Approved: 4-29-94
Date

MINUTES OF THE HOUSE COMMITTEE ON LABOR AND INDUSTRY.

The meeting was called to order by Chairman David Heinemann at 9:00 a.m. on March 16, 1994, in Room 526-S of the Capitol.

All members were present except: Representative Garner (excused)
Representative Nichols (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Linda Tierce, Chief of Benefits, Kansas Department of Human Resources
Roger Viola, General Counsel, Security Benefit Group
Pat Nichols, Kansas Trial Lawyers Association
Wayne Maichel, AFL-CIO
Mitch Wulfekoetter, Attorney, AFL-CIO

Others attending: See attached list

Hearing on SB 766 - Employment security law, determination of weekly benefit amount, employee welfare benefit plans included as wages.

Linda Tierce, Chief of Benefits, Kansas Department of Human Resources, addressed the committee stating that the Department was neutral on SB 766. Under current law, unemployment benefits are reduced by severance pay received from a former employer only if all other employment benefits are continued as though the severance had not occurred. SB 766 would take into consideration whether the employer has control of certain employment benefits as defined in Federal law. In 1993, of 2,987 unemployment insurance cases involving severance pay issues, 95% were cleared for payment. (Attachment 1)

Roger Viola, General Counsel, Security Benefit Group, testified in support of SB 766. Under Security Benefit's severance plan, full pay is continued for a period of time based on length of service, including all benefits that are allowed to be continued after termination. However, long term disability cannot be continued unless they are actively employed by Security Benefit. Because of the inability to continue this coverage, their severance package does not qualify as wages. Not only is Security Benefit paying for the severance package, but their experience account is charged for the person's unemployment benefits received at the same time. They believe a terminated employee should not receive unemployment benefits until after their severance pay ceases. A person should not be entitled to receive more during unemployment than he or she would have received while working. Not only does this arrangement place an unfair burden on the employer, but also acts as a disincentive for terminated employees to find new employment. (Attachment 2)

This concluded the hearing on SB 766.

Continuation of Hearing on SB 767 - Workers compensation, liability of principal for benefits of subcontractor's employees, exception for certain licensed motor carriers.

Pat Nichols, Kansas Trial Lawyers Association, testified in opposition to SB 767. This bill would shift the responsibility for purchasing workers compensation from the truck company to the owner-operator. The only way costs could be saved is if the owner-operator elects to "go bare" exposing himself and his own employees to the risk of uninsured injury. In such cases medical care would be paid either by the Workers Compensation Fund for insolvent employers or the State welfare system. In order to keep costs down, owner-operators are

likely to fail to purchase their own insurance. If this legislation is passed, other employers are certain to seek similar treatment for themselves. This singles out one industry and gives it special treatment. (Attachment 3)

George Gomez, Director of Workers Compensation, reported that the Advisory Council took no opinion on this legislation. If the Chairman requests that the Council look at it, they will do so.

Wayne Michael, AFL-CIO, introduced Attorney Mitch Wulfekoetter who testified in opposition to SB 767. The AFL-CIO feels this is special interest legislation which will adversely affect every taxpayer in Kansas. If workers are injured in the course of the employment and are not covered by workers compensation, they will end up on social welfare or be paid by the Workers Compensation Fund. Workers compensation insurance is a cost of doing business like any other cost of business. To remove this cost of business for this industry is nothing more than promoting special interest legislation. They feel that if an exception is made for this class of employers, one can anticipate a flood of industries requesting the same relief. (Attachment 4)

Claude Lee, Chief of Appeals, Kansas Department of Human Resources, provided written testimony in support of SB 767. (Attachment 5) A copy of a letter from Ron Todd, Commissioner of Insurance, to a Missouri owner-operator referred to by Mary Turkington in her testimony was distributed for background information. (Attachment 6) This closed the hearing on SB 767.

The meeting adjourned at 10:00 a.m. The next meeting is scheduled for March 17, 1994.

GUEST LIST

COMMITTEE: HOUSE LABOR AND INDUSTRY DATE: 3-16-94

NAME	ADDRESS	COMPANY/ORGANIZATION
Robert Lierz	Topeka	KDHR
Sam Orozco	Topeka	KDHR
Linda Tierce	Topeka	KDHR
Claude Lee	Topeka	KDHR
Jill Grant	Topeka	KID
Paul Bicknell	Topeka	KDHR
Bill Layes	Topeka	KDHR
Jim McHaffie	Topeka	Kansas AFL-CIO
Roger Viola	Topeka	SBG
Richard Thomas	Topeka	DHR/Work Comp
Mitch Willnauette	Topeka	KS AFL-CIO
Mary E. Turkington	Topeka	Kan. Motor Carriers Assn.
Burl Tollie	Kansas City, Ks	Tollie Freightways
Donna McDaniel	Topeka	Sen. Burke's office
Earl Seaton	Olathe	Seaton Van Lines
Larry "Doc" Criqui	Topeka	Bailey Moore & Stephens
Gary Gomez	Topeka	DHR/Work Comp

TESTIMONY

HOUSE LABOR AND INDUSTRY COMMITTEE

Senate Bill 766

Mr. Chairman, Members of the Committee, my name is Linda Tierce. I am the Chief of Benefits representing the Kansas Department of Human Resources, Division of Employment Security.

The department stands neutral on Senate Bill 766 but wishes to offer the following comments:

Section 44-704(e) of the Kansas Employment Security Law was amended in 1991 to define remuneration received as wages which would be used to reduce a claimant's weekly benefit amount. This section was added in an attempt to codify various court decisions in the treatment of vacation, holiday, and severance pay.

Under current law, an individual's unemployment benefits are reduced by severance pay received from a former employer only if all other employment benefits are continued as though the severance had not occurred.

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Amendments on page three of Senate Bill 766, lines two and three and lines 20 through 26 take into consideration whether the employer has control of certain employment benefits as defined in section 3 of the Federal Employee Retirement Income Security Act of 1974, commonly called ERISA. The primary concern, as we understand it, is that the employer cannot control or does not have the option to continue all employee benefits once the severance occurs. As an example, the employer cannot continue long term disability coverage during the severance period once an employee no longer works for the employer because of requirements of their long term disability insurer.

And finally, for your information, a total of 2,987 unemployment insurance cases involving severance pay issues were identified during state fiscal year 1993. Of that number, 2,839 cases, or 95%, were cleared for payment and 150 were denied. Typically, the cases are cleared because all other employment benefits such as health insurance and vacation or sick leave accrual are not continued once the severance occurs.

This concludes my prepared testimony. However, I would be happy to answer any questions. Thank you.

