

BOARD OF REVIEW
UNEMPLOYMENT COMPENSATION COMMISSION
OF NEW JERSEY

DIGEST OF DECISIONS

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DIGEST OF
BOARD OF REVIEW DECISIONS

A. LABOR DISPUTE DISQUALIFICATION

"An individual shall be disqualified for benefits for any week with respect to which it is found that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment or other premises at which he is or was last employed; provided, that this subsection shall not apply if it is shown to the satisfaction of the board of review that -- (1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

"(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that if in any case in which (1) or (2) above applies separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be separate factory, establishment, or other premises."--

Section 5 (d).

I. Disqualification Applies Only to Employees.

a. Prior Hiring or Severance.

Since disqualification arises only where a labor dispute exists at establishment where claimant was last employed, an employer-employee relationship must be shown. No disqualification under Section 5 (d) can apply to individuals engaged in a controversy with a prospective employer who have not been hired by said employer prior to the occurrence of the controversy.

(BR 64L)

A worker who definitely severs his connection with an employer prior to the occurrence of a labor dispute is not subject to any disqualification under Section 5 (d) because of a dispute which later occurred at the establishment of said employer.

(BR 50)

A worker who is discharged by his employer one week prior to the commencement of a labor dispute is not disqualified under Section 5 (d). (BR 67)

b. Prior Lay-off or Quit.

A worker who has been definitely laid off or discharged for lack of work prior to the commencement of a labor dispute cannot be disqualified for benefits under Section 5 (d) in connection with said labor dispute. (BR 60)

A refusal by men who have been definitely discharged by their employer to accept new work from him is not a labor dispute, regardless of its cause, since no employer-employee relationship exists between them. (BR 620)

Individuals discharged by an employer for participation in a sit-down strike are no longer employees and therefore are

not subject to disqualification under Section 5 (d); but since they are guilty of misconduct connected with their work in engaging in the sit-down strike, they are disqualified during four weeks for that reason. (BR 910)

c. Failure to Re-hire.

A claimant who is disqualified under Section 5 (d) but who is not re-hired by the employer when the dispute is settled becomes eligible for benefits immediately upon settlement of the dispute. (BR 63)

d. Offer of Work.

If, when a strike is called, the employer offers work to individuals who had been laid off but not discharged from his employ and they refuse to accept such work because of their participation in the strike, they are disqualified under Section 5 (d). (BR 230)

II. Time of Unemployment ("For Any Week").

The cause of the worker's unemployment must be examined with respect to each week independently; and even though the unemployment was originally due to a stoppage of work which existed because of a labor dispute, a new cause for the stoppage may intervene in subsequent weeks; and in that case the disqualification ceases with respect to those weeks. (BR 90)

III. Total Unemployment Due to Stoppage of Work.

1. Stoppage must be cause of unemployment.

A worker who is laid off by the employer cannot be disqualified under Section 5 (d) since his unemployment is due to the layoff and not to a stoppage of work. (BR 195)

It must appear that the unemployment is directly caused by the stoppage of work. (BR 20L)

2. Stoppage basis of disqualification.

Workers are disqualified for benefits where their unemployment is due to a stoppage of work which exists because of a labor dispute. (BR 27L)

The existence of a labor dispute is not of itself grounds for disqualification under Section 5 (d). There must also be an appreciable stoppage of work which is the cause of unemployment. (BR 114L)

No disqualification arises where there is no stoppage of work, despite the existence of a labor dispute. (BR 5L, BR 13L, BR 18L, BR 82L)

Where an employer contends that he curtailed production because of an approaching labor dispute, the burden of proof rests upon him to show that the resulting stoppage of work is actually due to the labor dispute and not to economic conditions. Where it appears that the season of the year during which the labor dispute occurred is a customary slack season, and that the employer's salesmen were attempting to secure orders throughout this period but were unable to do so, the stoppage of work is due to economic conditions and not to a labor dispute, and no disqualification arises under Section 5 (d). (BR 24L)

3. What constitutes a stoppage.

a. Cessation of Available Work.

A cessation of production at the employer's establishment is a stoppage of work. (BR 80L)

The cessation of production must be appreciable in order to constitute a stoppage; and a reduction in normal productive activity of less than 20% is not an appreciable stoppage of work. Workers who are unemployed as a result thereof are not subject to disqualification. (BR 88L)

A decrease of 50% in production, provided work remains available throughout the course of the labor dispute, constitutes a stoppage of work. (ER 94L)

An appreciable decrease in the total production of the plant is a stoppage of work. (BR 65L)

Where only ten out of one hundred and seventy-five men remain at work during the course of a labor dispute and ten others are transferred from the office force to production, work being available for the entire force of one hundred and seventy-five, a stoppage of work exists because of labor dispute. (BR 351)

b. Party Causing Stoppage.

A shut-down of the plant by the employer constitutes a stoppage of work. (BR 15L) (However, it may not be due to a labor dispute.--Ed.)

c. Work Available.

A stoppage is measured by the total amount of work available for workers. Where the amount of work available is less than normal the amount actually available is the test. (BR 2L)

It is not necessary to show that full-time work was available in order to prove the existence of a stoppage of work. Where part-time employment is available and this work is prevented from being done by reason of the existence of a labor dispute, a stoppage of work exists. (BR 27L)

Where work is available but is not performed due to the fact that a labor dispute has occurred, the unemployment of the workers is due to a stoppage of work which exists because of a labor dispute. (BR 20L)

Where no work is available in any event, the unemployment of the workers is not due to a stoppage of work which exists because of a labor dispute, even though they are actually engaged in such dispute. (BR 3L)

d. Prevention of Work.

A prevention of the resumption of work after a layoff is a stoppage of work. (BR 52L)

The prevention of available production by the refusal of workers to continue at work because of a labor dispute constitutes a stoppage of work which exists because of a labor dispute. (BR 109L)

e. Replacement of Workers.

No stoppage of work exists where the places of strikers are immediately filled by other workers. (BR 102L)

The discharge of all workers, on demand of a labor union, followed by the immediate re-hiring of all who are willing to join the labor union and a continuance of normal production does not constitute a stoppage of work. (BR 28L)

The discharge of all union employees and their immediate replacement by non-union employees does not constitute a stoppage of work. (BR 21L)

f. Stoppage Must Be Appreciable.

Where the curtailment of production is not appreciable, no stoppage of work exists. (BR 1L)

If production at the plant is maintained at better than 80% of the work available, there is no stoppage. (BR 5L)

Where only seven out of fifty-five employees cease work, an appreciable stoppage of work may exist where it is clear that the work of the strikers is of such a character as to cause an appreciable reduction in the total output of the plant. (BR 15L)

A stoppage of work exists where the employer is prevented from operating a night-shift, provided this results in an appreciable curtailment of production. (BR 19L)

A slight delay during the course of construction of a building which does not actually delay the date on which the building is completed, does not constitute a stoppage of work. (BR 29L)

g. Continued Production: Relation to Stoppage.

The maintenance of regular business activity through normal means is prima facie evidence that no stoppage of work exists. (BR 58L, BR 18L)

Continuance of production of only a portion of the goods for which orders have been received by the employer, an appreciable amount of available work being held up, does not prevent the existence of a stoppage of work. (BR 7L, BR 44L)

The continuance of production at a rate which is less than normal, but under which all available work is performed, is prima facie evidence that no stoppage of work exists. (BR 34L)

h. Emergency Measures: Relation to Stoppage.

Where the normal production of the plant is maintained only by the use of emergency measures which cause an appreciable delay in non-productive departments, a stoppage of work exists. (BR 33L, BR 42L)

i. Work Diverted: Relation to Stoppage.

A stoppage of work exists where the work available is farmed out as a temporary emergency measure. (BR 47L)

A stoppage of work exists where work is transferred by the employer to other plants operated by him where it appears that the plant at which the labor dispute occurred is a basic source of raw materials for other plants. (BR 46L)

j. Workers Replaced: Relation to Stoppage.

No stoppage exists when normal production is maintained through the replacement of strikers by new employees. (BR 11L, BR 21L, BR 61L)

An existing stoppage is terminated when sufficient new workers have been hired to bring production up to a point where all work available is performed. (BR 10L)

No stoppage of work exists where, because of a labor dispute, union workers are replaced by non-union workers and normal production continues. (BR 35L)

No stoppage of work exists where non-union workers are immediately replaced by union workers and normal production continues. (BR 28L)

k. Loss of Business: Relation to Stoppage.

