



California Bar Examination

SAMPLE 90-MINUTE

**Performance Test
INSTRUCTIONS AND FILE**

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INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.
2. The problem is set in the fictional State of Columbia, one of the United States.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File contains factual materials about your case. The first document is a memorandum containing the instructions for the tasks you are to complete.
5. The Library contains the legal authorities needed to complete the tasks. The case reports may be real, modified, or written solely for the purpose of this performance test. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page citations.
6. You should concentrate on the materials provided, but you should also bring to bear on the problem your general knowledge of the law. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.
7. This performance test is designed to be completed in 90 minutes. Although there are no parameters on how to apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.
8. Your response will be graded on its compliance with instructions and on its content, thoroughness, and organization.

PAGER MONT AND WHITE

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TO: Applicant
FROM: Susan Mont, Senior Partner
DATE: July 28, 2015
SUBJECT: Conrad Haynes Case

Conrad Haynes was referred to our firm by the Columbia Bar Association Pro Bono Project and we have agreed to represent him in an administrative appeal of the denial of his claim for unemployment compensation. His former employer, the National Bank of Columbia, opposes his claim, alleging that he voluntarily left his job as a bank teller and thus is ineligible for benefits.

Unemployment compensation appeals are decided by an administrative law judge (ALJ) in the Office of Administrative Appeals (OAA) on the record before the claims examiner -- in this case, the interviews of Mr. Haynes and that of Sandra Bennett, a bank employee.

Prepare an argument to include in our appeal brief. Be sure to argue both that Haynes' resignation should be construed as involuntary and that, if voluntary, it was for good cause. We will need to convince the ALJ that the circumstances that led our client to resign do not disqualify him from receiving benefits. We will have to marshal facts effectively to persuade the ALJ that Haynes should not be disqualified. Make sure to assert arguments in his favor and to rebut potential arguments against this conclusion.

Do not prepare a separate statement of facts. Your draft should relate specific facts to the legal tests and conclude how your analysis would establish that the client should prevail.

DEPARTMENT OF EMPLOYMENT SERVICES

SUBJECT: Intake Interview of Conrad Haynes

FROM: Jane Epstein, Claims Examiner

DATE: May 11, 2015

Conrad Haynes is a 28-year-old father of two who quit his job at the National Bank of Columbia (NBC), Frog Hollow Branch, 6 weeks ago. He expected at the time that he resigned that, with his experience and abilities, he would be able to find a new job quickly. Because of the number of bank failures and mergers, he has not gotten an interview.

Haynes worked for NBC for a total of 3 years, but had been at the Frog Hollow Branch for the last 6 months of his employment. Before going to Frog Hollow, he worked as a "Roving Teller," substituting in branches all through the city and suburbs of San Carlos as needed in any particular week. While working as a Roving Teller for the region, Haynes took evening courses at Central Community College, taking advantage of NBC's tuition payment program; he ultimately got the degree of Associate in Business. His hope, he said, was to advance beyond the lowest level teller job and get into a management position at the bank.

In September 2014, Haynes was temporarily assigned to Frog Hollow to fill in for a teller who was on leave due to a medical issue. He got along well with Sandy Bennett, the branch manager there. She told him that she was impressed with the fact that he was able to perform many aspects of the teller job that were "above his pay grade." Because he had worked in so many branches, filling in for people in various jobs, he had learned to do the work at each of the three levels of teller as well as that of "Customer Service Representative." Bennett noticed that he was a hard worker, that he took initiative, and that he got along well with customers.

Even while serving as a fill-in, he was able to form relationships with customers that enabled him to sell other bank services. On at least three occasions that he could

remember, “his” customers opened brokerage accounts upon his suggestion and two took out loans to purchase new cars. These are examples of work normally done by a “Customer Service Representative.” Haynes said that Bennett was very pleased with each of these occurrences and praised his ability to connect the customers with the bank’s other products.