The Security Benefit Group of Companies

Security Benefit Life Insurance Company
Security Benefit Group, Inc.
Security Distributors, Inc.
Security Management Company

700 Harrison St.
Topeka, Kansas 66636-0001
(913) 295-3000

March 9, 1994

Subj: Senate Bill 766
Amendment to Employee Security Law

Dear Chairperson and Committee Members:

The Security Benefit Group of Companies is a diversified financial services organization offering life insurance, mutual funds, annuities and retirement plans. The parent company, Security Benefit Life Insurance Company, has been in business for over 100 years. The Security Benefit Group of Companies has nearly $4 billion in assets under management and employs over 500 Kansans. We support Senate Bill 766.

Under current law, a person's unemployment benefits will be reduced by severance pay a person receives from his or her former employer if all other employment benefits are continued as though the severance had not occurred.

Like many employers, Security Benefit has a severance plan. Under our package, we continue full pay for a period of time based upon length of service and, if we can, we continue all employee benefit plans that the employee had been receiving during employment with the company. Unfortunately, Security Benefit is unable to continue to provide all benefits due to the displaced employee's ineligibility for certain coverage. For example, Security Benefit cannot continue the employee's long term disability insurance because our long term disability insurer will not cover persons unless they are actively employed by Security Benefit.

Although Security Benefit cannot control the eligibility of an employee under a coverage provided by an unrelated third party, our inability to continue such coverage precludes our severance package from qualifying as "wages" under K.S.A. 44-704. This costs Security Benefit money. Not only do we pay for the severance package, but also, our experience account is charged for the person's unemployment benefits he or she is receiving at the same time.

We believe that unemployment benefits are an essential benefit for the citizens of Kansas. They provide the security that people need in the event their employment is terminated and other employment has not been found. However, if someone is receiving pay from their former employer and substantially all other benefits the person had

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during his or her employment, the need for unemployment benefits is not present.

We believe that terminated employees should commence receiving unemployment benefits after their severance pay ceases. We believe that a person should not be entitled to receive more during unemployment than he or she would have received while working. Not only does this arrangement place an unfair burden on the employer, but also it may operate as a disincentive for terminated employees to find replacement employment during their severance pay period.

We believe that most individuals want to be employed and commence new jobs as quickly as possible. It is our hope that most displaced employees will find a new job during their severance pay period. Presently, displaced employees can get two payments during the severance pay period (one from Security Benefit and one from the state), but as noted, SBG essentially pays for both. We pay the severance pay, and our experience account is charged for the person's unemployment benefits.

Security Benefit does not contend that displaced persons are not entitled to unemployment benefits after their severance pay ceases as long as they have weeks of eligibility remaining. We contend that a person is not entitled to both unemployment benefits (that are not offset by severance pay) and severance pay at the same time, as long as all other employee benefit plans within the employer's control are continued.

We support Senate Bill 766 and hope that you will vote in favor of the proposal. Thank you for your time and consideration.

Very truly yours,

Anita Larson

Anita Larson
Assistant Counsel
Security Benefit Life Ins. Co.

KANSAS
TRIAL LAWYERS ASSOCIATION
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KTLA TESTIMONY IN OPPOSITION
SENATE BILL 767

After a careful review of the proposed legislation and after observing the testimony presented in the Senate it is apparent that this proposal should not be supported by this Committee. It is bad government, bad policy and bad law.

The burden of persuasion should be on the proponent of the bill. They estified in the Senate that the cost of savings in this measure would be generated by shifting the responsibility for purchasing Workers Compensation from the truck company to the "owner-operator." However, since the owner-operator must charge according to his costs of doing business, the owner-operator's fees will have to increase proportionately. Costs can only be saved if the owner-operator elects to "go bare" thus exposing himself and his own employees to the risk of uninsured injury. In such cases the medical care is paid either by the Workers Compensation Fund for insolvent employers or by the State Welfare System. The burden should be on the industry itself not on the people of the State.

The legislation is bad policy. It would create a large class of uninsured workers. In order to keep costs down owner-operators are likely to fail to purchase their own insurance. If the companies are relieved of liability under the Workers Compensation Act they will not purchase insurance. This costs all of us. Moreover, if passed, many other employers are certain to seek similar treatment for themselves. Builders would want to have the carpenters declared to be "independent contractors" if they provide their own hammer and nails. Businessmen would want to have secretarial staff declared "independent contractors" by having them bring their own keyboards. The possibilities for further special interest legislation are endless.

This legislation is bad government. Good government attempts to find general rules and apply them throughout the spectrum of affected industry without favoritism or special treatment for any one. This bill presents the reverse situation, singling out one industry and giving it special treatment to the disadvantage of all others. The rules which define independent contractor and which create vicarious liability in Workers Compensation System have been refined by the Courts and the Legislature over generations. They apply, typically, across the board to all types of industries. Other industries must bear the burden of vicarious liability in Workers Compensation, why should this one be excluded? The Workers Compensation Act is not a Christmas tree on which ornaments of special favor can be hung, it is a social compact between the workers and the employers of this state which must deal fairly and equitably with all.

This legislation is bad law. It is a violation of the Constitution to treat similarly situated classes of people differently. There must be a rational basis for distinguishing between such groups or the distinction is constitutionally invalid. *Stevenson v. Sugar Creek Manufacturing* held that reducing insurance rates was not a rational basis for such distinctions. This bill would provide treatment for one industry different from all others, the trucking industry; this bill would provide treatment for some trucking companies (licensed motor carriers) that would be different that the treatment provided others who drive trucks who are not licensed motor carriers.

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The 1993 Amendments to the Workers Compensation Act were accompanied by a great deal of uncertainty as to what changes were needed and why. It was obvious to Legislators then, as it should be now, that there is a clear lack of information as to the effect of certain changes on the Workers Compensation System and on the industries which seek those changes. Now, once again, we are prepared to embark willy-nilly on changes whose economic impact we can not begin to foresee, to solve a problem which is inadequately defined and for which we have no assurance that these measures will be effective.

It is not good government to take a social compact such as the Workers Compensation Act and use it as a vehicle for special interest favors. It is not good law to single out one small group of employers in the state and give them preferential treatment over all others. It is not good policy to open the door to an onslaught of other industries who will seek similar changes and to create a new class of uninsured workers, the burden of which will be born by the state at large, not the industry which profits from their labors.

KTLA urges you to reject this bill.

WRITTEN TESTIMONY OF KANSAS AFL-CIO
SENATE BILL 767
HOUSE LABOR & INDUSTRY COMMITTEE
March 15, 1994

My name is Mitch Wulfekoetter, appearing on behalf of the Kansas AFL-CIO, and **in opposition to Senate Bill 767.**

Senate Bill 767 is presented as a bill which will stimulate the Kansas economy by allowing independent truckers to "level the playing field" with regard to legislation passed in Missouri. In reality, Senate Bill 767 is nothing more than special interest legislation which will adversely affect every taxpayer of Kansas. The bottom line, if this bill becomes law, is that workers injured in the course of their employment will end up on social welfare or be paid by the Workers' Compensation Fund (sometimes referred to as the Second Injury Fund).