Where the business of an employer, after commencement of a stoppage, falls off to a point at which he no longer has work available for his striking employees, a condition is created where there is no longer a stoppage of work. (BR 34L)

l. Abandonment of Production: Relation to Stoppage.

No stoppage of work exists where, because of a labor dispute, a previous type of work is permanently abandoned by the

employer, (BR 28L) or where the business is liquidated. (BR 99L)

No stoppage of work exists where the production of goods on speculation is permanently abandoned and the employer is able to fill all orders which he receives from customers.

(BR 1L)

4. Termination of Stoppage.

A stoppage of work terminates as soon as normal production is resumed. (BR 10L)

A stoppage of work terminates when an employer no longer has work available for his employees. (BR 34L)

A stoppage of work terminates as soon as the production of all available work is resumed even though this is less than the normal amount of production prior to the labor dispute.

(BR 9L)

A stoppage of work does not necessarily terminate immediately upon settlement of the labor dispute when the consequences of the stoppage are such that work cannot immediately be resumed. (BR 27L)

IV. Labor Dispute as Cause of Stoppage.

1. Proximate Cause.

In order to create a disqualification under 5 (d), the labor dispute must be the proximate cause of the stoppage of work. Where no work is available for striking workers even if the strike is settled and they offer to return, the stoppage of work exists because of economic conditions and does not exist because of a labor dispute. (BR 24L)

Workers whose unemployment is due to lack of work and not to a stoppage of work which exists because of a labor dispute are eligible for benefits even though they participate in the labor dispute. (BR 97L)

Where the employer loses business because he is compelled to raise prices as a result of a demand for a wage increase, the consequent stoppage of work is not the proximate result of a labor dispute and no disqualification arises. (BR 24L)

Benefit claimants are permitted to prove that a stoppage of work alleged by the employer to be due to a labor dispute is, in fact, due to economic conditions and not to the labor dispute, even though it is admitted that a labor dispute exists. (BR 27L)

2. New Causative Factor.

The intervention of a new causative factor, such as a reduction in the amount of work which the employer can offer his workers during the course of a labor dispute may change the cause of a stoppage, originally due to a labor dispute, so that it no longer exists because of a labor dispute; and disqualification under Section 5 (d) ceases immediately upon the change of the

cause of the stoppage. (BR 9L)

A stoppage of work originally due to a labor dispute may cease to be due thereto, and may continue because of some other cause. In that event, the disqualification of the workers ceases with the change of cause. (BR 75L)

3. Notice to Workers.

Where workers have been temporarily laid off and it is not shown that they were informed of the employer's intention to resume work, and where weather conditions in a rural area make it doubtful that notices of the resumption were actually received by the workers, the stoppage of work does not exist because of a labor dispute. (BR 39L)

4. Fear of Damage to Goods.

Where a labor dispute exists and, because of the previous conduct of the workers in calling unauthorized sit-down strikes, the employer is afraid to continue the processing of perishable goods and thereupon closes down his plant in an effort to force a settlement of the dispute, a stoppage of work exists because of a labor dispute. (BR 16L)

5. Fear of Adverse Award.

Where a dispute exists between workers and employer but the workers offer to remain at work on the terms fixed by the employer and to arbitrate their differences, the shutting down of the plant by the employer because of his fear that an adverse award under arbitration may reduce his profits is not a stoppage of work which exists because of a labor dispute. (BR 84L)

6. Fear of Violence.

A shut-down by the employer because of justified fear

that violence on the part of rival labor unions which are disputing as to which should be recognized as the collective bargaining agency for the plant is a stoppage of work which exists because of a labor dispute. (BR 86L)

7. Refusal to Work.

Where a stoppage of work is caused by the refusal of the workers to perform services on goods furnished by a jobber against whom they have a grievance, the stoppage of work exists because of a labor dispute. (BR 43L, BR 48L, BR 49L)

The prevention of available production by the refusal of workers to continue at work because of a labor dispute constitutes a stoppage of work which exists because of a labor dispute. (BR 109L)

8. Refusal of Orders.

Where an employer, because of his inability to process orders on account of an existing strike, refuses to accept from his customers orders which remain available to him, the stoppage of work does not cease to be due to a labor dispute. (BR 51L)
(Dissenting opinion filed.)

9. Withdrawal of Orders.

Where, because of the existence of a labor dispute, a jobber refuses to furnish work to a contractor, the consequent stoppage of work at the establishment of the contractor is not due to a labor dispute. (BR 60L)

Where, during the course of a labor dispute, a jobber withdraws all materials from his contractor, leaving the latter without any work available for the workers, and it does not appear that the withdrawal was due to the labor dispute, the stoppage

of work ceases to be due to the labor dispute on the date of the withdrawal of materials. The burden of proof is on the employer to show that they were withdrawn by reason of the labor dispute.

(BR 81L)

10. Abandonment of Work.

Where, because a strike is called, the employer decides to abandon his business and does so, no work is available for the striking workers and therefore their unemployment is not due to a stoppage of work which exists because of a labor dispute

(BR 77L)

Where a business is liquidated because of a threatened labor dispute, the consequent unemployment of the workers is not due to a stoppage of work which exists because of a labor dispute.

(BR 95L)

11. Voluntary Shut-down.

Where an employer voluntarily shuts down his plant because his workers object to his receiving work from a jobber against whom they have a grievance, the stoppage of work is not due to a labor dispute. (BR 80L)

A voluntary shut-down by an employer at the request but not at the demand of his workers pending negotiations is not a stoppage of work which exists because of a labor dispute.

(BR 100L)

12. Emergency Measures.

Where, as a purely emergency measure, an employer whose plant has been closed because of a labor dispute does not bring in new materials during the course of a dispute but holds himself ready to do so as soon as the dispute is settled, there is a

stoppage of work which exists because of a labor dispute, (BR 89L)

13. Punitive Measures.

Where, during the course of a labor dispute, an employer is able to operate but, because of a desire to punish the workers, he refuses to do so, individuals who are willing to work but who are laid off are eligible for benefits. (BR 63)

Where, during the course of a labor dispute, an employer is able to operate but, because of a desire to punish the workers, he refuses to do so, individuals who are willing to work but who are laid off are eligible for benefits. (BR 68)

14. Intervening Causes.

a. Shortage of Material.

Where an employer is unable to secure raw material for reasons independent of the labor dispute at his establishment the stoppage of work does not exist because of a labor dispute.
(BR 59L)

b. Return of Material.

Where all material on hand is withdrawn from the employer by a jobber or other outside entity for reasons exclusive of a labor dispute, the consequent stoppage of work does not exist because of the labor dispute. (BR 82L)

Where materials are withdrawn by an outside entity or are returned by the employer directly because of the labor dispute, the consequent stoppage of work exists because of the labor dispute. (BR 78L)

c. Fear of Violence.

The shut-down of a plant by an employer through justified fear of violence by strikers is a stoppage of work which

exists because of a labor dispute. (BR 12L)

d. Settlement of the Labor Dispute.

A stoppage of work may exist because of a labor dispute even after the dispute has been terminated where the consequences of the original stoppage are such that work cannot be resumed immediately upon settlement of the dispute. (BR 27L) (However, the disqualification ceases upon settlement of the dispute.--Ed.)

V. Labor Dispute: What Constitutes

1. Controversy Must Exist

Any contest between an employer and his workers with respect to the terms, conditions or tenure, of employment is a labor dispute.

Workers whose unemployment is due to a stoppage of work which exists because of said labor dispute are disqualified under Section 5 (d) regardless of whether the workers or the employer actually caused the stoppage. (BR 17L)

A labor dispute implies the insistence by one party on acceptance or abrogation of some condition or group of conditions and resistance to the same by the other party. (BR 73L)

Where a difference exists between workers and employer, but the workers offer to remain at work on the terms fixed by the employer and to arbitrate their differences, the shutting down of the plant by the employer because of his fear that an adverse award under arbitration might reduce his profits is not a stoppage of work which exists because of a labor dispute. (BR 84L)
(Previous decision reversed.)