Bennett invited him to apply for an opening at her branch as a Customer Service Representative (CSR) and he gladly did so. He saw it as a stepping stone to management positions at the bank. He said that he very much liked the kind of customer contact that the job entailed and that he welcomed the opportunity for higher level training about the banking business. Getting the job would also result in an increase in pay of at least \$5,000 per year because the pay grade for the job is higher than any teller position.

Haynes was interviewed by a committee of three people for the CSR job and one week later was told by Bennett that he had the job and that she would arrange a transfer from the city-wide Roving Teller position to the Frog Hollow Branch and that he would start one week later, on the first of November 2014.

When Haynes reported for work on what was to have been his first day in the new job, Bennett called him in and said that the CSR job “had not been authorized” by senior management and that she was sorry. She said that she did not know when the authorization might come through. Instead, she said, he could continue to work as a teller and “be patient” until something changed. Haynes said he was very disappointed by this news but felt he had no choice but to do his job well and strive to get ahead.

Haynes believed he had been offered and accepted a position as CSR at Frog Hollow. When he got his paycheck he found himself in the lowest level teller position, which paid the lowest salary. He explained that there are three levels of teller: Teller, Senior Teller, and Teller Manager. After he started at Frog Hollow, his supervisors often asked him to take on some of the tasks that Senior Tellers and Teller Managers were supposed to do. Bennett also asked him to train and mentor other tellers “because the other tellers didn’t like doing it.” He was not paid more for this extra

responsibility.

Haynes thought that it was unfair that he wasn't paid for it or given the formal recognition that he felt he deserved. About four months ago he asked Bennett for at least a promotion in the teller ranks, but she said that he needed more time on the job. When he said it wasn't fair to do the job of the more senior tellers without being paid for it, she told him that if he was dissatisfied with his work, he should quit.

After that, Haynes spoke with Bennett every two weeks to ask when the CSR job would be his. Each time, Bennett stalled him and advised patience.

Haynes said that on March 25, 2015 he received a written performance appraisal that was positive but that said that he "wasn't a team player." He suspected that this comment was the result of his complaints to Bennett about his promised job.

The next day, Haynes once more talked to Bennett about the CSR job and pointed out that in his performance appraisal the things that were listed as his strengths were all the things that would make him an excellent customer service representative. Bennett responded that, "It just isn't going to happen." She told Haynes that NBC had been bought by a large nationwide bank, that there was a new senior management team in place, that there was attrition going on in the total number of employees the bank would employ, and that no one's job was secure. She said, "My boss thinks you aren't ready for promotion. And you should know that you have no future at this bank."

Haynes said, "I felt completely defeated, misled about the job I had been promised, so I quit." The next day Haynes resigned and gave two weeks' notice. Bennett told him that the policy of the bank was that when someone quit, the employment ended immediately, and thus the last day of his employment was right then.

Haynes applied for unemployment benefits, stating that he left because "I had no choice when I learned that they lied to me about my position." I informed Haynes that I would interview a representative of the bank and that he would get my decision in the mail.

STATE OF COLUMBIA
DEPARTMENT OF EMPLOYMENT SERVICES

ADJUDICATION BRANCH

196 Magnolia Street
Celiana, Columbia

JUNE 22, 2015

CLAIMANT:

CONRAD HAYNES
17 BEMBE ROAD
ROSLYN, COLUMBIA

EMPLOYER:

NATIONAL BANK OF COLUMBIA
FROG HOLLOW BRANCH
2173 WILLOW STREET
ROSLYN, COLUMBIA

DETERMINATION BY CLAIMS EXAMINER

The Columbia Unemployment Compensation Act provides that an individual shall be disqualified from receiving benefits if it is found that he/she voluntarily left his/her most recent work without good cause connected with the work. (*Col. Unemployment Comp. Code, section 110.*)

Per the statement you, Conrad Haynes, provided to the Department of Employment Services, you left your most recent employment on March 27, 2015 because of general dissatisfaction with your job. You said that you resigned from your position with the National Bank of Columbia immediately after you were told that you were not getting a promotion that you believed had been promised to you.