The situation as it now stands is simple, and does not require improvement. Let me explain how insurance in this situation works. It is identical to a homeowner who must buy fire insurance for his home. The mortgage company requires the insurance so that their interests are protected to the extent of the mortgage. If the homeowner fails to provide proof of coverage, the mortgage company purchases the insurance on the homeowner's behalf and adds the cost to the monthly payment. Obviously, the mortgage company does not shop for the best "price" in the market.

In the trucking industry, the owner/operator must show proof of workers' compensation insurance for himself and any other drivers. This is because the courts have consistently ruled that the carrier has the "right to control" and as such is the real employer. If the owner/operator fails to produce insurance, the carrier is "exposed", just like the mortgage company of the homeowner. Therefore, the carrier has the right to purchase it on behalf of the owner/operator and bill them back.

Without this "hammer", it is unrealistic to expect owner/operators to buy coverage. What owner/operator really expects for this to be the month he will drive his truck off the road? Similarly, no homeowner anticipates that their home will catch fire this month. Even if they made such a purchase, in times of economic crisis, it would be considered a "luxury" and not a necessity.

It might be said that if the owner/operator is so short sighted that they fail to protect themselves, that is "their problem". There are two problems with such an analysis. First of all, without medical insurance, the most minor of accidents will force the owner/operator into bankruptcy. They will not go without medical care. They will go to welfare. The injury will also cause them to lose their tractor-trailer because of an arrearage in

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payments. Once on welfare, without a truck, they will have a difficult time getting off.

Additionally, the owner/operator is making the choice of not having comp insurance for other drivers who use his truck. Therefore, these individuals (and their families) are also in an unprotected status. They might get coverage through the Workers' Compensation Fund (depending on payroll), but this is an unsatisfactory solution.

We have also been informed by supporters of the bill that "better coverage" is available at a cheaper rate. This is simply not true. The coverage spoken of requires extended periods of disability and for a vehicular accident of some sort. The worker who hurts himself unloading the truck, slipping in a freight yard, or changing a tire will not be covered. Recall also that the owner/operator can negotiate for work comp insurance independently of the carrier. This is not often done because the owner/operator is in an adhesion contract situation.[1]

Motor vehicle insurance is a state requirement, and constitutes a cost of doing business. Workers' compensation is a similar cost of doing business, and the State through the courts should continue to mandate coverage so that society as a whole does not get burdened with the losses.

The bill is touted as an incentive to do business in Kansas. There are other costs of doing business which could be eliminated to make owner/operators competitive, and appropriately, most of them would also seem ridiculous. We could give our owner/operators free fuel, free tires, or make it so they do not pay income tax. Certainly, if we gave free fuel, we would have a leg up on those Missouri truckers.

As pointed out in our testimony before the Senate, there are other problems with this legislation. For many years, employers have attempted to escape carrying workers' compensation by hiring illusory independent contractors. Over the years, the courts have consistently applied a series of tests to separate "true independent contractors" from "fictitious independent contractors". In the trucking industry, the lead case is *Knoble v. National Carriers, Inc.*, 212 Kan. 331, 310 P.2d 1274 (1973). The rules have been well defined for twenty years. This legislature can anticipate that if special interest legislation is passed for truckers we will see other industries requesting such special treatment by legislation or through the courts. This legislation creates dangerous precedence.

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[1] Attached and incorporated by reference is the AFL-CIO's written testimony presented in the Senate. This testimony explains adhesion contracts as well as other negative provisions of the proposed bill.

In summary, the Kansas AFL-CIO would make the following points:

a) **Workers' compensation insurance is a cost of doing business like any other cost of business. To remove this cost of business for this industry is nothing more than promoting special interest legislation.**

b) **Owner/operators will not voluntarily increase their overhead by purchasing workers' compensation coverage. The current status of the law creates a "hammer" to force them to have coverage. If they do not have coverage, the taxpayers, as a whole, will be subsidizing them directly through welfare or indirectly through the Workers' Compensation Fund.**

c) **The State mandates that certain types of insurance are required. This has historically included workers' compensation insurance. The State should continue to mandate coverage. It does not cost the carriers a single dime to force their drivers to have coverage as the cost is "passed through" to the individual.**

d) **In the current situation, the courts have universally ruled that owner/operators are not "true" independent contractors. For reasons stated in *Knoble, supra*, and our testimony before the Senate, this is a correct interpretation.**

e) **If an exception is carved out for this class of employers under the ruse of "competitiveness", one can anticipate a flood of industries requesting the same relief before the legislature or the courts. Again, the industry *might* be more competitive (no proof is given, and it may just be "crying wolf"). If they are more competitive, it is because all taxpayers are paying their losses.**

I will stand for questions.

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WRITTEN TESTIMONY OF KANSAS AFL-CIO
SENATE BILL 767
COMMITTEE ON COMMERCE
FEBRUARY 24, 1994

The Kansas AFL-CIO **opposes** Senate Bill 767. In summary, the bill merely represents a piece of "special interest" legislation. It will also open the door for other employers to press the legislature for a way to "opt out" of workers' compensation coverage.

For many years, through various creative schemes, employers have attempted to avoid providing workers' compensation coverage by establishing employees as "independent contractors". Kansas case law is filled with such situations. Over the years, a body of law has developed which clearly, and definitively, establishes the rules for "independent contractors". In essence, the courts have used an expanded right to control test. For the most part, if the employer has the right to control the work being performed, and does in fact exercise that right, an employer-employee relationship is established. Courts will also look to multiple surrounding factors such as the nature of the business and the work being performed, who supplies the tools, how the person is paid, what type of supervision takes place, etc.

For example, if a physician solicits bids for a new roof, and subsequently accepts a bid, the roofers will be independent contractors. The physician is not in the construction business, has no particular knowledge of how the roof work should be done, and does not supply tools and materials to the contractor. On the other hand, a lawn service that hires someone to trim trees on property that they are maintaining, will likely establish an employer-employee relationship despite the fact that the worker may bring his own chain saw to work.

For some time, trucking firms have entered into "lease back" arrangements with individual owners of tractor-trailers. While the terms of these contracts vary greatly, they are all "adhesion

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contracts".[1] In these adhesion contracts, the owner-operator who leases himself to the trucking firm is required to purchase his own workers' compensation insurance. This insurance is generally secured by the trucking firm with their insurance company, and on their terms. Again, there is no negotiation by the individual who is really just trying to work as a truck driver.

In these situations, in the unlikely event that the owner-operator does not obtain coverage, the courts have universally held that an employment relationship does exist between the owner-operator and the trucking firm. This is because the nature of the business is the same (not like the physician/roofer example above) and the trucking firm controls everything.

But for the adhesion contract forced upon the individual, one would be unable to distinguish any difference between a straight employer-employee relationship. The driver must pass the firm's safety requirements, he is given the route and stops, he is permitted to charge fuel and repairs, he is advanced road money for meals and lodging, he uses the firm's permits and licenses, etc. At the end of his trip, the firm presents an accounting telling what the load paid, and then makes all deductions *including deductions for payments of workers' compensation premiums*. The individual so-called owner-operator only receives net compensation for work performed. Again, this arrangement is not at all like a true "independent contractor" situation.

