d 267 (1959), which allowed benefits to a woman who had left work to marry and move to her husband's chosen domicile. *See In re* Russo's Claim, 236 N.Y.S.2d 170, 171 (App. Div. 1963) (dissenting opinion). New Jersey and Pennsylvania also enacted restrictive legislation in response to court decisions that family obligations may justify voluntary resig-

The court's failure in *Ayers* to expressly apply or discuss the dual test, although perhaps attributable to the particular factual circumstances of the case,[42] has already led to deviation from the purpose of the Employment Security Act in at least one decision. In *Alexander v. Employment Security Department*,[43] claimant Alexander and his wife resided in Seattle, where he had a temporary carpentry job. Although the claimant had only two weeks remaining in his term of employment, he quit work to move with his wife to Burlington, approximately 65 miles from their former home, where she had accepted a teaching position. Alexander failed to allege, as had Ayers, that his family could not afford to maintain two separate homes or that he could not commute to work during the two weeks remaining in his employment. Unlike the *Ayers* case, nothing in the record suggested that the claimant would suffer unreasonable inconvenience had he completed his term of employment.[44] Nevertheless, a stipulated judgment, entered in favor of the claimant, was requested by the department on the ground that the factual situation before the court was *"in all substantial respects indistinguishable from Ayers . . . ."*[45]

The result in *Alexander* suggests that the Washington Employment Security Department has construed *Ayers* to repudiate its own administrative standards for a compelling personal reason constituting good cause for voluntary termination of employment. Certainly the relatively close proximity of Seattle and Burlington, the shortness of claimant's remaining term of employment, and the lack of proof of any marital, familial, or financial hardship expected from the short separa-

nation. *See* Raytheon Co. v. Director of Div. of Empl. Sec., 196 N.E.2d 196, 198 n.1 (Mass. 1964); N.J. STAT. ANN. § 43:21–5(a) (Supp. 1975); PA. STAT. ANN. tit. 43, § 802(b)(2) (Purdon's Supp. 1975). *See also* note 8 *supra*.

42. The court may have concluded sub silentio that claimant Ayers had no reasonable alternative but to quit work and that the nature of his job precluded him from successfully preserving it. As the dissenting opinion and prior decisions on the claim indicate, however, there was room for differing opinions on these matters. *See* note 51 *infra*.

43. No. 35447, 10 UNEMPL. INS. REP. (Wash.) ¶ 8619 (Wash. Super. Ct., Skagit County, July 28, 1975), *rev'g* Burt F. Alexander, Dkt. No. 4–10037 (App. Trib., Nov. 12, 1974), *and* Review No. 21894 (Comm'r of Empl. Sec. Dep't, Feb. 11, 1975).

44. The factual circumstances in *Alexander* may be found in Dkt. No. 4–10037 (App. Trib., Nov. 22, 1974). Briefly, claimant was receiving $5 per hour at the time of termination and was satisfied with both his pay and hours of work. His wife would have moved to Burlington to accept the teaching position, salaried at $725 per month, even if claimant had not accompanied her. The evidence did not indicate that claimant had to accompany her at the time she moved in order to preserve their marriage, nor that he consulted with his employer at the time of his termination as to the amount of time he could reasonably expect to remain employed.

45. Stipulated Judgment at 1, Alexander v. Employment Sec. Dep't, No. 35447 (Wash. Super. Ct., Skagit County, July 28, 1975) (emphasis added).

tion were factors which indicated that Alexander's decision, as distinguished from Ayers', was based on reasons of personal convenience. Nevertheless, on the basis of *Ayers*, the department did not believe Alexander's decision could be proved unreasonable.[46] As indicated, *Alexander* appears distinguishable from *Ayers*, and it is unfortunate that the court's failure to discuss the dual test may have obscured not only the policy bases of its decision but also the requirement that the decision to terminate be reasonable.