No labor dispute exists where a new type of work is entered upon and, owing to the absence of the manager and their inability to make an agreement with respect to wages, the workers do not return until the manager is available. (BR 40L, 54L, 63L, 68L, 69L, 73L, 84L, 85L)

2. Definite Demand and Refusal

A strike called by some workers for the purpose of preventing the lay-off of other workers is a labor dispute. (BR 54L)

A dispute between workers and employer with respect

to processes of manufacture is a labor dispute. (BR 63L)

A strike called to prevent a pay cut is a labor dispute. (BR 68L)

A strike called because the employer refuses to sign a new contract is a labor dispute. (BR 69L)

A strike called by workers because the employer insists upon the discharge of a particular employee is a labor dispute. (BR 73L)

3. Lockout

A lock-out by the employer to enforce his side of a labor dispute is a stoppage of work which exists because of a labor dispute provided the labor dispute is the direct and proximate cause of the stoppage. (BR 73L) (The burden of proof is on the employer to show that the labor dispute is not only the indirect but actually the direct and proximate cause of the stoppage.)

4. Jurisdictional Dispute

A strike which is called because of a jurisdictional dispute between rival labor unions is a labor dispute even though the only question at issue between the workers and the employer is the recognition of a particular union. (BR 85L)

5. Existing Contract

A labor dispute may exist even where the demand which is made by the employer and refused by the workers is in contravention of a contract previously entered into between them. (BR 80L)

6. Picketing

The picketing of a plant is prima facie evidence of the

existence of a labor dispute; but ordinarily it has no bearing upon the relation of a stoppage of work to the labor dispute.

(BR 27L)

7. Refusal to Work

A contest with respect to the recognition of a particular labor union as the collective bargaining agency for all workers in an establishment is a labor dispute within the meaning of Section 5 (d). (BR 22L)

A refusal by workers to perform services until the employer signs a contract with their labor union is a labor dispute. (BR 10L)

When workers refuse, in concert and at the instigation of their labor union, to perform services for their employer a labor dispute exists even though the original cause of the controversy related to conditions at another establishment. (BR 56L)

A refusal by workers to perform services until individuals who have been discharged by the employer are reinstated constitutes a labor dispute. (BR 57L)

A refusal by workers to perform services because, while negotiations were pending, the employer transferred production workers to the shipping department constitutes a labor dispute. (BR 79L)

Where a new type of work is entered upon, and, owing to the absence of the manager of the plant, new terms with respect to employment thereon have not been agreed upon, the failure of the workers to perform services during the manager's absence does not constitute a stoppage of work caused by a labor dispute.

(BR 40L)

A concerted refusal by the workers to continue work until their employer restores a wage rate which he has arbitrarily reduced constitutes a labor dispute. (BR 50L)

8. Justification

Justification for a labor dispute cannot be considered in determining whether or not the participants are disqualified for benefits. (BR 27L)

9. Types of Disputes

a. Dispute With Respect to Future

A labor dispute exists when workers are on strike because the employer notifies them that a contract which has not yet expired will not be renewed upon its expiration. (BR 11L)

b. Sympathy Strike

A labor dispute exists where members of one union go on strike in sympathy with the members of another union, even though the first union is not directly interested in the cause or result of the grievance advanced by the second union. (BR 32L)

Where all the employees in a factory go on strike for the purpose of forcing a wage increase which applies to only one department a labor dispute exists. (BR 26L)

Where workers refuse to perform services on material furnished by a non-union material man their refusal to work constitutes a labor dispute with respect to the terms or conditions of their employment. (BR 13L)

Where workers refuse to perform services on goods furnished their employer by an outside party against whom they have a grievance, their refusal to work constitutes a labor dispute with respect to the terms of their employment. (BR 30L)

A refusal of workers to perform services until individuals who have been discharged by the employer were reinstated constitutes a labor dispute. (BR 57L)

A refusal by workers to perform services on a specified type of work or on certain types of equipment constitutes a labor dispute with respect to the terms of their employment. (BR 63L)

c. Extended Strike

A concerted refusal to work on the part of employees of a dress contractor who have no direct dispute with their own employer but who refuse to work on goods furnished by a jobber against whom they have a grievance, constitutes a labor dispute. (BR 56L and BR 80L)

d. Demand for Contract

A labor dispute exists when workers demand that a contract be signed and walk out upon the rejection of their demands by the employer. (BR 33L)

A labor dispute exists where the employer locks out his workers because of their refusal to sign a contract. (BR 14L)

e. Demand for Reinstatement or Discharge

A demand by the workers for the reinstatement of a discharged individual, followed by a walk-out, constitutes a labor dispute.

A demand by the workers for the reinstatement of a discharged individual and the refusal of said demand by the employer followed by a walk-out, constitutes a labor dispute. (BR 12L)

A demand by the workers for the discharge of an individual and the refusal of such demand by the employer, followed

by a walk-out constitutes a labor dispute. (BR 12L)

A demand by the workers for the discharge of an individual and the refusal of such demand by the employer, followed by a walk-out, constitutes a labor dispute. (BR 57L and BR 21L)

f. Refusal to Recognize Discharge

When workers are discharged by an employer for alleged participation in a slow-down or a sit-down strike but refuse to admit the validity of such discharge and other workers are called out on strike, one of the conditions for settlement of the strike being the reinstatement of the workers who have been discharged, a labor dispute exists; and if a stoppage of work ensues both the workers who have been discharged and those who join in the strike are disqualified under Section 5 (d). (BR 25L)

10. Dispute Between Worker and Union

The unemployment of a worker who is laid off for protesting to his employer against a fine levied upon him by a labor union is not due to a stoppage of work which exists because of a labor dispute. Such a controversy is not a labor dispute within the meaning of Section 5 (d). (BR 10L)

VI. Dispute at Establishment Where Last Employed

No disqualification arises with respect to individuals who have not previously been employed by the employer with whom they engage in a controversy since the dispute is not at the establishment where they were last employed. (BR 64L)

Where an employer operates as a common carrier between two states, employing a separate force in each state, and the employees in each state belong to separate labor unions, the existence of a labor dispute at the establishment in one state may not affect the workers at the establishment in the other state. (BR 20L)

Where an employer is unable to secure material because of the existence of a labor dispute at the establishment of his material man, the consequent unemployment of his workers is not due to a stoppage of work which exists because of a labor dispute at the establishment where they are or were last employed. (BR 59L)

VII. Period of Disqualification

Disqualification under Section 5 (d) terminates at the same time that the stoppage of work which exists because of a labor dispute is terminated. (BR 30)

A claimant who is disqualified under Section 5 (d) but who is not re-hired by the employer when the dispute is settled becomes eligible for benefits immediately upon settlement of the dispute. (BR 63)

Where, during the course of a labor dispute, an employer is able to operate but, because of a desire to punish the workers, he refuses to do so, individuals who are willing to work but who are laid off are eligible for benefits. (BR 68)

An individual who is disqualified during the pendency of a labor dispute but who is discharged after the dispute has been settled is eligible for benefits for periods subsequent to his discharge. (BR 148)

An individual whose unemployment is due to the stoppage of work which exists because of a labor dispute and who is a member of a grade or class participating, etc. is not relieved of disqualification under Section 5 (d) because his particular job is held by a strike-breaker where a stoppage of work continues to exist at the establishment of his employer. (BR 158)

VIII. Relief from Disqualification

1. Non-participation Not Cause for Relief.

An individual who is a member of a grade or class of workers whose unemployment is due to a stoppage of work which exists because of a labor dispute at the establishment where they were last employed is disqualified under Section 5 (d), even though he is not a member of the labor union involved in the dispute. (BR 1)

An individual who is a member of a grade or class of workers participating, etc. in a labor dispute is disqualified under Section 5 (d) where the unemployment is due to a stoppage of work which exists because of a labor dispute, even though he himself was opposed to the strike and was willing to work.