The net effect of the proposed bill would be that the trucking firm would no longer be responsible for coverage itself, nor for making sure that the so-called owner-operators have coverage. **As a practical matter, owner-operators will not secure workers' compensation coverage unless forced to do so by the trucking firm.** They are cash short at the time they lease themselves to these firms, and will not be able to make the advance payments necessary for premiums. If the uninsured owner-operator suffers injury in an accident, it will then be assessed against the Workers' Compensation Fund, or more likely, the taxpayers of Kansas through welfare.

No one is in a better position to insure that proper coverage exists than the trucking firms. If they fail in their duty, then logically the so-called owner-operators are deemed to be employees.

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[1] Adhesion contracts are contracts that are offered on a "take-it-or-leave-it" basis with no negotiation. Courts do not look favorably on adhesion contracts because one side has all the power. Therefore, adhesion contracts are generally construed against the drafter of the contract.

No logical reason exists to change this situation, and such legislation will only serve to shield certain members of one industry.

It may be said that the owner-operator in not securing coverage is assuming his own risk. Therefore, he should pay the consequences. However, it is critical to note that under this bill *employees* of the owner-operator are also cut off from benefits. That is, if the owner-operator is not a contractor of the trucking firm, then neither are the employees of the owner-operator. Coverage may not be required because of the owner-operator low payroll threshold. Again, these often become welfare cases because of medical bills. There are truly innocent victims of this bill. Small operators tend to misrepresent that they do have coverage when they do not, or they let policies lapse due to cash flow problems.

If this type of legislation is permitted, we can expect similar arrangements to be forthcoming in the future. Word processors will be forced to buy their own keyboard, and then be "leased back" to law firms such that comp coverage is not required. A plumber with a pipe wrench, a carpenter with a hammer, and a sanitation worker with a pair of gloves are all just as legitimately excluded as these arrangements created by the trucking industry.

As stated previously, this is special interest legislation, pure and simple. It is designed to avoid workers' compensation coverage in situations where an employment relationship exists. If the trucking firms fail to assure that the owner-operators have proper coverage, they should be held liable. This is the current state of the law.

This proposed legislation will force taxpayers to foot the bill for work-related injuries. Furthermore, this legislation will lead to other requests of a similar nature by other industries.

On behalf of the Kansaas AFL-CIO

Respectfully submitted,

John M. Ostrowski
Registered Lobbyist

Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

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Date: March 16, 1994

To: The House Committee on Labor and Industry

From: Claude Lee, chief of appeals

Re: Senate Bill 738

It is our job in the office of appeals to decide individual cases under existing law, not to decide policy. However, at the appeal hearing, theory meets practice, and the consequences of policy, enacted into law, are clearly seen. The real consequences of this legislation, intended and unintended, are of vital concern to all of us here. That is why I offer this testimony today.

Linda Tierce spoke ably and officially for the department on this bill last week. I speak only as an appeals referee to clarify some of the statements made by Mr. Chanay and Ms. Summerson from Manpower.

Last session, a bill was introduced to create special kind of "voluntary quit" for the temporary employment industry. The purpose was to give them a tax break and made no mention of disqualification for benefits. It didn't pass, in part, because the U.S. Department of Labor said that the bill would give special treatment to the temporary employment industry to the detriment of other employers, placing the department out of federal compliance. So this year, the new bill is more broad and is under a different section of the law, but the tax effect would be the same.

The tax decision is made in most temporary agency cases when benefits are no longer at issue. The question of charge to the temporary agency's experience rating account is then resolved solely on the basis of one

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document filled out by the personnel department of the home office of the temporary agency. When no benefits are then at stake, the claimant is not consulted. In the great majority of cases, the temporary agencies now respond with the statement that the claimant did not call in for more work. Reference was made here last week to referee decisions, so I have attached three Manpower decisions to my statement. In each case, the Topeka Manpower office responded that the claimant did not call in for more work. In these cases, the claimant did respond that they called in for more work the first day, but none was available. In two of the cases, Manpower employees from the Wichita office, when questioned under oath, testified that the claimant did call in and there was no job assignment for them. In the third case, the Manpower witness admitted under oath that they *don't keep records of people who call in at the end of an assignment.* Yet with those calls, and without the records, the Topeka office of Manpower had responded that the claimants had not called in. Manpower did not appeal these decisions.

Last week Ms. Summerson asked "why should we be treated any differently?" referring to a separation from a "full time employer." Let us examine that comparison. Unlike Manpower, when an employee goes home after work at a genuinely permanent job, that employee has a definite job to return to the next work day, unless the employer tells him he is laid off. That employee doesn't need to call in to see if he should show up for work. And when he does clock in the next day, by contract and by law, he must be paid until the employer acts to end his employment. If the employee doesn't report to work or call in on a particular day, there is no *legal* presumption that he quit. The presumption is that he is *absent.* Later facts may show that he quit. The burden of proof will then be on the claimant to prove good cause, and the employer may receive a non-charge to their account. Or, the claimant may be discharged for absence without calling in. But in real, full time employment, there is no immediate *legal* presumption that there was a voluntary separation. If passed, this bill would create that legal presumption for the benefit of the temporary employment industry. Whether to do that is obviously a policy question for this body. But that decision should be made with the realization that all other Kansas employers will reimburse the employment security fund for all tax relief given the temporary employment industry by this provision.

To answer a valid question raised here last week: to be eligible for benefits, all claimants must be available for work and make a reasonable

effort to find work every week. All claimants will be disqualified for refusing suitable work without good cause. Those provisions of the law are applied to every claimant every week. Benefits are withheld under those provisions every day. Those questions have no tax consequences for employers and should not confuse the debate on this bill which will decide the character of the *separation from work.* That is a different issue, with either tax or disqualification consequences or both, depending on the individual case.

Mr. Chanay invokes the Shawnee County district court case, but surely he must know that Judge Buchele's opinion in one case, that affects only three claimants, can not reverse the Court of Appeals' holding that a job must really exist before a person can "quit" what Mr. Chanay imprecisely refers to as "his job."

Ms. Summerson refers to the difficulty of keeping records. I suggest that the tax benefits to her company are great enough to justify accurate records. She also complains that the referee relies upon the sworn testimony of the claimant if, as she says, "we don't have our witness with us." The supreme court has ruled that benefits cannot be denied without due process of law. Speaking as an appeals referee, I can assure her that if she will keep accurate records and send witnesses to the hearings who can testify to relevant facts from their own knowledge, she will win under the *existing* law, when the facts and the law support her case. That is all any employer or any claimant is entitled to in any case.

I will answer any questions you may have. Thank you.