In eliminating the former administrative requirement that a husband show an actual threat to his marriage in spouse relocation cases, the court in *Ayers* took notice of the substantial public interest in keeping a family together. It decided that where employment for both spouses is not available in the same area the State cannot *presume*—for the purposes of determining unemployment compensation eligibility—that separation of the family is a reasonable alternative to unemployment.[47] As Justice Wright stated in the majority opinion:[48]

> It is often a substantial factor to be considered that *it is desirable for numerous reasons to keep the family together.* If employment for the husband and for the wife are [*sic*] not available in the same area, it is a compelling personal reason and, therefore, good cause for one of the spouses to leave employment and go to the place of employment of the other spouse *in order to keep the family together.*

The mere fact that one spouse must relocate in order to accept new employment, however, need not compel the other spouse to terminate employment in every instance. As the following section demonstrates,

46. Since *Ayers*, the Washington Employment Security Department and interested employers have dropped or conceded several spouse relocation cases because of the difficulty in ascertaining a standard of reasonableness consistent with the court's decision. Thus, the court's failure to expressly apply the dual test or to formulate factors relevant to a workable standard of reasonableness may lead to determinations of benefit eligibility without the consideration of reasonableness mandated in *Ayers*. Because of these difficulties, the department is presently considering draft legislation which would expressly eliminate accompanying one's spouse to a new domicile as good cause for voluntary termination of employment. Interview with Barbara Phillips, Assistant Attorney General, State of Washington, in Seattle, Nov. 25, 1975.

47. In basing its decision on the public interest in preserving the family unit, the *Ayers* court implicitly followed the reasoning of the *Bale* decision, which was tacitly based on the public interest in preservation of marriage. *See* note 22 *supra*. *Compare* Woodmen of the World Life Ins. Soc'y v. Olsen, 141 Neb. 776, 4 N.W.2d 923 (1942), *with* Kathleen D. Seeley, 1 Comm'r Dec. No. 165 (Wash. Empl. Sec. Dep't, Feb. 8, 1955), *rev'g* Dkt. No. A–26669 (App. Trib., Jan. 10, 1955) (husband and wife's agreement to move to another town in order to preserve their marriage held to constitute good cause for voluntary termination of wife's employment).

48. 85 Wn. 2d at 552, 536 P.2d at 611–12 (emphasis added).

several factors should be examined in determining whether the dual test is met and whether the decision to terminate is reasonable so that immediate eligibility is warranted.

III. RELEVANT FACTORS IN SPOUSE RELOCATION CASES

The Washington court's finding that employment-related separation of the spouses cannot be presumed to be reasonable warrants critical reconsideration. As the dissenting opinion implied,[49] a vulnerable aspect of the court's reasoning is its assumption that in spouse relocation situations either separation of the spouses or termination of employment is inevitable. In this respect, it is important to recognize factors that indicate there may be less drastic alternatives. For instance, where the distance between the work sites of husband and wife is not great, the family may be able to re-establish residence midway between the two locations; alternatively, where an employer maintains several installations, the spouse electing to terminate employment may request a transfer to a site more conveniently located with respect to the other spouse's place of employment.[50] Such solutions would satisfy both the *Ayers* goal of preserving the family unit and the administrative goal of minimizing unemployment and its ill effects.[51] Inasmuch as *Ayers* did not raise the issue of whether one spouse may establish

49. *See id.* at 555, 536 P.2d at 613.

50. In addition, situations may exist where the separation of the spouses due to different employment localities will be for only a short period of time so that the separation will result in no substantial impact upon the family finances, or upon filial or marital relationships. *See* 85 Wn. 2d at 553, 555, 536 P.2d at 612, 613 (Hamilton, Utter, & Horowitz, JJ., dissenting).

Fourteen states have statutes either expressly disqualifying or deeming "unavailable" individuals who quit work due to marital obligations. *See* COMPARISON, *supra* note 13, at 4–44. New York, California, Idaho, Nevada, Oregon, Pennsylvania, and Utah specifically disqualify a claimant who quits work to follow a spouse. *See* N.Y. LABOR LAW § 593 (McKinney 1965); CAL. UNEP. INS. CODE § 1264 (West 1975); IDAHO CODE § 72–1366(c) (1973); NEV. REV. STAT. § 612.415(2)(a), (b) (1973); ORE. REV. STAT. § 657.176(3)(b) (1974); PA. STAT. ANN. tit. 43, § 802(b)(2) (Purdon's Supp. 1975); UTAH CODE ANN. § 35–4–5(i) (1966). *See also* note 41 *supra*.