(BR 124)

An individual whose unemployment is due to the stoppage of work which exists because of a labor dispute and who is a member of a grade or class participating, etc. is not relieved of disqualification under Section 5 (d) because his particular job is held by a strike-breaker where a stoppage of work continues to exist at the establishment of his employer. (BR 158)

An individual who is laid off for lack of work is not disqualified under Section 5 (d) even though a labor dispute occurs at the establishment of his employer during the period of his unemployment. (BR 159)

An individual who is working during the course of a labor dispute and who is laid off by his employer for lack of work is not disqualified under Section 5 (d) even though he is a member of a grade or class of workers participating, etc., (BR 177)

An individual laid off after a labor dispute is not disqualified under Section 5 (d). (BR 207)

Where, during the course of a labor dispute, the employer decides to liquidate his business and lays off his employees, their unemployment is not due to a stoppage of work which exists because of a labor dispute. (BR 221)

A worker who is laid off because of lack of work resulting from a jurisdictional dispute between iron workers and millwrights, the claimant not being a member of either group, is not disqualified under Section 5 (d). (BR 3)

Where the members of one grade or class of workers settle their differences with their employer and offer to return to work, their disqualification ceases immediately even though a stoppage continues because of a strike on the part of other groups of workers, since they are not participating, etc. and are not members of a grade or class, any members of which are participating, etc. (BR 51L)

Workers who are unemployed at the time a labor dispute arises, but who refuse to accept work because of the existence of a labor dispute in which they are participating, when it is offered to them by the employer, are disqualified under Section 5 (d). (BR 55L)

a. Membership in Participating Group

Workers who are unemployed because of a labor dispute but who are not participating, etc. therein and are not members of a grade or class of which any members are participating, etc. therein are not disqualified under Section 5 (d). (BR 72L)

Membership in a labor union which is engaged in a labor

dispute at the establishment where claimant was last employed does not make claimant ineligible for benefits where he can prove that his unemployment is not due to the dispute. (BR 343)

A foreman who is not eligible for membership in a striking union is not a member of a grade or class of workers participating, etc. (BR 70)

A salesman who is laid off because of the fact that production workers at the establishment of his employer are on strike is not disqualified under Section 5 (d). (BR 120)

An assistant superintendent whose unemployment is due to a stoppage of work which exists because of a labor dispute is not disqualified under Section 5 (d) where only production workers are involved in the dispute since he is not a member of a grade or class participating, etc. (BR 200)

A purchasing agent is not disqualified under Section 5 (d) because of a labor dispute in which only production workers are involved. (BR 206)

An elevator operator whose unemployment is due to a stoppage of work which exists because of a labor dispute is not disqualified under Section 5 (d) where only production employees are engaged in the labor dispute. (BR 264)

An assistant engineer whose unemployment is due to a stoppage of work which exists because of a labor dispute is not disqualified under Section 5 (d) where only production workers are involved in the dispute. (BR 275)

A janitor whose unemployment is due to a stoppage of work which exists because of a labor dispute is not disqualified under Section 5 (d) where only production workers are involved

in the dispute. (BR 337)

Where, after the settlement of a labor dispute, a portion of the strikers cannot be recalled to work because of economic conditions, their disqualification ceases. (BR 73L)

As soon as a labor dispute is settled, the workers involved are no longer participating, etc. or members of a class which is participating, etc. and therefore their disqualification ceases with the settlement of the labor dispute. (BR 51L)

Where one grade of workers is thrown out of work because another grade of workers goes on strike but the first grade does not participate in the dispute, those workers who are not participating, etc. are not disqualified under Section 5 (d). (BR 30L)

Where only one group of workers goes on strike, causing a complete stoppage of work at the establishment, other groups which are thrown out of work by such stoppage but which are not participating, etc. in the dispute are not subject to disqualification under Section 5 (d). (BR 53L)

Night shift and day shift workers may be regarded as being in separate grades or classes, and where the day shift does not participate, etc. but ceases work only because of threats of violence made by members of the night shift, the day workers are not disqualified under Section 5 (d). (BR 133L)

A handyman who is laid off by his employer at the commencement of the stoppage of work which exists because of a labor dispute between his employer and a plumbers' union, of which he is not a member, is not disqualified under Section 5 (d) since he is not a member of a group or class of workers participating

in, financing or interested in the dispute. (BR 2)

Warehouse workers who are not interested in and who do not participate in, nor finance a labor dispute, are not disqualified under Section 5 (d), even though they are laid off by the employer because of a strike on the part of his truck drivers has caused a complete cessation of operations at the plant.

(BR 19L)

A handyman who is not eligible for membership in a plumbers' union is not disqualified under Section 5 (d) when he is laid off by his employer because of lack of work caused by a labor dispute between the employer and the plumbers' union.

(BR 2)

b. Layoff

A worker who is a member of a grade or class of workers participating in a labor dispute may not be disqualified under Section 5 (d) if he can show that he was laid off for lack of work prior to the commencement of the labor dispute and that no work was available for him during the existence of the labor dispute. (BR 195; BR 6L)

The only color mixer employed at a plant is not disqualified under Section 5 (d) in the event of a labor dispute which involves workers who all belong to other grades or classes.

(BR 128)

Both those workers who actually leave work and workers who had been temporarily laid off prior to the labor dispute but who would have been recalled except for the existence of the labor dispute, are disqualified under Section 5 (d) where all are members of the grade or class participating in, financing or interested

in the dispute. (BR 230)

Where all member organizations of a trades council vote to support a strike, called by one of its member organizations, they are all participants in the consequent labor dispute. (BR 36L)

Workers who are employed at the plant of an employer in one state are not necessarily participants, because of their employment, in a labor dispute which occurs at another establishment of the same employer in a different state. (BR 45L)

c. Violence by Pickets

A worker who fails to report for work during the existence of a labor dispute because of his fear of violence by pickets is disqualified under Section 5 (d) where it appears that he was a member of the grade or class of workers participating in the dispute. (BR 1)

Workers who are not members of a grade or class participating in, interested, or financing a labor dispute, are not disqualified under Section 5 (d) because of failure to report for work due to fear of violence by pickets. (BR 88L)

d. Sympathy Strike

Where all the employees in a factory go on strike for the purpose of forcing a wage increase which applies to only one department, all the workers are participating in the labor dispute. (BR 26L)

Workers who go on strike in sympathy with members of another group or class of workers are disqualified under Section 5 (d) even though they do not themselves have a direct interest in the labor dispute, inasmuch as they are participants therein. (BR 32L)

e. Demand for Reinstatement

Where workers walk out in protest against the employer's refusal to reinstate discharged individuals, they are participating in a labor dispute. (BR 12L)

Where a strike is called for the purpose of securing the reinstatement of discharged individuals, these persons are disqualified under Section 5 (d) even though their discharge occurred prior to the commencement of the dispute, provided they have not accepted said discharge and are, therefore, still interested in the dispute. (BR 12L)

f. Worker Hired during Labor Dispute

A worker who is hired during the existence of a labor dispute and who is discharged upon the return to work of one of the strikers whom he had replaced, is not disqualified under Section 5 (d). (BR 14)

IX. Unemployment Not Subject to Disqualification

1. Layoff

A worker who is laid off for lack of work at the commencement of a stoppage of work, which exists because of a labor dispute at the establishment where he was last employed, is not disqualified under Section 5 (d). (BR 33)

Workers who are temporarily laid off prior to the commencement of a labor dispute but who would normally be recalled except for the existence of the dispute, are disqualified under Section 5 (d) during the period of the stoppage of work which exists because of the labor dispute. (BR 21)

A worker who is laid off for lack of work prior to the commencement of a labor dispute is not disqualified under Section 5 (d) where it appears that no work was available for him during the occurrence of such labor dispute. (BR 195)

When a worker is laid off and it appears that he was not a member of a group or class of workers participating in a labor dispute, and it also appears that subsequent to his layoff he secured work with another employer, then was rehired by his previous employer and subsequently was again laid off for lack of work, his unemployment is not due to a stoppage of work which exists because of a labor dispute at the establishment where he was last employed. (BR 33)

2. New Employment

A worker is not disqualified under Section 5 (d) when he is laid off prior to the commencement of a labor dispute, and, because of lack of work, later secures bonafide employment with another employer under circumstances that it is clear that such

new employment is not temporary work for the period of the dispute. (BR 67)

3. Discharge

The discharge of a worker prior to the commencement of a stoppage of work which exists because of a labor dispute, relieves such worker of any disqualification under Section 5 (d). (BR 29)

Workers who refuse to recognize an attempted discharge by the employer but who participate in a labor dispute, which is called for the purpose of forcing their reinstatement, are disqualified under Section 5 (d). (BR 25L)

Where workers who were engaged in a labor dispute are not reemployed upon conclusion of the stoppage of work, the disqualification under Section 5 (d) ceased to be effective as of the date of the termination of the stoppage of work. (BR 20L)

Where cancellation of orders by customers during the period of a labor dispute makes it impossible for the employer to rehire all his workers upon settlement of the dispute, the unemployment of the workers who are not rehired after the settlement has been effected is not due to a stoppage of work which exists because of a labor dispute and they are not disqualified under Section 5 (d). (BR 3L)

