

**SUBCHAPTER 11. CLAIMS ADJUDICATION—
REFUSAL TO APPLY OR ACCEPT
SUITABLE WORK**

**12:17–11.1 Disqualification period for failure to apply for
or accept suitable work—general principles**

An individual shall be disqualified for benefits if it is found that the individual has failed, without good cause, either to apply for available, suitable work when directed by the employment service office or the Director, or to accept suitable work when it is offered. The disqualification shall continue for the week in which the failure to apply occurred and for the three weeks which immediately follow that week. This disqualification for failure to accept suitable work shall be imposed during the week in which the individual refused the work or, if there is a definite starting date, the week in which the work is to begin. (See N.J.S.A. 43:21–5(c).)

12:17–11.2 Suitability of work defined

(a) In determining whether or not the work is suitable, consideration shall be given to the degree of risk involved to health, safety and morals, the individual's physical fitness and prior training, experience and prior earnings and employee benefits, the individual's length of unemployment, prospects for securing work in the individual's customary occupation and commuting distance.

1. For a position to be considered suitable, all of the factors in (a) above must be judged with respect to the particular individual involved.

2. For purposes of this subchapter, and restricted to those offers of work made during an individual's benefit year, suitability in terms of wages means:

i. Eighty percent of the claimant's average weekly wage (including the value of employee benefits) during the base year if the offer made is during the first 20 consecutive weeks of unemployment benefits;

ii. Seventy percent of the claimant's average weekly wage (including the value of the employee benefits) during the base year after the twentieth consecutive week of unemployment benefits.

3. Notwithstanding any other provisions of this subchapter an offer of work at a rate of pay less than provided by the State minimum hourly wage shall be unsuitable.

(b) No work may be deemed suitable, and an individual will not be disqualified for benefits because of his or her refusal to accept work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

2. If the wages, hours, or other conditions of work offered are substantially less favorable than those prevailing for similar work in the labor market area; or

3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

12:17–11.3 Establishing bona fide offers of work

(a) An individual shall not be disqualified for benefits pursuant to this subchapter unless it has been established that there was a bona fide offer of work or referral to work which he or she refused. An employer should document offers of work and should contact the Division if unable to reach the claimant. In order for a bona fide offer or referral to exist it must be shown that:

1. There was an offer of work to a specific job evidenced by details of the job including job duties, rate of pay, hours of work; and

2. The offer was conveyed in writing or verbally to the individual.

(b) If an individual prevents the details of the job from being relayed by refusing the job or the referral at the beginning of the interview, the offer is still considered bona fide.

12:17–11.4 Good cause for refusal of suitable work

For purposes of this subchapter, "good cause" means any situation over which the claimant did not have control or which was so compelling as to prevent the claimant from accepting work. In order to establish good cause, the claimant must have made a reasonable attempt to remove the restrictions pertaining to the refusal.

12:17–11.5 Offers of new work

(a) An individual shall be subject to disqualification for benefits if he or she fails to accept or apply for suitable new work. For purposes of this subchapter, "new work" means:

1. An offer of work made to an unemployed individual by an employer with whom he or she has never worked;

2. An offer of reemployment made to an unemployed individual by any former employer, following an indefinite layoff with no recall date; or

3. An offer of work made by an individual's present employer of substantially different duties, terms or conditions of employment from those he or she agreed to perform in his or her existing contract of hire. Examples of factors which may be weighed when considering whether there is a substantial change in the terms or conditions of employment which constitute "new work" include, but are not limited to, the employer's change of hours or shift, job duties, location, salary, benefits, work environment and health and safety conditions.

(b) An individual who accepts suitable work, even for a brief period, and voluntarily leaves such work for reasons not attributable to the work, shall be disqualified for bene-

fits for voluntarily leaving work as opposed to for refusing suitable work.

SUBCHAPTER 12. CLAIMS ADJUDICATION— OTHER BENEFIT ELIGIBILITY ISSUES

12:17-12.1 Corporate officers, owners and creditors

(a) An officer of a corporation and/or a person who has more than five percent equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation, shall not be considered unemployed in any week during the individual's term of office or ownership in the corporation and the claim shall be determined invalid.

1. An equitable interest in the corporation is defined as the ownership of the corporate stock.

2. A debt interest in the corporation is defined as being a creditor of the corporation.

3. A corporation is considered viable unless it has been dissolved in accordance with the New Jersey Business Corporation Act, N.J.S.A. 14A:1-1 et seq.; or has filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code.

Case Notes

Claimant, who was corporate treasurer and a 25% shareholder, was not "unemployed" and was precluded from receiving unemployment benefits even though restaurant (employer) had ceased operating; owner remained active for collection of debts. *Fernicola v. Board of Review*, 335 N.J.Super. 523 (A.D. 2001).

12:17-12.2 Labor disputes

(a) The following words and terms, as used in this section, shall have the following meanings:

1. "Labor dispute" means any controversy concerning wages, hours, working conditions or terms of employment between an employer and a bargaining unit or a group of employees.

2. "Stoppage of work" means a substantial curtailment of work which is due to a labor dispute. Justification for the labor dispute may not be considered. An employer is considered to have a substantial curtailment of work if not more than 80 percent of the normal production of goods or services is met. There is no distinction made with regard to whether the work stoppage is caused by a strike or a lockout.