KANSAS DEPARTMENT OF HUMAN RESOURCES Office of Appeals, 1430 SW Topeka Blvd., Topeka, KS 66612

BEFORE THE APPEALS REFEREE:

In The Matter Of:

Docket Number: 310922
bfh 510

Claimant: STACY [redacted]
2911 [redacted]
WICHITA KS 67218-2111

Social Security #: 510-74-[redacted]

Hearing: October 5, 1993
Wichita, KS

Employer: MANPOWER, INC OF WICHITA
2901 BURLINGAME RD
TOPEKA KS 66611

*Decision Mailed: NOV 12 1993

REFEREE'S DECISION

APPEARANCES: No one appeared for the claimant. Amy Smith, Branch Supervisor, and Linda Meier, Service Representative, appeared for the employer.

FINDINGS OF FACT: The employer filed a timely appeal from an examiner's determination which found the claimant not disqualified for benefits because the claimant left work voluntarily with good cause attributable to the work or the employer. The examiner further found that benefits paid on this claim will be charged to the employer's experience rating account. In support of that decision, the examiner made the following determination of fact: "The claimant reports being separated due to a lack of work. The employer's report is different. The claimant worked for an employer who supplies temporary workers to other employers. The claimant completed the most recent assignment and no further assignments were available at that time. Therefore, the claimant was laid off due to a lack of work."

The claimant began working for this employer on February 9, 1993. At the time of separation, she earned $5.00 per hour laborer as a laborer. August 2, 1993 was her last day of work.

The employer is a temporary employment service who supplies temporary workers to business clients. On July 16, 1993, claimant was sent to the [redacted] Company for an indefinite assignment.

The claimant's assignment at [redacted] ended on July 28, 1993, at the end of her work shift. The claimant called the employer the very next day and advised them that the job had ended and requested another assignment. Claimant was not given another assignment. Claimant called in the following day on July 30, 1993 and requested an assignment. The employer had no work for claimant to perform.

5-4

Rec'd

The employer attempted to call claimant several days later on August 12, 1993 but her phone was disconnected. On August 13, 1993, claimant came in and gave the employer her new phone number and her new address. The employer had no work for claimant on that day. The employer called claimant on August 16, 1993 and offered her a position which she accepted.

OPINION: The department must pay unemployment insurance benefits to a claimant who was discharged unless the employer proves that the reason for discharge was misconduct connected with the work. The employment security law specifies further that:

> . . ."misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. In order to sustain a finding that such a duty or obligation has been violated, the facts must show:
> (A) willful and intentional action which is substantially adverse to the employer's interests, or
> (B) carelessness or negligence of such degree or recurrence as to show wrongful intent or evil design. *[K.S.A. 44-706(b)(1)]*

The Supreme Court of this state has ruled that the burden of proof in establishing that a former employee is disqualified for benefits under K.S.A. 44-706(b) is upon the employer, and must be proved by a preponderance of the evidence. *Farmland Foods, Inc. v. Board of Review, 225 Kan. 742, 594 P.2d 194 (1979).*

Kansas law also provides that a contributing base period employer's account shall be charged when a claimant leaves work voluntarily, unless there is a finding that the claimant quit without good cause attributable to the work or the employer. *[K.S.A. 44-710(c)]*

The referee finds that claimant was discharged by this employer and claimant did not voluntarily leave the employment. Claimant completed her last assignment at the [redacted] Company effective July 28, 1993. Claimant immediately contacted the employer and requested additional work. The employer had no additional work for claimant to perform. Based on these facts which were supplied by the employer, the referee finds that claimant was laid off due to lack of work when her assignment at the [redacted] Company ended.

As claimant was laid off due to lack of work, she shall be cleared to receive benefit payment and benefits paid on the claim will be charged to the employer's account.

DECISION: The examiner's determination is affirmed and modified. The claimant is not disqualified for benefits because the claimant was discharged, but not for misconduct connected with the work. The employer's experience rating account is charged.

IT IS SO ORDERED.

Nelsonna Potts Barnes,
Referee

*NOTICE: **Appeal rights if you disagree with this decision:** You have 16 days after the "Decision Mailed" date to file an appeal to the Employment Security Board of Review. You may file either in writing at your Department of Human Resources local office or by letter postmarked within 16 days and mailed to the Employment Security Board of Review, 1430 SW Topeka Blvd, Topeka, KS 66612. The Board will affirm or reverse this decision after reviewing the evidence presented at the referee's hearing.

5-6

B. Base Period Employer. "Notice of Separation and Reconsideration Under Section 44-710(c), Kansas Employment Security Law".

Wages that your firm paid to the claimant in the base period and the max. that is chargeable to your account is shown on the reverse side. Your accou remains charged unless you request reconsideration by completing and returning this notice.

You may be eligible for a noncharge if the claimant's last employment with your firm ended for one of the following reasons:

-Discharge for misconduct or gross misconduct connected with the work;

-Left work voluntarily without good cause attributable to the work or the employer; OR

-Was and still is a "part-time" employee. (Part time means concurrent work with two or more employers and continues part-time work while claiming benefits.)

1. (✓) I request reconsideration of benefit charges now under K.S.A. 44-710(c) for the reasons below.

2. (✓) I request that my charge/noncharge determination be deferred until a first payment is made following an additional claim. (You may want this option if the claimant is currently between school terms, on a leave of absence, or involved in a labor dispute. If you check this option, you will be mailed a second employer notice after or if first payment is made.)

SEPARATION INFORMATION: **Please provide complete details** relating to the separation. This information will be provided to the claimant if an appeal is filed by either interested party.

Enter the last date worked: 8-2-93 Enter the separation date(If different from the last date worked): —

Stacy worked on several temporary positions from 2-9-93 until 8-2-93. She has not called in for further work which is a violation of company policy & considered a "voluntary quit."

EXHIBIT #1A

If additional space is needed, attach a letter. You may also attach any documentation you wish to have considered. You must sign this document on the line designated below. If signed for you by an agent who is not your employee, the response must include the name and title of your employee who certifies the information to be correct and complete. (K.A.R. 50-3-1)

I do hereby certify that the information submitted is correct and complete. I acknowledge that willful misrepresentation or failure to disclose a material fact is punishable by imprisonment for up to 60 days and/or a fine of up to $200 for each day of failure or refusal to disclose correct and complete facts. (K.S.A. 44-719(b))

Don Henderson
Signature

Service Rep
Title

913-267-4060
Telephone Number

8-18-93
Date Mailed

5-7

KANSAS DEPARTMENT OF HUMAN RESOURCES Office of Appeals, 1430 SW Topeka Blvd., Topeka, KS 66612

BEFORE THE APPEALS REFEREE:

In The Matter Of:

Docket Number: 311756

bfh 510 EB

Claimant: STEVE [redacted]
3030 [redacted]
WICHITA KS 67217-3376

Social Security #: 487-74-[redacted]

Hearing: October 18, 1993
Wichita, KS

Employer: MANPOWER INC OF WICHITA
2901 BURLINGAME RD
TOPEKA KS 66611

*Decision Mailed: NOV 12 1993

REFEREE'S DECISION

APPEARANCES: Steve [redacted] appeared for the claimant. Nicole Winter, Service Assistant, appeared for the employer.