A worker who is definitely discharged by his employer is not disqualified under Section 5 (d) by reason of the existence of a labor dispute subsequent to the date of his discharge. (BR 5)

Even though a labor dispute exists, a worker who is discharged by the employer to make room for a returning striker,

is not disqualified under Section 5 (d). (BR 14)

The discharge of a worker prior to the commencement of a labor dispute relieves such worker from disqualification under Section 5 (d) provided there are no attendant circumstances which indicate that the worker is interested in the dispute. (BR 29)

The posting of a notice to the effect that a plant will be closed for lack of work is not conclusive evidence that a stoppage of work is due to economic conditions rather than to labor dispute. It may be rebutted by proof that the notice was rescinded, work was available, and the workers were notified thereof but refused to perform the same. (BR 27L)

4. Recall to Work

Where workers have been temporarily laid off and it is not shown that they were informed of the employer's intention to resume work, and where weather conditions in a rural area make it doubtful that notices of resumption were actually received by the workers, no disqualification arises under Section 5 (d). (BR 39L)

Where workers who have been temporarily laid off refuse to return to work, when notified to do so by their employer, until he accedes to certain demands made by them, a disqualification arises under Section 5 (d). (BR 52L)

ELIGIBILITY FOR BENEFITS

I. Payment of Benefits Based on Covered Employment

1. Employer Must Have Been Subject

An individual whose employment during his base year was entirely with non-subject employers is not eligible for benefits. (BR 83)

An individual who has had employment during his base year with both subject and non-subject employers is eligible for benefits only with respect to the remuneration earned in the employ of subject employers. (BR 83)

A claimant who performs services in this State for an employer who is covered in another State but is not covered in New Jersey is not eligible for benefits in this State. (BR 87)

An individual employed by an employing unit having less than eight employees is not eligible for benefits. (BR 139)

An individual employed by an employing unit which does not have eight or more persons in employment during twenty different weeks within a calendar year is not eligible for benefits. (BR 228)

2. Coverage Is Question of Fact

An employer will be regarded as a subject employer, and benefits will be paid to his employees, if it appears that he is covered by the Unemployment Compensation Law of New Jersey, even though he failed to register or file reports. (BR 81)

A claimant who was engaged in employment which is excepted from coverage under the Unemployment Compensation Law of New Jersey, is not eligible for benefits, even though

contributions were paid by his employer in mistake. (BR 118)

Legal relationships may be disregarded in the light of equitable considerations in determining eligibility for benefits. (BR 38)

a. Reports Filed

Benefits will be paid on the basis of the sworn testimony of a worker with respect to his remuneration during his base year, where it appears that he was engaged in covered employment but his employer failed to register as a subject employer and to file reports. The employer will be allowed to cross-examine the worker with respect to the amount of remuneration earned. (BR 64)

b. Contributions Paid

A worker who was engaged in employment which is covered by the Unemployment Compensation Law of New Jersey is eligible for benefits on the basis of his earnings in such employment, regardless of whether or not contributions were paid for unemployment compensation. (BR 81)

A claimant who was engaged in employment which is excepted from coverage under the Unemployment Compensation Law of New Jersey, is not eligible for benefits, even though contributions were paid by his employer in mistake. (BR 118)

The fact that contributions have not been paid with respect to the remuneration of an individual, who has been engaged in covered employment, does not deprive him of his right to benefits. (BR 81)

c. Employer Registered

An employer will be regarded as subject and benefits

will be paid to unemployed workers formerly in his employ if it is shown by the claimant that the employer had eight or more individuals in his employ for some portion of a day in each of twenty different weeks within a calendar year, even though said employer has not been registered as a subject employer. (BR 64)

d. Employer Held Non-Subject by Commission

A claimant may be eligible for benefits if it appears that his employer was actually subject to the provisions of the Unemployment Compensation Law of New Jersey even though the employer has been informed by the Commission that he was not subject. (BR 66)

e. Coverage by Succession

An individual employed by a corporation which acquires substantially all the assets of a covered employer is in covered employment and is eligible for benefits. (BR 231)

A claimant is eligible for benefits where he has been employed by an employing unit which would not be a subject employer on the basis of its own employment experience but which comes within the coverage of the Law by reason of the fact that it is a successor to another employing unit and their combined employment experience brings them within the coverage provisions of the Act. (BR 62)

f. Coverage by Reason of Common Control

An individual who is employed by an employing unit which is not itself a subject employer may nevertheless be in covered employment if the said employing unit is one of several which are owned or controlled by the same interests and the combined experience of all makes them all subject employers. (BR 313)

g. Coverage in Fact

A trust company which acts as trustee for itself and for others in liquidation of a property, being itself the chief beneficiary of the trust, and having complete control and management of the property, must be regarded as the employer of a janitor employed in caring for the property. (BR 38)

II. Base Year Earnings

An individual who earned less than \$80.00 in his base year is not eligible for benefits. (BR 108)

A claim for benefits cannot be antedated. Where an individual would have been eligible for benefits in the event of filing a claim within a given quarter but fails to do so, his base year is fixed by the date of filing his claim and the date of expiration of his waiting period, and if he fails to file his claim until a date which fixes his base year as one during which he received no remuneration, he is not eligible for benefits. (BR 55)

An individual may establish the remuneration upon which benefits should be based by testimony before the Board of Review where the employer has failed to file wage records. (BR 341)

III. Only Unemployed Individuals Eligible

A decrease in earnings to an amount less than \$3.00 per week does not render a claimant eligible for benefits prior to the time when he definitely severs his connection with his employer and thus becomes an unemployed individual. (BR 37)

A chair pusher, who is paid only on the basis of trips made but who is required to report regularly and to perform some services, even when he receives no remuneration and who is given preference in the assignment of trips, is not an unemployed individual, even though his remuneration is less than \$3.00 per week. (BR 30)

1. Total Unemployment; What Constitutes

Self-employment in the operation of a candy store is not a bar to benefits since the claimant remains an unemployed individual. Self-employment is not employment. (BR 75)

An individual who continues to perform some services for his employer in regular employment is not eligible for benefits even though his earnings in any week are less than \$3.00. (BR 36)

A worker who retains his employer-employee relationship is not an unemployed individual; and he is not eligible for benefits even though his earnings in a given week are less than \$3.00. (BR 74)

A salesman who definitely severs his relationship as an employee but who continues to make sales when possible on an odd job basis, is an unemployed individual. (BR 143)

An individual who is from time to time laid off and later reemployed by the same employer is eligible for benefits in lay-off periods during which he performs no services and receives

no remuneration. (ER 84)

A claimant who secures employment with his father after losing a previous position is not an unemployed individual and is not eligible for benefits. (BR 234)

2. Odd Jobs

An individual who reports as an extra man or works as a rolling chair pusher not being carried regularly on the payroll and being assigned to work only when no regular men are available, is employed only on an odd job basis and is eligible for benefits in any week in which his earnings are less than \$3.00. (BR 78)

A person who becomes totally unemployed and who later accepts subsidiary part-time work with his former employer is eligible for benefits where his earnings are less than \$3.00 per week. (BR 107)

A chair pusher who is regarded as an extra man, who is assigned trips only when all the regular chair pushers are busy, and who is hired only on an odd job basis, is an unemployed individual during those weeks in which his remuneration is less than \$3.00. (BR 43)

3. Casual Services Without Remuneration

Casual voluntary services which are rendered purely as a favor to a prospective employer before the latter's business is open, and for which no remuneration is received, do not constitute employment. (BR 282)

4. Self-Employment

Self-employment which does not consist of services performed for another individual or entity is not employment. A

claimant who is engaged in such self-employment may be an unemployed individual and may be eligible for benefits. (BR 144)

Self-employment in the operation of a candy store is not a bar to benefits since the claimant remains an unemployed individual. Self-employment is not employment. (BR 75)

An individual who operates a real estate business of his own and who is elected as a constable but does not serve in that capacity is an unemployed individual and is eligible for benefits. (BR 142)

An individual who, on becoming unemployed, engages in a business of his own either independently or as a partner is an unemployed individual and is eligible for benefits on the basis of remuneration earned in prior employment. (BR 191)

5. Gifts of Meals, etc.

The voluntary gift of meals by a prospective employer who operates a hotel to a prospective employee prior to the opening of the hotel, no services being rendered in return, does not make a claimant ineligible for benefits on the ground that he is not an unemployed individual. (BR 282)