(b) A claimant shall be disqualified for benefits if he or she is unemployed due to a work stoppage which occurs because of a labor dispute at the factory, establishment or other premises at which the individual is or was last employed. Separate branches of work which are commonly conducted as separate business in separate premises or are conducted in separate departments of the same premises, shall be deemed to be a separate factory, establishment, or other premises. The individual shall be disqualified if:

1. He or she is participating in, financing or directly interested in the labor dispute; and

2. Immediately before the work stoppage began, he or she belongs to a grade or class of workers employed at the premises which are participating in, financing or directly interested in the dispute.

(c) A claimant shall not be disqualified for benefits in accordance with N.J.S.A. 43:21-5(d):

1. If the claimant was separated from employment for reasons which occurred prior to the labor dispute, or was laid off due to lack of work without a definite recall date, even if the layoff was caused by a labor dispute at an industry upon which the employer is dependent;

2. From the date the claimant was discharged during the labor dispute, however, this shall not preclude a determination of disqualification under other provisions of the law; or,

3. The employer has permanently closed and ceased operations, has commenced bankruptcy proceedings under Chapter 7 of the United States Bankruptcy Code, has sold the business and its assets or has permanently relocated.

12:17-12.3 Employees on leave of absence

(a) A voluntary and mutually agreed upon leave of absence between an employer and employee connotes a continuity of employment. An individual on an approved leave of absence is not considered unemployed under the Unemployment Compensation Law and any claim for benefits filed during this period shall be invalid except, if the leave of absence is granted in part due to disability or a projected disability of the individual, the validity of any claim filed under N.J.S.A. 43:21-4(f) shall not be effected by the leave of absence while the claimant is disabled from work.

(b) The failure of an employer to grant or extend a personal leave of absence for other than the individual's personal health reasons does not establish good cause attributable to such work for the individual to leave such employment provided the denial was not in violation of Federal or State Laws including the Federal Family Medical Leave Act, P.L. 103-3 and the New Jersey Family Leave Act, N.J.S.A. 34:11a-1 et seq. which would provide for such leave.

(c) Any request for a leave of absence for personal health reasons of an individual must be supported by competent medical certification.

(d) If an individual's request for a leave of absence is denied, and he or she takes the leave, any termination of employment shall be reviewed as a voluntary leaving of work issue unless the reason for the leave is related to the individual's personal health, or if the leave is covered by any Federal or State law, including the Federal Family Medical Leave Act, P.L. 103-3 and the New Jersey Family Leave Act, N.J.S.A. 34:11a-1 et seq. regulation or other policy, bargaining contract or contract of hire.

12:17-12.4 School employees

(a) An employee of an educational institution shall be ineligible for benefits for any week that begins during the period between academic years or terms and during vacation periods and holiday recesses, if the employee has reasonable assurance of returning to work in any such capacity, during the succeeding academic year or term or after the vacation period or holiday recesses.

1. The term "reasonable assurance" of returning to work means a written, oral, or other implied agreement that the employee shall perform services in any such capacity during the next academic year, term, or remainder of a term. "Any such capacity" means the same or similar capacity and refers to the type of services provided, that is, a professional capacity as provided by N.J.S.A. 43:21-4(g)(1) or nonprofessional capacity as provided by N.J.S.A. 43:21-4(g)(2).

2. Reasonable assurance of recall does not exist when an individual performs full-time services under an annual contract and during the next academic year or term is offered day-to-day substitute work.

3. An employee who is employed for all or part of a term in a day-to-day substitute position has reasonable assurance of recall if he or she is placed on a substitute list for the next academic year or term.

(b) Any ineligibility under this section begins the first calendar week following the date the individual received reasonable assurance of recall. If such assurance is given on a Sunday, that Sunday would be the first day of ineligibility.

(c) Where reasonable assurance of recall exists, claims involving both school and non-school wage credits shall be processed as follows:

1. Initially a monetary determination shall be made using all covered base year employment wages.

2. If a claimant is determined to be ineligible for benefits and if he or she has sufficient non-school employment and earnings to establish a valid claim, an adjusted monetary determination shall be made solely on the non-school base year employment. Benefits would be payable under this adjusted monetary determination.

3. Benefits claimed and paid for prior to or subsequent to any denial periods shall be paid to eligible claimants at the initial monetary rate determined in (c)1 above.

(d) If a claimant employed in a non-professional capacity is denied benefits, solely because he or she had reasonable assurance of returning to work, the claimant may receive benefits retroactively if the educational institution subsequently does not offer him or her an opportunity to return to work and the following requirements are met:

1. The claimant complied with continued claims reporting requirements provided in N.J.A.C. 12:17-4; and

2. The claimant is otherwise eligible for benefits.

(e) An individual who is employed under a 12-month contract and offered a 10-month contract in the next academic year of term shall not be ineligible under these provisions.

12:17-12.5 Claimant engaged in a temporary business

(a) A claimant who seeks to augment his or her income through a temporary business may be eligible to receive unemployment benefits only if he or she is available for work, actively seeking employment and otherwise meets the eligibility requirements set forth in the Unemployment Compensation Law. "Temporary business" means any work performed by an unemployed person for the purpose of augmenting his or her unemployment benefits while actively seeking employment.