FINDINGS OF FACT: The employer filed a timely appeal from an examiner's determination which found the claimant not disqualified for benefits because the claimant left work voluntarily with good cause attributable to the work or the employer. In support of that decision, the examiner made the following determination of fact: "The claimant reports being separated due to a lack of work. The employer's report is different. The claimant worked for an employer who supplies temporary workers to other employers. The claimant completed the most recent assignment and no further assignments were available at that time. Therefore, the claimant was laid off due to a lack of work."

The claimant began working for this employer on February 10, 1993. At the time of separation, he earned $4.75 per hour as a laborer. March 12, 1993 was his last day of work.

The employer is a temporary employment service which supplies temporary workers to business clients. The claimant's last assignment with this employer began on March 3, 1993 and ended on March 12, 1993. The claimant completed a temporary assignment with [redacted] Company.

After the assignment was completed, claimant contacted the employer immediately by phone and also in person. The claimant inquired about other work, particularly a job at [redacted] The claimant was told by the employer representative that some second shift jobs at [redacted] would be opening up shortly. She told claimant that she would place him on a "call back" sheet for a position at [redacted]

5-8

Recd

Although claimant believed that he was placed on the call back sheet, he continued to call the employer himself for the next two or three days. Claimant made contact with the employer for a total of four consecutive days and nothing was offered to him.

Approximately one week after his assignment with this company was concluded, the claimant moved in with his parents. Two or three days later, he called the employer and gave them his new address and phone number. A job offer was made at that time which claimant did not accept.

According to Nicole Winter, Service Assistant, contacts on file with her agency are made on a form called Application and Job History. The employer records all job refusals and separations on this document. The card does not reflect, nor does the employer record calls made by the claimant inquiring about work. Ms. Winter had the application and job history card at the hearing and reviewed it indicating that the claimant's last assignment was completed on March 12, 1993, and on March 23, 1993 he refused a job that was offered.

OPINION: The department must pay unemployment insurance benefits to a claimant who was discharged unless the employer proves that the reason for discharge was misconduct connected with the work. The employment security law specifies further that:

> . . ."misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. In order to sustain a finding that such a duty or obligation has been violated, the facts must show:
>
> (A) willful and intentional action which is substantially adverse to the employer's interests, or
>
> (B) carelessness or negligence of such degree or recurrence as to show wrongful intent or evil design. *[K.S.A. 44-706(b)(1)]*

The Supreme Court of this state has ruled that the burden of proof in establishing that a former employee is disqualified for benefits under K.S.A. 44-706(b) is upon the employer, and must be proved by a preponderance of the evidence. *Farmland Foods, Inc. v. Board of Review, 225 Kan. 742, 594 P.2d 194 (1979).*

The referee finds that claimant was laid off due to lack of work by this employer. The claimant completed his very last job assignment which was a two week assignment. The assignment ended on March 12, 1993. The claimant made contact with the employer for four consecutive days immediately after his assignment ended. The claimant requested work. The employer had no work for claimant to perform. After a delay of two or three days, the

claimant contacted the employer again and inquired about work. Again, no work was offered. Finally, on March 23, 1993, approximately two weeks after his last assignment ended, the employer did contact claimant and offer him a job. The claimant's failure to accept this job does not alter or change the reason why his employment ended on March 12, 1993, which was due to a lack of work when that assignment ended.

On the Employer Notice which was mailed to this employer on August 12, 1993, Don Henderson, Service Representative, indicated that the claimant, "has not called in for further work." Mr. Henderson's information is not consistent with the sworn statement provided by Nicole Winter at the hearing when she indicated that her office does not keep track of call-ins made by claimants, only job refusals and separations. The claimant's sworn testimony is that he did contact the employer immediately for additional work and was not offered any. The referee finds that claimant's testimony to be credible and concludes that claimant did make contact for additional work and the employer had no work for claimant to perform. Based on these facts and circumstances, the referee concludes claimant is cleared to receive benefit payment because he was laid off due to lack of work by this employer.

DECISION: The examiner's determination is affirmed and modified. The claimant is cleared to receive benefit payment pursuant to K.S.A. 44-706(b) because the claimant was laid off due to lack of work by this employer.

IT IS SO ORDERED.

Nelsonna Potts Barnes

Nelsonna Potts Barnes,
Referee

*NOTICE: **Appeal rights if you disagree with this decision:** You have 16 days after the "Decision Mailed" date to file an appeal to the Employment Security Board of Review. You may file either in writing at your Department of Human Resources local office or by letter postmarked within 16 days and mailed to the Employment Security Board of Review, 1430 SW Topeka Blvd, Topeka, KS 66612. The Board will affirm or reverse this decision after reviewing the evidence presented at the referee's hearing.

5-10

Part B. Base Period Employer. "Notice of Separation and Request for Reconsideration Under Section 44-710(c), Kansas Employment Security Law".

Wages that your firm paid to the claimant in the base period and the maximum that is chargeable to your account is shown on the reverse side. Your account remains charged unless you request reconsideration by completing and returning this notice.

You may be eligible for a noncharge if the claimant's last employment with your firm ended for one of the following reasons:

-Discharge for misconduct or gross misconduct connected with the work;

-Left work voluntarily without good cause attributable to the work or the employer; OR

-Was and still is a "part-time" employee. (Part time means concurrent work with two or more employers and continues part-time work while claiming benefits.)

1. (✓) I request reconsideration of benefit charges now under K.S.A. 44-710(c) for the reasons below.

2. (✓) I request that my charg[illegible]rmination be deferred until a first payment is made[illegible]additional claim. (You may want this option if th[illegible] currently between school terms, on a leave of abs[illegible]d in a labor dispute. If you check this option, y[illegible]d a second employer notice after or if first payment is made.)

PENCAD-Bayonne, N. J.
EXHIBIT
#2A

SEPARATION INFORMATION: **Please provide complete details** relating to the separation. This information will be provided to the claimant if an appeal is filed by either interested party.

Enter the last date worked: 3-12-93 Enter the separation date(If different from the last date worked): —

Steve worked on several temporary positions from 2-10-93 until 3-12-93. He has not called in for further work which is a violation of company policy & considered a "voluntary quit". We contacted him for further work, but he refused. Have not heard from him since. Work not available.