Sandra Bennett, the branch manager of the bank, was your supervisor. She

stated you were not yet ready for a promotion. She also said that you had often expressed dissatisfaction with your work, despite being given opportunities to work as a permanent teller. She said that you left your job of your own volition.

Accordingly, it is determined that you voluntarily left available employment and that your employer did not force you to leave. It is also determined that you did not have good cause connected with your work to quit your position and that you left because of general unhappiness with your job.

For these reasons, you are disqualified from receiving benefits.

_____ *JANE EPSTEIN* _____

Jane Epstein

Claims Examiner



California Bar Examination

SAMPLE 90-MINUTE

**Performance Test
LIBRARY**

HAYNES v. NATIONAL BANK OF COLUMBIA

LIBRARY

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Columbia Association of Accountants v. Columbia Department of Employment Services

Columbia Supreme Court (1991)

In this claim for unemployment compensation benefits, an administrative law judge (ALJ) reversed the decision of a claims examiner of the Department of Employment Services (DOES) who had ruled that Lindsey Schultz was ineligible for unemployment compensation because she had voluntarily left her employment. The ALJ concluded that Schultz's resignation was coerced and thus involuntary and that she is entitled to unemployment benefits. The Columbia Association of Accountants (CAA) appealed.

An individual who leaves his or her most recent work involuntarily or with good cause connected with the work shall be eligible for unemployment compensation benefits. *Columbia Unemployment Compensation Code, section 110*. Whether an individual leaves voluntarily or involuntarily is determined in accordance with the totality of the circumstances. Whether an individual leaves with or without good cause is determined in accordance with the test: "What would a reasonable and prudent person in the labor market do in the same circumstances?"

Schultz was employed by the Cincinnati (Ohio) Chapter of the CAA until January 1989, when she joined the Columbia Chapter as Executive Vice President. After seven months, Arnold Prince, president of the Columbia Chapter, asked Schultz to stay after an Executive Committee meeting. Schultz testified that Prince gave no indication that anything was wrong or that she should be concerned. The day before the meeting, Schultz called the secretary of the chapter, William Hansen, to ask what he could tell her about the meeting. Schultz said Hansen told her that "there was some dissatisfaction and some anger" on both sides of the employment relationship and that "we need to talk some things over."

After the meeting, five of the Committee members met with Schultz. Prince told

her that “we have no choice but to ask for your resignation.” Hansen then gave Schultz a draft letter of resignation to which a positive letter of recommendation was attached. The resignation letter provided for an additional six months of salary and health benefits upon termination of employment, as well as a “suitable positive employment reference.” The letter also contained extensive waiver provisions absolving the CAA of liability attributable to Schultz's leaving her job.

Schultz testified before the ALJ that: “I was absolutely and totally in shock. I never expected any such thing. I couldn't believe that these people, who had recruited me to do a three year job, would fire me.”

According to Hansen's testimony, Schultz was “extremely upset” and went into an adjacent kitchen. Hansen followed her. Schultz testified that Hansen told her “in a very stern tone of voice,” that she had never heard him use, that it was very important that she “sign this letter now” and that if she decided to fight them she would “never win.” She also testified that Hansen said that if she did not sign the letter, she would not receive the letter of recommendation. Schultz, in shock, agreed to sign the letter because she had recently recovered from major surgery and needed the six months of health insurance.

The next day, CAA counsel wrote to Schultz, ordering her to remove all personal effects and turn in her key. He told her, “Your presence at the office is not desired and will not be permitted as of August 25, 1989.”

Schultz filed a claim for unemployment compensation. After a claims examiner ruled that she was ineligible for benefits because her resignation had been voluntary, she appealed. The ALJ reversed, concluding that “a careful review of the evidence and testimony at the appeals hearing fails to support the decision that Schultz voluntarily left her position. The evidence rather supports a finding that her leaving was involuntary.” This appeal followed.

