

1973 WL 26598 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 5, 1973

\*1 Major General Robert L. McCrady  
The Adjutant General  
Military Department  
State of South Carolina  
1225 Bluff Road  
Columbia, South Carolina 29201

Dear General McCrady:

Your letter of January 23, 1973, has been referred to me for reply. You have inquired as to whether or not the situation of a National Guardsman who is forced to resign from the Guard for purely personal reasons would be considered 'involuntary separation' under § 44-230 of the South Carolina Code of Laws. Extensive research reveals that there are no cases directly in point. However, there are some cases dealing with legislation and wording closely related to that in question. These cases deal primarily with unemployment compensation which requires 'involuntary unemployment' or a 'voluntary leaving with good cause,' before compensation will be paid.

Cases from other jurisdictions, for example New Jersey and Pennsylvania, seem to indicate that when a person is compelled to leave his employment because of legal or family obligations it is considered to be a voluntary leaving with good cause. See e.g., [Krauss v. A. M. Karaghansian, Inc.](#), 13 N.J. 447, 100 A.2d 277; [Breskin v. Bd. of Review](#), 46 N.J. Super. 338, 134 A.2d 730; [Blilcy Elec. Co. v. Unemployment Comp. Bd.](#), 158 Pa. Super 548, 45 A.2d 898. South Carolina, however, seems to take a contrary view. In [Stone Mfg. Co. v. S. C. Employment Security Commission, et al.](#), 219 S.C. 239, 84 S.E.2d 644 (1951), the Supreme Court held that the term 'involuntary unemployment' as used in the declaration of state policy in the Unemployment Compensation Act was not intended to provide benefits for a worker compelled to give up his job solely because of a change in personal circumstances. This case involved a woman's leaving her employment to accompany her husband who had been transferred to another army station. It thus appears that in South Carolina involuntary unemployment requires more than a separation for purely personal reasons. However, since these statutes are civilian in nature, I thought it best to check some military sources.

Major Rankin of the Fort Jackson J. G. Office informed me that an involuntary separation from the regular Army involved three different situations. (a) When a member is discharged because of a reduction in the force; (b) when a member has been passed over for promotion a certain number of times; and (c) when a member is separated for medical reasons. Further, [10 U.S.C.A. § 687](#) provides for readjustment payment upon involuntary release from active duty. Subsection (b) of this Act provides for situations where the Act does not apply. Among these are situations where a member is released from active duty at his own request; and where a member is released from active duty for training. The wording of subsection (b), together with the information from Major Rankin, would seem to indicate that the regular Army interprets 'involuntary separation, release, etc.' to require more than personal problems as the reason for leaving the service.

\*2 Therefore, considering South Carolina's position in [Stone Mfg. Co.](#), *supra*, and the Army's requirements for involuntary separation, it would seem that an interpretation of 'involuntary separation' as used in § 44-230 would not include a leaving for purely personal problems.

If this office can be of further assistance to you in this matter, please do not hesitate to call upon us.

Yours very truly,

Randall T. Bell  
Assistant Attorney General

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