If additional space is needed, attach a letter. You may also attach any documentation you wish to have considered. You must sign this document on the line designated below. If signed for you by an agent who is not your employee, the response must include the name and title of your employee who certifies the information to be correct and complete. (K.A.R. 50-3-1)

I do hereby certify that the information submitted is correct and complete. I acknowledge that willful misrepresentation or failure to disclose a material fact is punishable by imprisonment for up to 60 days and/or a fine of up to $200 for each day of failure or refusal to disclose correct and complete facts. (K.S.A. 44-719(b))

Don Henderson
Signature

Senior Rep
Title

5-11

913-267-4060

9-17-93
Date Mailed

BEFORE THE APPEALS REFEREE:

In The Matter Of:

Docket Number: 306566

sah 510 EB

Claimant: MARSHA [redacted]
1238 E [redacted]
WICHITA KS 67216-1627

Social Security #: 512-52-[redacted]

Hearing: June 18, 1993
Wichita, KS

Employer: MANPOWER INC OF WICHITA
2901 BURLINGAME RD
TOPEKA KS 66611

*Decision Mailed: JUN 25 1993

REFEREE'S DECISION

APPEARANCES: Marsha [redacted] appeared for the claimant. Amy Tongue, District Manager, appeared for the employer.

FINDINGS OF FACT: The claimant filed a timely appeal from an examiner's determination which found the claimant disqualified for benefits until the claimant returns to work and earns $648.00 after April 17, 1993, because the claimant left work voluntarily without good cause attributable to the work or the employer. In support of that decision, the examiner made the following determination of fact: "The claimant reports being dismissed because of lack of work. The employer provides information that the claimant voluntarily quit. The evidence presented shows the claimant left work without good cause attributable to the work or the employer."

This determination establishes an overpayment for the week ending April 24, 1993, in the amount of $216.00.

On Thursday, March 25, 1993, the claimant went to Job Services and spoke with a counselor regarding possible employment. The claimant was referred to [redacted] Engineering for a stockroom clerk position paying $6.00 per hour. The Job Services counselor set up an interview with claimant and [redacted] Engineering.

When claimant was interviewed by [redacted] Engineering personnel, she was asked questions about the job and her qualifications. At no time did the [redacted] Engineering staff advise claimant that she would have to proceed through this employer to secure the [redacted] Engineering job.

5-12 n.
Rec'd 6-28-93

Later that same day, when claimant returned home after the interview, she received a telephone message to call the Job Services counselor. She returned the phone call and discovered that [redacted] Engineering wanted to hire her for the clerk position and wanted her to start work on Monday at a salary of $6.00 per hour. The claimant was then advised that she would have to go through this employer before she could begin working at [redacted] Engineering. The Job Services counselor advised claimant to call Judy at Manpower and set up an appointment for Friday.

The claimant did as was requested and set up an appointment with Judy at this employer's place of business on Friday, March 26, 1993. During the interview, Judy explained to the claimant that all [redacted] employees first work as Manpower temporary employees during their probation period. At the end of the ninety day probationary period, if [redacted] Engineering remains happy with claimant's performance, then she would be hired full-time. The claimant was told by Judy that this is the only possible way to secure employment at [redacted] Engineering. The claimant was further informed that the job would pay $5.50 per hour instead of $6.00 per hour. The claimant accepted the job under these conditions.

After working for [redacted] for three weeks, the claimant was told by Judy that she was being laid off due to lack of work. On the same day that claimant was laid off, she asked Judy for another industrial assignment paying $5.25 or $5.50 per hour or more. Judy explained that the employer had nothing to offer claimant at that type of salary at this time. Judy further advised claimant that only clerical positions paid $5.00 per hour or more and that industrial positions normally paid $4.75 per hour.

The claimant contacted this employer on the following workday and requested if any additional assignments were available paying her $5.25 per hour or more. Again, Judy explained that industrial assignments were offered at the rate of $4.75 per hour and offered claimant a position at the [redacted] Company. The claimant turned down the position.

The claimant did not continue to contact this employer for work on a repeated basis after she was twice told by Judy that there were no jobs available for her at the salary that she wanted to earn. The claimant did not seek employment through a temporary agency. Her only involvement with this employer's temporary placement service was because she was trying to get a job through [redacted] Engineering and was advised that proceeding through Manpower was a prerequisite for employment with [redacted] Engineering.

OPINION: "Quit" can be defined as the willful departure with intent to remain away. *Blacks Law Dictionary 801, 1125 (5th ed. 1979).* There is no Kansas case law that defines "quitting". However, in *Local Lodge v. Wilson Trailer, Iowa, 289 N.W.2d 608 (1980),* the Iowa Court held that **"quitting requires an intention to terminate the employment relationship accompanied by an overt act carrying out the intent".** (Emphasis Added)

The first issue to be resolved is whether claimant quit her job or was terminated by this employer. The evidence is clear that claimant was laid off from her last position with this employer at [redacted] Engineering due to lack of work. The record is also clear that claimant made immediate contact with a counselor for this employer and requested an additional assignment. The employer did not have another assignment to send claimant on immediately. The employer's statement on the Employer Notice which was signed by Don Henderson is totally and completely false. The claimant did call in for further work and did make contact with this employer for additional assignments. The employer did not have an assignment which met claimant's qualifications with respect to salary.

It is clear that the claimant did not voluntarily end her employment, but was dismissed by the employer from her last assignment. The claimant did make an effort to obtain other work by contacting the counselor for this employer for additional work. No additional work was forthcoming. The referee concludes that claimant was discharged by this employer.

The department must pay unemployment insurance benefits to a claimant who was discharged unless the employer proves that the reason for discharge was misconduct connected with the work. The employment security law specifies further that:

> . . ."misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. In order to sustain a finding that such a duty or obligation has been violated, the facts must show:
>
> (A) willful and intentional action which is substantially adverse to the employer's interests, or
>
> (B) carelessness or negligence of such degree or recurrence as to show wrongful intent or evil design. *[K.S.A. 44-706(b)(1)]*

The Supreme Court of this state has ruled that the burden of proof in establishing that a former employee is disqualified for benefits under K.S.A. 44-706(b) is upon the employer, and must be proved by a preponderance of the evidence. *Farmland Foods, Inc. v. Board of Review, 225 Kan. 742, 594 P.2d 194 (1979).*

5-14

t B. Base Period Employer. "Notice of Separation and Request for Reconsideration Under Section 44-710(c), Kansas Employment Security Law".

Wages that your firm paid to the claimant in the base period and the maximum that is chargeable to your account is shown on the reverse side. Your account remains charged unless you request reconsideration by completing and returning this notice.

You may be eligible for a noncharge if the claimant's last employment with your firm ended for one of the following reasons:

-Discharge for misconduct or gross misconduct connected with the work;

-Left work voluntarily without good cause attributable to the work or the employer; OR

-Was and still is a "part-time" employee. (Part time means concurrent work with two or more employers and continues part-time work while claiming benefits.)

1. (✓) I request reconsideration of benefit charges now under K.S.A. 44-710(c) for the reasons below.