An employee who leaves work voluntarily without good cause connected with the work is disqualified from receiving unemployment benefits. The threshold issue in this case is whether the employer's actions were coercive to the point of compelling an involuntary resignation. Because we answer that question in the affirmative, we do not reach the question whether, if the employee resigned voluntarily, there was "good cause" for doing so. Whether the employee's action was compelled by the employer rather than based on the employee's volition must be determined by reference to all the circumstances surrounding the decision to leave.

Situations reflected in our termination cases involving voluntariness generally fall into: "shape up or ship out" (voluntary) and "quit or be fired" (involuntary). Schultz's comes closer to "quit or be fired" than "shape up or ship out."

The Columbia Chapter initiated Schultz's resignation and drafted the resignation letter without consulting her. The resignation letter mentioned a positive employment reference, and a letter of recommendation was attached to the resignation letter. Hansen, an Executive Committee member, suggested to Schultz that she would be best served by accepting the proposed resignation rather than remaining. There is no evidence that the employer offered Schultz any palatable option other than resignation. She was not told improvement would result in a work relationship satisfactory to her employer. Schultz, therefore, in effect was told to quit or be fired.

Based on these facts, the ALJ was justified in concluding as a matter of law that the employer's conduct caused an involuntary separation.

Affirmed.

Rodger Kaplan v. Columbia Department of Employment Services

Columbia Supreme Court (1982)

Rodger Kaplan challenges a ruling by the Department of Employment Services (DOES) that disqualified him from receiving unemployment benefits on the ground that he voluntarily left his previous employment without good cause connected with the work. We agree with Kaplan that the final decision is unsupported by substantial evidence of record.

On June 28, 1980, Kaplan, who had been employed for nearly two years at Club East II, resigned from his position there. An administrative law judge (ALJ) determined that the employment had been voluntarily terminated without good cause connected with the work.

Kaplan testified that the management of the club, a 24-hour facility, had repeatedly failed to keep its promises to him and also engaged in coercive employment practices. He was told that shift assignments would be made on the basis of seniority of the work staff, but the practice was never followed. With regard to salary, he was promised an increase from \$4.00 to \$4.50 an hour, but received a lesser amount. Whenever a shortage of monies was received during a particular work shift, the manager routinely required all employees on the shift to make up the deficiency. When an employee reported late for his shift, the manager required the employee on duty to continue until a replacement arrived. The manager then insisted that the employee who had worked extra hours collect his compensation for the work from the tardy co-worker. On several days, Kaplan was not paid for overtime work.

In ruling against Kaplan, the ALJ set forth the circumstances described but concluded that, in leaving his employment, Kaplan had not acted as a reasonable and prudent person in the labor market. He concluded that Kaplan had left because of "general dissatisfaction with his work" and not for good cause.

Since in this instance it is undisputed that Kaplan voluntarily left his employment, we need only review the question of whether Kaplan's decision to resign was without good cause.

Regulations promulgated by the Department of Employment Services provide examples of circumstances that do and do not constitute good cause. *Columbia Code of Regulations, sections 311.6, 311.7*. Circumstances that do not constitute good cause include "minor reduction in wages," "refusal to obey reasonable employer rules," and "general dissatisfaction with work." *Id, Section 311.6*. Circumstances that do constitute good cause include "failure to provide remuneration for employee services," "material change in terms of employment resulting in lower pay," and "racial or sexual discrimination or harassment." *Id, Section 311.7*.

These regulations offer non-exclusive illustrations of the respective factors to be used in determining good cause. The determination of good cause is factual in nature and should be judged by the standard of a reasonably prudent person under similar circumstances. The ALJ articulated this more general legal test. Thus our inquiry is whether there was sufficient evidence to support the decision. We conclude there was not.

In addition to the complaints regarding promised salary and work schedules, we think it significant that Kaplan was required to work overtime and referred to other employees to seek compensation for the work done. The failure to provide remuneration for employee services constitutes good cause. The employer also required that all employees on a shift were held collectively responsible, regardless of fault, for any deficiency in receipts. Taking these circumstances as a whole, without opposing evidence, we hold that there is insufficient evidence in the record to support the ALJ's decision that Kaplan did not act as a reasonable and prudent employee under the circumstances.

