BOARD OF REVIEW
UNEMPLOYMENT COMPENSATION COMMISSION
OF NEW JERSEY

DIGEST OF DECISIONS

Board of Review
Appeal Tribunal

Trenton, N. J.
July 1, 1939

BOARD OF REVIEW DECISIONS

A. LABOR DISPUTE

I. Labor Dispute At Establishment Where Last Employed

1. Relationship Between Parties

A labor dispute cannot exist between an employer and workers who have not actually been hired by him prior to the occurrence of the controversy. (BR-64L)

2. What Constitutes A Labor Dispute

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 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)

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)

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)

a. In General

A contest with respect to the recognition of a particular labor union as the collective bargaining agency for all the 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 re-instated 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)

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

b. 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)

c. 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-80L)

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)

d. 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)

e. 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)

f. 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-57L and BR-21L)

g. 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)

3. Dispute at Establishment Where Last Employed

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)

4. 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)

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)

II. STOPPAGE OF WORK

1. Stoppage Basis Of Disqualification

No disqualification arises where there is no stoppage of work. (BR-5L, BR-13L, BR-18L, BR-82L)

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

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)

2. What Constitutes A Stoppage.

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

A shut-down of the plant by the employer constitutes a stoppage of work. (BR-15L)

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

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

A stoppage relates to the total amount of work available, even if this is less than normal production. (BR-2L)

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 a 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)

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 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 which exists because of a labor dispute. (BR-40L)

a. Stoppage Must Be Appreciable

Where the stoppage is not appreciable, no disqualification

arises. (BR-1L)

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

If the general production of the plant is reduced by 20% or more of that which is available, there is a stoppage of work. (BR-65L)

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. (BR-12L)

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)

b. 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, other available work being prevented, 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)

c. 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)

d. 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)

e. 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)

f. 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)

g. Abandonment Of Production: Relation To Stoppage

No stoppage of work exists where a previous type of work is permanently abandoned by the employer. (BR-28L)

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 received from customers. (BR-1L)

3. Stoppage Exists Because Of Labor Dispute

Where no work is available for striking workers the stoppage of work exists because of economic conditions and not because of a labor dispute. (BR-24L)

The intervention of a new causative factor, such as seizure of the employer's equipment by a chattel mortgagee, may change the cause of a stoppage so that it no longer exists because of a labor dispute; and thereupon disqualification ceases. (BR-80L)

A reduction in the employer's business during the course of a stoppage of work may create a new intervening cause therefor which relieves the workers of disqualification. (BR-9L)

Where demand for a wage increase makes it impossible for an employer to secure new business on account of the

increased price, the consequent stoppage of work is not the proximate result of a labor dispute and no disqualification arises. (BR-24L)

Workers 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)

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, there is no stoppage of work because of a labor dispute. (BR-39L)

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 the 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)

4. Termination Of Stoppage

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

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)

5. Cause Of Unemployment

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)

III. Participation In Labor Dispute

1. Disqualification

A worker 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)

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)

a. Membership In Participating Group

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 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)

(a^1) 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)

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)

b. 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)

c. 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)

d. Demand For Reinstatement

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

Where a strike is called for the purpose of securing a reinstatement of discharged individuals, these persons are

interested in the dispute and are, therefore, 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)

e. 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)

IV. Relief From 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-2L)

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 such 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) ceases 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 a 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

1. 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 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-88)

2. Reports Filed

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)

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)

3. Coverage Of Employer

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

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)

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

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)

4. Must Be Unemployed Individual

A claimant who is permanently on call for work and who receives fixed compensation each year, regardless of whether or not he actually does perform any work, is not an unemployed individual and is, therefore, ineligible to receive benefits. (BR-100)

Workers who, by agreement with their employer, work only in alternate weeks but who retain their status as employees, are not unemployed individuals during the weeks in which they perform no work and receive no remuneration. (BR-27)

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)

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 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)

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 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)

An individual who is sought to be discharged by the employer but who refuses to recognize the discharge, complains to the National Labor Relations Board and secures an order under which he is reinstated with back pay, was not an unemployed individual during period when he performed no services and was not eligible for benefits. (BR-167)

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-80)

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)

5. Employment; What Constitutes

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)

