

Membership Matters

Quarterly News from The 501 Alliance

December 2019

New Members Join The 501 Alliance

The board approved two new organizations for membership in the group at their November meeting. We now have approximately 340 members located across the state of Michigan.

The board would also like to thank those members who took advantage of our Member Referral Program and helped us to recruit new members. As a reminder, this program provides your organization with a \$50 charitable donation for every prospective member who completes and submits an application for membership. An additional \$150 charitable donation is provided to your organization for every prospective member who also qualifies and is approved for membership. In total, up to \$200 can be received for each prospective member referred to The 501 Alliance.

To receive your referral check, the applicant simply needs to include the name of your organization on their application. In addition, there is no limit to the number of prospective members you can refer. For example, refer just five prospective members and your agency will receive at least \$250 and up to \$1,000. You can also contact us at any time to inquire about the status of any nonprofit referred for membership.

If you have any questions, please contact us at 800-968-9675. You can also visit our website at 501alliance.org for more information.

How Would You Rule?

Background

A company provides security services to different clients. They hired the claimant as a part-time employee working as needed on various assignments. The claimant placed limitations on his availability but the employer stated he refused a suitable offer of work.

At the Hearing

The Employer's Evidence: The employer testified the claimant was hired to work part time, and was assigned to various clients as needed by the employer. The claimant worked for the employer in this capacity for approximately three-and-a-half years working an average of 16 hours per week for the same client. However, the employer's client made changes to their requirements and the hours the claimant had been working were no longer available. The claimant was offered several other assignments for the same number of hours and pay but it required the claimant to work weekends. The claimant declined those assignments. The employer also stressed during the hearing that weekend hours were customary in the security industry.

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How Would You Rule Continued...

The Claimant's Evidence: The claimant testified he had told the employer at the time of hire that he was not able to work weekends. The claimant stated that he travels frequently on weekends to see family in neighboring states and he would not be able to accept weekend assignments. He argued this was not a refusal of suitable work.

The Hearing Decision

The Administrative Law Judge (ALJ) found the evidence established that the claimant was essentially an on-call employee to provide security services. His hours were contingent upon whether or not the employer had requests for security services from clients. The claimant had always refused weekend hours, although weekend hours were available and were common in the industry. Since the claimant limited the number of hours he was available to work, the ALJ found the claimant was unduly restricting his availability for part-time work and had therefore refused suitable work. The ALJ ruled the claimant was not eligible for benefits.

The claimant appealed and argued he never worked weekends and he advised the employer at the time of hire that he would not be available to work weekends. The claimant argued the assignments offered were not suitable because the work was for weekends. Thus, it was not the same schedule he had been working. He testified he would accept an offer of suitable work that did not include weekend hours.

The Board of Review Decision

The Board of Review (board) could not come to an agreement, as each of the three board members voted differently. Therefore, they had no choice but to agree with the ALJ's decision. One board member voted to affirm the ALJ's decision in its entirety. Another board member voted to remand the ALJ's decision, requesting additional evidence for testimony. This was because the record did not contain information about whether or not there were assignments the claimant could accept in the industry that did not include weekend hours. The last board member voted to reverse the decision of the ALJ, finding that both the employer and the claimant had agreed at the time of hire that the claimant could not work weekends. This was based on the employer not requiring weekend work for three-and-a-half years and therefore, could not change the employment terms now.

Most states have a Board of Review that contains three or more members. In order for the board to reverse or remand a decision, a majority of the board members must agree. Since they did not agree, the only thing they could do was to leave the ALJ's decision as it was and explain how they would have decided individually.

Takeaways

In a refusal of work case, sometimes it is necessary to present evidence on whether or not there was any work available that would fit the claimant's required hours, regardless of whether an offer for those hours had been made. In addition, the employer may have to prove that there was not any work available that would have met the claimant's requirements. Keep in mind that when employees advise upon hire that they have limitations to their schedule and an employer agrees to those limitations, any modification by the employer to that mutual agreement may be considered a change in the agreement of hire. If the employee quits as a result, that could lead to an award of benefits.