2. (✓) I request that my charg[illegible]rmination be deferred until a first payment is made[illegible] additional claim. (You may want this option if th[illegible] currently between school terms, on a leave of abs[illegible]d in a labor dispute. If you check this option, yo[illegible] mailed a second employer notice after or if first payment is made.)

EXHIBIT #3A

PERCAD-Bayonne, N.J.

SEPARATION INFORMATION: **Please provide complete details** relating to the separation. This information will be provided to the claimant if an appeal is filed by either interested party.

Enter the last date worked: 4-16-93 Enter the separation date(If different from the last date worked): —

Marsha worked a temporary position 3-29-93 until 4-16-93. She has not called in for further work, which is a violation of company policy & considered a 'voluntary quit.'

If additional space is needed, attach a letter. You may also attach any documentation you wish to have considered. You must sign this document on the line designated below. If signed for you by an agent who is not your employee, the response must include the name and title of your employee who certifies the information to be correct and complete. (K.A.R. 50-3-1)

I do hereby certify that the information submitted is correct and complete. I acknowledge that willful misrepresentation or failure to disclose a material fact is punishable by imprisonment for up to 60 days and/or a fine of up to $200 for each day of failure or refusal to disclose correct and complete facts. (K.S.A. 44-719(b))

Don Henderson
Signature

Service Rep.
Title

5-16

913-267-4060
Telephone Number

4-27-93
Date Mailed

STATE OF KANSAS

KANSAS
INSURANCE DEPARTMENT

420 S.W. 9th
Topeka 66612-1678 913-296-3071

1-800-432-2484
Consumer Assistance
Division calls only

RON TODD
Commissioner

COPY

February 23, 1994

Ms. Brenda Reynolds
Owners-Operator Services, Inc.
311 R.D. Mize Road
Grain Valley, MO 64029

Occupational Accident Insurance For
Independent Truckers

Dear Ms. Reynolds:

Please find attached to this letter a copy of a Certificate of Insurance received by our office for the captioned type of coverage.

As the certificate indicates, the insured is a Kansas resident and the certificate holder is a Kansas entity. Accordingly, we are interested in how the master policy of insurance for occupational accident coverage was marketed to the insured. Our concerns focus on the fact that the certificate was apparently extended to the certificate holder to fulfill the purposes of workers' compensation certification. Such a purpose is not contemplated by Kansas law, since no methods other than the NCCI workers' compensation policy or qualified self-insurance may be used to fulfill obligation for workers' compensation coverage.

Although an independent contractor may not be required by Kansas law to maintain workers' compensation coverage, the principal contractor (motor carrier) may require proof of workers' compensation coverage to avoid exposure under Kansas law for injuries to the owner operator (sub-contractor) or any employees they may obtain. Additionally, we are unaware of the approval of a master policy for occupational accident insurance in this state.

In view of the above comments, we request that you immediately advise how this coverage was solicited to this Kansas policyholder and request that you immediately cease marketing such products to Kansas residents since it is a possible misrepresentation under Kansas law. We request your immediate response to the above comments and will hold this matter in abeyance pending receipt of your reply.

Very truly yours,

Ron Todd
Commissioner of Insurance

House Labor and Industry
Attachment 6
3-16-94

John V. Spain
Fire and Casualty Policy Examiner

JVS:jbfc
4588

CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY) 10/18/93

PRODUCER

OWNER-OPERATOR SERVICES, INC.
311 R. D. MIZE ROAD
GRAIN VALLEY MO 64029

CODE SUB-CODE

INSURED

PARKER, RICK
R 3 BOX 121
LOUISVILLE KS 66450

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

COMPANIES AFFORDING COVERAGE

COMPANY LETTER A: RELIANCE INSURANCE COMPANY
COMPANY LETTER B:
COMPANY LETTER C:
COMPANY LETTER D:
COMPANY LETTER E:

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YY)	POLICY EXP. DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS	
	GENERAL LIABILITY				GENERAL AGGREGATE	$
	COMMERCIAL GEN. LIABILITY				PRODUCTS-COMP/OPS AGGREGATE	$
	CLAIMS MADE [ ] OCCUR. [ ]				PERSONAL & ADVERTISING INJURY	$
	OWNER'S & CONTRCTR'S PROT.				EACH OCCURRENCE	$
					FIRE DAMAGE (Any one fire)	$
					MED EXPENSE (Any one person)	$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	$
	ANY AUTO				BODILY INJURY (PER PERSON)	$
	ALL OWNED AUTOS				BODILY INJURY (PER ACCIDENT)	$
	SCHEDULED AUTOS				PROPERTY DAMAGE	$
	HIRED AUTOS					
	NON-OWNED AUTOS					
	GARAGE LIABILITY					
	EXCESS LIABILITY				EACH OCCURRENCE $	AGGREGATE $
	OTHER THAN UMBRELLA FORM					
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY				STATUTORY	
					$ (EACH ACCIDENT)	
					$ (DISEASE-POLICY LIMIT)	
					$ (DISEASE-EACH EMPLOYEE)	
A	OTHER INDEPENDENT TRUCKERS OCCUPATIONAL ACCIDENT INSURANCE WITH INDEMNIFICATION RIDER	MASTER POLICY 0001-1256	10/21/93	10/21/94	1000 COMBINED SINGLE LIMIT	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

TRUCKMEN-KANSAS (INDEMNIFICATION RIDER ATTACHED)

CERTIFICATE HOLDER

J M J PROJECTS
835 ST PAUL
PO BOX 246
KANSAS CITY KS 661100246

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES

AUTHORIZED REPRESENTATIVE Brenda Reynolds

6-2

KATYO 150623 1 CRTO MOTOR CARRIER COPY

INDEMNIFICATION RIDER

In consideration of the payment of premium calculated in the manner stated in the policy to which this rider is attached, it is hereby agreed that the policy is amended as follows:

It is hereby understood and agreed that in the event of a successful action on the part of the Insured to recover benefits under statutory Workers' Compensation Laws from the motor carrier to whom the Insured Person has a permanent lease agreement, as permitted by Interstate Commerce Commission regulations, this policy will upon written agreement reimburse that carrier (or its Workers' Compensation insurer) for all benefits paid by the carrier or its insurer to the Insured Person according to the benefits which would have been paid under this occupational accident policy. Nothing in this provision shall obviate the Insured Person's agreement that he or she shall not file any Workers' Compensation claims against the motor carrier, but will as an independent contractor file any claim for benefits under this occupational accident policy for the same accident, the Insured Person shall reimburse the insurer for all amounts paid under the occupational accident policy for that accident.

All other terms and conditions of this policy remain the same.

/

This rider takes effect on September 1, 1992 12:01 A.M., Standard Time at Washington, D.C. and it expires concurrently with the policy and is subject to all of the provisions, definitions, limitations and conditions of the policy not inconsistent herewith.

Attached to and made a part of Policy No. NOA 0105268 issued to Owner Operator Independent Driver's Association Insurance Trust by the Reliance Insurance Company, Administrative Office, New York, NY.