Accordingly, we reverse.

Jaime Delgado v. Columbia Department of Employment Services

Columbia Supreme Court (1993)

Petitioner Jaime Delgado asks us to review a decision by the Department of Employment Services (DOES) denying him unemployment benefits upon the ground that he voluntarily left his job without good cause connected with the work. We agree with Delgado that the administrative law judge (ALJ) failed to make sufficient findings to support her decision that Delgado's leaving was without good cause.

Delgado worked as a Spanish Coordinator for the United Programming Organization (UPO) from May 1990 to August 9, 1991 when he resigned.

Delgado immediately applied for unemployment benefits. On his claim form, he marked "Reason for Separation: Left Voluntarily," without providing any further explanation. Based on the application, the DOES claims examiner found Delgado ineligible for benefits because he had left for unspecified personal reasons. Delgado filed an administrative appeal.

At the hearing, Delgado explained that UPO had been experiencing severe financial difficulties, that employees had been furloughed, and that he believed, in light of the employer's economic crises, that his own continued employment was in jeopardy. Delgado further explained that he had encountered "a lot of resistance" from the Executive Director's support staff to carrying out his job, a situation that "made it very uncomfortable to stay." The employer did not contest any of these allegations.

The ALJ found that Delgado "left of his own volition" for a personal reason that was not "objectively job-related or directly connected with the work." The ALJ described these personal reasons as "general dissatisfaction with his work." See, *Columbia Code of Regulations, section 311.6*. The ALJ concluded that Delgado had not shown that his voluntary departure was for "good cause connected with the work." She ruled that Delgado was disqualified from receiving unemployment benefits.

We have consistently held that the Unemployment Compensation Act is remedial humanitarian legislation of vast import. Its benefits sections must be liberally and broadly construed for the benefit of unemployed workers. The Act has wiped out the acute and almost unbearable hardships that accompany unanticipated loss of employment. The purpose of Columbia's unemployment compensation statute is to protect employees against economic dependency caused by temporary unemployment and to reduce the need for other welfare programs. The remedial goals of the legislation apply in "voluntary quit" cases such as this.

Delgado alleges that UPO was in a financial crisis, that employees had been furloughed, that he believed that his position was at risk, and, implicitly, that he would soon be out of work if he did not secure another job. Second, he alleges that resistance from his superior's support staff made his job "very uncomfortable."

The ALJ only addressed Delgado's allegations of resistance from supervisors. The ALJ made no attempt at the hearing to elicit facts relevant to the situation at UPO – whether the employer was, in fact, in financial peril or if Delgado reasonably believed that it was. No inquiry was made as to the nature and extent of the alleged furloughs. The ALJ made no findings regarding the pressures that allegedly made it difficult for Delgado to stay on.

If Delgado had left UPO because he believed he could find better work elsewhere, recovery would be foreclosed under our decisions. But this case is unlike those where an employee resigned, intending to take a similar position with another company at a higher wage. Here, Delgado alleged that he voluntarily left UPO at least in part because UPO's financial instability seriously threatened his job security, and because other employees on the staff of his boss had made it difficult for him to stay on. These reasons merit scrutiny under the "reasonable and prudent person" test. Furthermore, the sufficiency of a claimant's asserted justifications must be considered in light of the remedial purposes of the statute.

We do not suggest that an employee's concerns about possible discharge on account of his employer's actual or perceived financial straits or the employee's own difficulties with supervisors would necessarily constitute good cause. In order to constitute good cause, the circumstances that compel the decision must be real, substantial, and reasonable; there must be some compulsion produced by extraneous and necessitous or compelling circumstances.

Having alleged financial crises and employee furloughs, as well as activities on the part of aides to his boss that made it difficult for him to stay, Delgado satisfied the threshold requirement that he articulate material issues of fact. He was entitled to have these issues adequately explored and then resolved by specific findings.

We reverse the agency's decision and remand for further proceedings consistent with this opinion.