IV. Eligible Employment

All services performed for remuneration constitute employment unless it can clearly be shown that the claimant falls within all three exceptions to Section 19 (i) (6). (BR 127)

Legal Relationships may be disregarded in the light of equitable considerations in determining eligibility for benefits. (BR 38)

1. Independent Contractor

An independent contractor who performs services for remuneration is in employment unless it can be shown that he was customarily engaged in an independently established business. (BR 82)

a. Facts of Employment Overrule Description

A salesman who sells on a commission basis is in employment, despite the fact that his contract describes him as an independent contractor, unless the employer conclusively shows that all the conditions set forth in Section 19 (i) (6) has been met. (BR-82)

2. Commission Salesmen

A salesman who sells on a commission basis is in employment, despite the fact that his contract describes him as an independent contractor, unless the employer conclusively shows that all the conditions set forth in Section 19 (i) (6) has been met. (BR 82)

3. Direction and Control

A deliveryman for a daily newspaper who is required to cover a fixed route and to service newstands in the order which is directed by the newspaper is an employee and is eligible for

benefits. He is subject to direction and control. (BR 242)

An individual who performs services for remuneration is in employment unless the employer can show conclusively that the presumption of employment has been rebutted by meeting all three conditions set forth in Section 19 (i) (6). (BR 82)

A car-washer who collects rental space charges from customers, deducts a fixed salary for himself, and turns over the balance to the owner of the garage is an employee of the owner and is eligible for benefits. (BR 257)

A trust company which acts as trustee for itself and others in the liquidation of a property, being itself the chief beneficiary of the trust, and having complete control and management of the property, must be regarded as the employer of a janitor engaged in caring for the property. (BR 38)

A stenographer who is employed by the District Manager of a corporation, said District Manager actually being an employee of the corporation although his contract declares that he is an independent contractor, is an employee of the corporation and is eligible for benefits based on her remuneration in such employment. (BR 227)

A musician who is hired through the leader of his orchestra to perform services for a night club or other amusement enterprise on its premises and in the usual course of its business, must be regarded as the employee of such amusement enterprise. (BR 99 and BR 59)

An individual who is engaged as an employee and, after serving in that capacity, is transferred by his employer to another corporation which is set up for the purpose of conducting

the same duties which were formerly performed by the individual directly for the employer is eligible for benefits on the basis of remuneration earned in the employ of the new corporation.

(BR 146)

4. At Employer's Place of Business

A commission salesman who is furnished office space, telephone service, light and heat by a publishing company, is its employee even though remuneration is paid only on a commission basis. (BR 102)

5. In Usual Course of Employer's Business

A worker who performs service through a concessionaire for the management of a department store is its employee.

(BR 121)

A musician who is hired through the leader of his orchestra to perform services for a night club or other amusement enterprise on its premises and in the usual course of its business, must be regarded as the employee of such amusement enterprise.

(BR 99 and BR 59)

6. Customarily Engaged in Independently Established Business

A magazine salesman is an employee even where he is not subject to direction and control, his services are performed outside all the places of business of the employer, and it is contended by the employer that he is an independent contractor, provided he is not customarily engaged in an independently established trade, occupation, business or profession. (BR 127)

A salesman who has not been engaged in an independently established business prior to his connection with an employer and who, on leaving said employer, has no other means of livelihood

does not meet all three tests of 19 (i) (6) and therefore must be regarded as having been in employment and therefore eligible for benefits. (BR 47 Appeal to Supreme Court Pending)

An individual who engages in construction work on buildings on a piece-work basis but who is not customarily engaged in an independently established business is in employment and is eligible for benefits. (BR 161)

7. Remuneration Received Elsewhere

An individual who is employed by a golf club and whose remuneration is collected from caddies but who receives from the club any shortage between the remuneration paid by the caddies and a fixed amount set by the club as salary, and who also receives his meals from the club, is eligible for benefits based on the said fixed salary allowed him by the club together with the value of his meals. (BR 259)

8. Employee of Employee

An individual is eligible for benefits on the basis of remuneration received after being discharged by his employer but where he continues to work, with the employer's knowledge, sharing the work and remuneration of other employees. (BR 125)

9. Employee of Sub-Contractor

A musician who plays in an orchestra for an opera company which is not itself a subject employer but which performs under a contract with the owners of an amusement pier, the said owners being subject employers, is eligible for benefits. (BR 122)

A plasterer who works on the constructions of a house for a covered employer in the actual employ of a sub-contractor who is not covered is eligible for benefits on the basis of

remuneration earned in such employment. (BR 173)

10. Employee of Concessionaire

A worker who performs service through a concessionaire for the management of a department store is its employee. (BR 121)

11. Services Performed in New Jersey

An individual who performs services both in this State and in another State but whose place of direction and control is in this State is eligible for benefits in New Jersey. (BR 156)

An individual whose principal service is performed in New Jersey but who is required from time to time to report at an office in another State is covered in New Jersey with respect to all services performed. (BR 160)

12. Subterfuge by Employer

An individual who is engaged as an employee and, after serving in that capacity, is transferred by his employer to another corporation which is set up for the purpose of conducting the same duties which were formerly performed by the individual directly for the employer is eligible for benefits on the basis of remuneration earned in the employ of the new corporation. (BR 146)

Legal relationships may be disregarded in the light of equitable considerations in determining eligibility for benefits. (BR 38)

13. Partner Not in Employment

A member of a partnership is not in employment and therefore is not eligible for benefits based on partnership earnings. (BR 192)

14. Work With Employer's Knowledge

An individual is eligible for benefits on the basis of remuneration received after being discharged by his employer but where he continues to work, with the employer's knowledge, sharing the work and remuneration of other employees. (BR 125)

V. Excepted Employment

1. Agriculture

Whether or not a worker performing service for an agricultural establishment is excepted from coverage depends upon the type of service performed by the individual and not upon the general business of the employer. (BR 91)

A structural iron worker engaged in the construction of greenhouses for a nurseryman is not engaged in agricultural labor and is eligible for benefits. (BR 91)

An office worker who performs services in the office of an agricultural establishment is in covered employment and is eligible for benefits. (BR 92)

Field workers in the employ of a nurseryman are engaged in agricultural labor and are not eligible for benefits. (BR 90 and BR 119)

A worker who handles milk in an ice house on a dairy farm is engaged in agricultural labor and is not eligible for benefits. (BR 105)

The question of whether or not services are excepted from coverage as agricultural labor depends upon the character of the services performed and not upon the nature of the employer's business. (BR 40)

An individual engaged in the cultivation of plants in a greenhouse is engaged in agricultural labor and therefore is not eligible for benefits. (BR 86)

An individual engaged in packing greenhouse and nursery products grown on the same premises is engaged in agricultural labor and is not eligible for benefits. (BR 138)

2. Workers on Vessels

A worker who performs services in connection with dredging operations but is not a member of the crew of the dredge is engaged in covered employment and is eligible for benefits.

(BR 93)

VI. Available for Work

A claimant who fails to report at the local employment office is not available for work during those weeks in which he fails to report. (BR 52)

A claimant is not available for work while engaged on jury duty. (BR 37)

VII. Able to Work

An individual who leaves his employment because he is physically unable to perform the type of work which he has been doing in the past but who is physically able to perform other types of work, is able to work and is eligible for benefits. (BR 28)

An individual who is compelled to abandon his work because it develops a nervous condition which makes him unfit to continue in the same type of work, is able to work and is eligible for benefits where it appears that he is able to perform lighter work. (BR 31)

Pregnancy is not ipso facto proof of inability to work. Each case must be decided upon its own merits. (BR 229)

VIII. Remuneration

Remuneration of more than \$3.00 in any week received for the performance of jury duty renders a claimant ineligible for benefits. (BR 37)

An individual may establish the remuneration upon which benefits should be based by testimony before the Board of Review where the employer has failed to file wage records. (BR 341)

IX. Reporting at Local Office

A claimant is not eligible for any week in which he fails to report to the local employment office. (BR 52)

DISQUALIFICATION

1. Date of Disqualification

Disqualification commences as of the date of separation. Where the disqualification period expired prior to the date on which benefits were first payable in New Jersey, the claimant is eligible for all weeks of total unemployment thereafter. (BR 42)

2. Voluntary Quit

An appreciable decrease in the amount of an individual's earnings is good cause for leaving employment. (BR 35)

The removal by an employer of his establishment to a considerable distance from the home of a worker is good cause for leaving employment. (BR 7)