51. The failure of the *Ayers* court to consider these possible alternatives may be due to the factual circumstances of that case. The 250 mile distance between the job sites of claimant Ayers and his wife was beyond reasonable commuting distance and, in any case, Ayers was certain to be laid off work at or before the end of the work season. There was no evidence that Ayers' employer maintained any branch business in the area of Mrs. Ayers' employment. Consequently, the court could have concluded that Ayers had no opportunity to preserve his employment and no alternative but to quit work if he was to avoid separation from his wife.

good cause for voluntary termination of employment even if continued employment without a family separation is possible, the Washington court has yet to evaluate the utility of the "no alternative" and "preservation of employment" standards in spouse relocation cases where there exist alternatives to family separation and methods for preservation of employment.

The *Ayers* decision is sufficiently broad, however, to permit consideration of viable alternatives to family separation or unemployment in cases where such alternatives do in fact exist, for the court held that the establishment of good cause depends upon whether the decision as to which spouse should resign from work is "reasonable" in light of "all relevant factors."[52] It is unlikely that the court would find it reasonable for one spouse to become voluntarily unemployed in order to accompany the other spouse to a new domicile, where the former could have both preserved the family unit and retained his or her employment without undue inconvenience. That a husband or wife may have a means of preservation of employment, *e.g.*, transfer to a more conveniently located job site, establishment of domicile in a more central location or temporary leave of absence, should be a relevant factor in determining whether there exists good cause to voluntarily terminate employment.

The mere existence of an alternative to resignation, however, should not result in automatic denial of unemployment benefits. The alternative must be reasonable. A spouse cannot reasonably be expected to transfer to a new job site when the transfer is conditioned on the acceptance of substantially lower pay or unsuitable duties.[53] A family cannot reasonably be expected to establish a new home in some central location where adequate housing or transportation is not available. Whether a reasonable alternative is available to an individual and his or her family will, of course, depend upon myriad fac-

52. 85 Wn. 2d at 552–53, 536 P.2d at 612.

53. The question of whether suitable job factors may or may not be present may be determined by considering the degree of risk to an individual's health, safety, or morals; his experience, prior training, prior earnings, or prior working conditions; or the distance between available employment and his residence. *See* WASH. REV. CODE §§ 50.20.100, .110 (1974).

This reasoning is analogous to that found in the context of transferring tenured teachers from one school setting to another. In Rosenthal v. Orleans Parish School Bd., 214 So. 2d 203 (La. App.), *appeal denied*, 252 La. 963, 215 So. 2d 130 (1968), the court stated that the transfer of a teacher from one position to another constituted removal from office if a reduction of salary was involved or if the new position required the teaching of subjects for which the teacher was not qualified.

tors pertinent to the particular situation, but the decision reached should be consistent with one which "a normally prudent person acting under like or similar circumstances"[54] and with a sincere desire to protect his or her employability would have made.

IV. CONCLUSION

After *Ayers*, separation of the spouses cannot automatically be deemed a reasonable alternative to voluntarily leaving work where employment for both spouses is not available in the same area. Yet, where other alternatives to separation or unemployment do exist, the reasonableness of the available alternatives is an important consideration in establishing good cause to voluntarily resign. Such options should be examined under the dual test of "no alternative" and "preservation of employment" as a means of assuring that the personal reason given for voluntary termination of employment is compelling and not merely a matter of personal convenience. Utilization of this approach can help preserve the objective of the unemployment compensation system: to alleviate only the hardships of *involuntary* unemployment.

Pamela A. Okano

54. George Zemek, 3 Comm'r Dec. No. 326 at 2, 10 UNEMPL. INS. REP. (Wash.) ¶ 8270.12 at 50,508 (July 9, 1956), *setting aside* Dkt. No. A–30250 (App. Trib., June 11, 1956), *quoted in* Laura G. Bale, Dkt. No. A–41215, 4 Comm'r Dec. No. 452 at 2 (App. Trib., Nov. 22, 1960), *aff'd*, *In re* Bale, 63 Wn. 2d 83, 385 P.2d 545 (1963). *See also* Western Printing & Lithographing Co. v. Industrial Comm'n, 260 Wis. 124, 50 N.W.2d 410 (1951) (applying the reasonably prudent person standard, the court held an unemancipated minor had compelling personal reason to quit job at parents' insistence that she move with them to another state).