An individual does not leave his work without good cause when he quits because he believes that a change in piece-work rates would decrease the amount of his earnings. (BR 66)

An individual does not leave his employment voluntarily without good cause where he is required to work seven days a week as a motion picture operator and leaves for that reason. (BR 141)

An officer of a corporation who resigns because he cannot get along with the other officers does not leave his work voluntarily without good cause. (BR 192)

An individual who leaves his work on the grounds that the amount of work required of him is excessive, but where this amount is that which is fixed by a labor union of which he is a **member**, leaves his work voluntarily without good cause. (BR 283)

3. Refusal to Accept Suitable Work

In order to establish a refusal to accept suitable work it must appear that definite notice of work available was given to the claimant. Where it is customary for workers to quit without notice from the management, when no work is available, and to wait until a notice is received from the management that work is available, there is no refusal to accept work when such notice is not given. (BR 95)

An individual who has been employed at \$35.00 a week and who, when the work in his department is discontinued, is offered a new position at \$30.00 a week and who refuses the same has refused suitable work. (BR 193)

An individual who refuses an offer of work in a lower grade than he previously held and at a materially lower salary does not refuse suitable work and is eligible for benefits. (BR 238)

4. Misconduct

A worker is not guilty of misconduct connected with his work where he is laid off by his employer because of his protest to the employer against a fine levied upon him by a labor union. (BR 10)

An individual whose employer attempts to discharge him for misconduct but refuses to recognize the discharge, complains to the National Labor Relations Board, is paid his wages pending decision of the case and whose discharge is made effective by the National Labor Relations Board at a later date, is subject to a disqualification for misconduct connected with his work commencing on the date of discharge approved by the National Labor

Relations Board. (BR 166)

An individual whose honest interest in his work leads him to resent unfair criticism by declaring, "If you say I'm laying down on the job, I'll punch you in the nose", no other employees being present and no effort being made to strike a superior, is not guilty of misconduct connected with his work. (BR 169)

Inefficiency does not constitute misconduct connected with work. (BR 218)

PROCEDURE

1. Reporting at Local Office

A claimant is not eligible for any week in which he fails to report to the local employment office. (BR 52)

2. Failure to Appeal

Where a claimant, after due notice, fails to appear at a hearing on his appeal, the appeal may be dismissed without prejudice. (BR 212)

3. Withdrawal of Claim

A claimant may be permitted to withdraw his claim for benefits where it appears that it was improperly filed. (BR 76)

4. Power to Re-open

The Board of Review may re-open a decision more than twenty days after the date thereof on a showing of a mistake of fact or law. (Golinsky)

5. Direct Appeal

A case may, by permission of the Board of Review, be appealed directly to that body from the Deputy.

6. Labor Dispute

No claimant is barred, by reason of a decision in a mass labor dispute case, from an individual hearing.

7. Ante-dating Claim

BR 55

RULES WITH RESPECT TO APPEALS AND APPEAL PROCEDURE

A. Organization of the Board of Review.

8.01. The Board of Review shall consist of three members, appointed by the Executive Director, subject to the provisions of Chapter 156, P.L. 1908, with the supplements and amendments thereto, from Civil Service eligible lists, subject to the approval of the Commission.

8.02. The Board of Review shall elect one of its members as Chairman and one of its members as Secretary.

8.03. A quorum of the Board of Review shall consist of the Chairman and one other member. No decision, determination, or opinion shall be rendered by the Board of Review except with the approval of a quorum thereof. In the event of the incapacity of the Chairman for a period of seven or more days, the other members of the Board of Review may elect a temporary Chairman who shall act in the place of the Chairman during the period of the latter's incapacity.

B. Organization of Appeal Tribunals.

8.04. (a) Appeal Tribunals shall consist either of a single member appointed by the Executive Director, subject to the provisions of Chapter 156, P.L. 1908, with the supplements and amendments thereto, from Civil Service eligible lists, subject to the approval of the Commission; or

(b) A body consisting of three members, one of whom shall be selected in accordance with the paragraph (a) of this rule who shall serve as Chairman, one of whom shall be a representative of employers, and the other of whom shall be a

representative of employees.

8.05. Appeals in which Three Member Appeal Tribunals shall be used,

(a) Appeals from determinations of deputies which involve issues arising under Section 43:21-5 (a), (b), (c), and (d) of Chapter 21, Title 43, Revised Statutes of New Jersey, 1937, and amendments thereto, shall be heard and decided by a three member Appeal Tribunal referred to in rule 8.04 (b).

(b) The Chairman shall act alone in the absence or disqualification of any other member and his alternates, except that in cases involving labor disputes arising under Section 43:21-5 (d) of the New Jersey Unemployment Compensation Law, all three members of the Appeal Tribunal shall hear and determine the appeal.

8.06. Appeals in which single member Appeal Tribunals shall be used.

Appeals from determinations of deputies which involve issues arising under sections of the Law other than those mentioned in rule 8.05, shall be heard and decided by a single member Tribunal.

C. Appeals to Appeal Tribunals.

8.07. Presentation of Appealed Claims.

All hearings shall be scheduled promptly.

(a) A party appealing from a decision or order of a deputy shall file with the Commission, at the office where the claim was filed, notice of appeal on Form B-35, setting forth the information required thereby. Copies of such Notice of Appeal shall be mailed by the Commission to the parties interested in

the decision or order of the deputy which is being appealed.

(b) The Notice of Appeal shall be filed within five days after receipt of the decision, or if the decision is mailed, within seven days after date of mailing.

(c) Parties who may appeal.

The parties who may appeal from the decision of the deputy shall include the claimant and the claimant's most recent employer. Any other employer may be permitted to intervene or appeal provided he establishes to the satisfaction of the Chairman of the Board of Review that his interests may be immediately and substantially affected by the allowance of the claim.

(d) Upon the scheduling of a hearing on an appeal, Notices of Hearing on Form AT-3 shall be mailed to the claimant and to the parties interested in the decision or order of the deputy which is being appealed, at least seven days before the date of the hearing, specifying the place and time of the hearing.

8.08. Disqualification of members of Appeal Tribunals.

No member of an Appeal Tribunal shall participate in the hearing of any appeal in which he has an interest. Challenges to the interest of any member of an Appeal Tribunal, other than the Chairman, may be heard and decided by the Chairman of the Appeal Tribunal, or, in his discretion, referred to the Board of Review; challenges to the Chairman shall be heard and decided by the Board of Review.

8.09. Hearing of Appeal.

(a) All hearings shall be conducted informally and in such manner as to ascertain the substantial rights of the parties.

All issues relevant to the appeal shall be considered and passed upon. The claimant and any other party to an appeal before an Appeal Tribunal may present such evidence as may be pertinent. Where a party appeals in person the members of an Appeal Tribunal shall examine such party and his witnesses, if any, and may cross-examine the witnesses of any opposing parties. An Appeal Tribunal, with or without notice to any of the parties, may take such additional evidence as it deems necessary; provided that, in case such further evidence is taken, the parties shall be given an opportunity to inspect and refute such evidence.

(b) The parties to an appeal, with the consent of the Appeal Tribunal, may stipulate in writing the facts involved. The Appeal Tribunal may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence as it deems necessary to enable it to determine the appeal.

(c) Members of Appeal Tribunals, during the conducting of any hearing, may indicate to the reporter portions of the facts which they wish transcribed to aid them in preparing their findings of fact and decision.

8.10. Adjournment of Hearing.

(a) The Chairmen of Appeal Tribunals shall use their best judgment as to when adjournments of hearings shall be granted in order to secure all the facts that are necessary and to be fair to the parties.

(b) If a claimant fails to appear at the first hearing, the Appeal Tribunal shall adjourn the hearing to a later date. If the claimant fails to appear at the second hearing, the Appeal

Tribunal shall proceed to make its decision on the appeal, unless it appears to the Appeal Tribunal that there is good cause for further adjournment.

8.11. The determination of appeals.

(a) Following the conclusion of the hearing of an appeal the Appeal Tribunal shall, within ten days, announce its findings of fact and decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Appeal Tribunal. The Appeal Tribunal shall set forth its findings of fact with respect to the matters appealed, its decision and the reasons therefor.

(b) If the decision of an Appeal Tribunal is not unanimous the decision of the majority shall control. The minority may file a dissent from such decision, setting forth the reasons why it fails to agree with the majority.

(c) Copies of all decisions and the reasons therefor shall be mailed by the Appeal Tribunal to the claimant, to all other parties to the appeal, to the deputy, and to the Board or Review.

D. Appeals to the Board of Review.

8.12. Presentation of Appeals to the Board of Review.

(a) Notice of Appeal shall be filed within ten days after date of notification or mailing of the decision of the Appeal Tribunal which is being appealed.

(b) A party appealing from the decision of an Appeal Tribunal which was not unanimous, or a deputy appealing from a decision of an Appeal Tribunal which overruled or modified his decision, shall file with the Commission, at the office where the

claim was filed, a Notice of Appeal to the Board of Review on Form AT-8, setting forth the information required thereby. Copies of the Notice of Appeal shall be mailed by the Commission to the parties interested in the decision of the Appeal Tribunal which is being appealed.

(c) Upon the scheduling of a hearing on an appeal Notices of Hearing on Form BR-2 shall be mailed at least seven days before the date of hearing, specifying the place and time of hearing, to the claimant and to all other parties interested in the decision of the Appeal Tribunal which is being appealed.

8.13. Presentation of applications for leave to appeal to the Board of Review under conditions other than those specified in rule 8.12.

(a) A party applying for leave to appeal to the Board of Review from a decision of an Appeal Tribunal under conditions other than those specified in rule 8.12 shall file with the Commission, at the office where the claim was filed, an application for leave to appeal on Form BR-1, setting forth the information required thereby. Such applications may be accompanied by reference to, or excerpts from, the original matters on the appeal before the Appeal Tribunal. Copies of the application for leave to appeal shall be mailed by the Commission to all parties interested in the decision of the Appeal Tribunal.

(b) The application for leave to appeal shall be filed within ten days after the date of notification or mailing of the decision of the Appeal Tribunal.

(c) The Board of Review may grant or deny the application for leave to appeal without a hearing, or may notify the parties

to appeal at a specified place and time for argument on the application. Copies of the decision on the application for leave to appeal shall be mailed to the claimant and to all other parties interested in the decision of the Appeal Tribunal.

(d) If leave to appeal is granted, notice of hearing on Form BR-9 shall be mailed at least seven days before the date of hearing, specifying the place and time of hearing, to the claimant and to all other parties interested in the decision which is being appealed.

8.14. Hearing of appeals.

(a) Except as provided in rule 8.16, for the hearing of appeals removed to the Board of Review from an Appeal Tribunal, all appeals to the Board of Review may be heard upon the evidence in the record made before the Appeal Tribunal; or the Board of Review, to enable it to determine the appeal, may direct the taking of additional evidence before it.

(b) In the hearing of an appeal on the record, the Board of Review may limit the parties to oral argument or the filing of written argument, or both. If, in the discretion of the Board of Review, additional evidence is necessary to enable it to determine the appeal, the parties shall be notified by the Commission, as provided in rule 8.13 (b), of the time and place such evidence shall be taken. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issue on which the Board of Review directed the taking of evidence.

(c) The Board of Review, in its discretion, may remand any claim or any issue involved in a claim to an Appeal Tribunal

for the taking of such additional evidence as the Board of Review may deem necessary. Such testimony shall be taken by the Appeal Tribunal in the manner prescribed for the conduct of hearings on appeals before Appeal Tribunals. Upon the completion of the taking of evidence by an Appeal Tribunal pursuant to a direction of the Board of Review, the claim or the issue involved in such claim shall be returned to the Board of Review for its decision upon the entire record, including the evidence before the Appeal Tribunal and such additional evidence and such oral argument as the Board of Review may permit before it.

8.15. The hearing of appeals by the Board of Review on its own motion.

(a) Within ten days following a decision by any Appeal Tribunal, and in the absence of the filing, by any of the parties to the decision of the Appeal Tribunal, of a notice of appeal on an application for leave to appeal to the Board of Review as provided for in rules 8.12 and 8.13, the Board of Review, on its own motion, may order the parties to appear before it for a hearing on the claim or any issue involved therein.

(b) Such hearings shall be held only after seven days' prior notice to the parties to the decision of the Appeal Tribunal, and shall be heard in the manner prescribed in rule 8.14 for the hearing of appeals by the Board of Review.

8.16. Hearing of Appeals by the Board of Review on cases ordered removed to it from any Appeal Tribunal.

The proceedings on any claim before an Appeal Tribunal ordered by the Board of Review to be removed to it shall be presented, heard, and decided by the Board of Review in the manner

prescribed in the rules for the hearing of claims before Appeal Tribunals..

(a) The Board of Review shall not remove to itself the proceedings on any claim pending before an appeal tribunal which involves a labor dispute issue arising in connection with section 43:21-5 (d) of the New Jersey Unemployment Compensation Law.

(d) The proceedings on claims other than those involving labor disputes pending before an appeal tribunal which are ordered to be removed by the Board of Review, shall be heard by the Board of Review in the manner prescribed in sections 8.04, 8.05, 8.06, and 8.07 for the hearing of appeals before appeal tribunals.

8.17. Determination of Appeals.

(a) Following the conclusion of any hearing on an appeal, the Board of Review shall within ten days announce its findings of fact and its decision with respect to the appeal. The decision shall be in writing and shall be filed by the members of the Board of Review who heard the appeal. It shall set forth the findings of fact of the Board of Review with respect to the matters appealed, its decision, and the reasons therefor.

(b) If a decision of the Board of Review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision, setting forth the reasons why it fails to agree with the majority.

(c) Copies of all decisions and the reasons therefor shall be mailed by the Board of Review to the claimant and to the other parties to the appeal before the Board of Review.

E. General rules for both appeal stages.

8.18. Issuance of subpoenas.

(a) Subpoenas to compel the attendance of witnesses and the production of records for any hearings on an appeal may be directed to issue by a member of the Board of Review in cases appealed to the Board of Review, or by the Chairman of an Appeal Tribunal, in cases appealed to an Appeal Tribunal, only upon the showing of the necessity therefor by the party applying for the issuance of such subpoena.

(b) Witness fees at the rate of fifty cents for each day of attendance upon a hearing.

Mileage at the rate of four cents per mile from the residence of the witness to the place of hearing and return.

8.19. Orders for supplying information from the records of the Commission.

(a) Orders for supplying information from the records of the Commission to a claimant or his representative to the extent necessary for the proper presentation of a claim shall issue only upon an application therefor on Form B-49, setting forth the information required thereby. All applications for information from the records of the Commission shall state, as nearly as possible, the nature of the information desired.

(b) In all cases where an application to supply a claimant or his representative with information from the records of the Commission is granted, the party shall be furnished with a copy of such information.

8.20. Representation before Appeal Tribunals and the Board of Review.

(a) Any individual may appear for himself in any proceedings before any Appeal Tribunal or before the Board of Review. Any partnership may be represented by any of its partners or by a duly authorized representative. Any corporation or association may be represented by an officer or duly authorized representative.

(b) Any party may appear before any Appeal Tribunal or the Board of Review by an attorney admitted to practice, or by any other person who is qualified to represent others.

(c) In any proceeding on an appeal before an Appeal Tribunal or the Board of Review, all fees for persons representing claimants shall be approved by the Appeal Tribunal or the Board of Review, as the case may be, in accordance with the following schedule:

Fees shall not exceed 10% of the amount involved in the claim and in no case shall such fees exceed ten dollars.

(d) The Board of Review, or any Appeal Tribunal, in its discretion, may refuse to allow to appear before it to represent others in any proceedings before it, any person whom it finds to be guilty of unethical conduct, or who intentionally and repeatedly fails to observe the provisions of the Unemployment Compensation Law of New Jersey, the regulations of the Commission, or the rules of the Board of Review.

8.21. Inspection of decisions of the Appeal Tribunals and the Board of Review.

Copies of all decisions of the Appeal Tribunals and the Board of Review shall be kept on file at the offices of the

Board of Review and of the Appeal Tribunals at Trenton. Such decisions shall be open for inspection, but without in any manner revealing the names of any of the parties or witnesses involved.

8.22. Re-opening of Decisions:

The Board of Review may at any time, on good cause shown, re-open any of its decisions. The Board shall then proceed to act de novo upon the claim involved in such decision.

(a) No party to an appeal shall be permitted to apply to the Supreme Court of New Jersey for a writ of certiorari before applying to the Board of Review for a re-opening of the decision sought to be corrected.