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)

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)

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)

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

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)

6. Excepted Employment

a. 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)

b. 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)

7. 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)

8. 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)

9. 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)

DISQUALIFICATION

1. 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)

2. Refusal To Accept 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)

3. 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)

APPEAL TRIBUNAL DECISIONS

Syllabi: Appeal Tribunal

DIGEST OF APPEAL TRIBUNAL DECISIONS

1. Coverage of Employer

A claimant who clearly establishes that he has worked in covered employment and that his employer was a subject employer is, if otherwise eligible, entitled to benefits, regardless of employer's delinquency or failure to pay necessary contributions. (A-109)

A claimant who alleges that his employing unit was a subject employer, but who fails to produce any evidence to indicate that the employing unit met the subject requirements of the Law, is ineligible for benefits where the employing unit's records definitely indicate that it did not employ eight or more individuals for some portion of a day in twenty different weeks during a calendar year. (A-110)

Any unemployed individual who has established sufficient wage credits during a base year while in the employ of a subject employer is eligible for benefits provided he meets all other eligibility requirements. (A-122)

The fact that the employer has not been held to be a subject employer by the Unemployment Compensation Commission of New Jersey and that said employer has not paid contributions to the Commission does not deprive the claimant of his eligibility for benefits. (A-122)

A claimant who has earned wages payable with a non-registered but subject employer is entitled to have such

wages payable credited to his base year earnings. (A-151)

Eligibility to receive benefits is based on earnings in covered employment, and the claimant cannot be deprived of such eligibility by the failure of the employer to make reports of wages or contributions thereon. (A-151)

2. Proof of Remuneration

A claimant who disputes the total wages as shown on her wage transcript, but whose only evidence consists of payroll memoranda records from her former employer who is out of business and cannot be located, which memoranda show a total of approximately the same amount as indicated on the official wage transcript, has not established any basis upon which to reach a determination other than that made by the Deputy. (A-120)

A claimant whose earnings for the fourth quarter of a base year are disputed and who obtains benefits based on computations for earnings in the first three quarters of his base year only may, upon proper showing of his fourth quarter earnings, receive the necessary additional benefits to give him a total amount of benefits based on earnings for the whole base year. (A-123)

Claimant, a former employee of an employer who has gone out of business and who disputes the total of wages shown on his wage transcript, is, in the absence of evidence to the contrary, entitled to swear to the minimum amount of wages received during his base year and, if this testimony is believed to be true, it may form the basis on which benefits may be computed. (A-143)

A claimant who has received remuneration on a commission basis, which commissions are not actually payable until payments are made by the customer, may not be credited with wages payable for anticipated commissions not actually earned. (A-151)

3. Unemployed Individual

A claimant, who for several years was accustomed to a seasonal slack period in her regular employment and is willing to accept other work only on days when she is not performing services in her regular employment, where she is retained on a priority list, is in employment and, therefore, is ineligible for benefits. (A-20)

Claimant, after a period of regular employment, was rehired as a part-time worker to report only on Saturdays. It was held, that since he was engaged in subsidiary work or in odd jobs, that for each week he was so employed and earned not more than three dollars, he was totally unemployed within the meaning of Section 19 (m) (1) and (2). (A-30)

A claimant who, after a long period of regular employment, is placed on part-time work where she earns not more than three dollars per week and informs the local employment office that she is available for any work presented, even though it might interfere with her part-time employment, has severed the employer-employee relationship and is totally unemployed within the meaning of the Unemployment Compensation Law. (A-34)

The acceptance of odd jobs or subsidiary work, the remuneration for which is not more than three dollars per

week, does not continue the employer-employee relationship where a claimant clearly indicates that she no longer considers herself regularly employed but is merely accepting odd jobs. (A-34)

A claimant who enters into a contract of employment as a salesman for income to be derived from commissions on sales, regardless of when commissions are paid, and who, after deciding to terminate his contract, continues to devote his time to sales for the same employer is considered not to be unemployed and, therefore, is ineligible for benefits. (A-36)

Claimant, a non-salaried officer of a closed corporation (secretary), of which his father is the president and his mother the vice president, but who works for the corporation as a regular employee for which he receives remuneration, is in the same working status as other employees and is not ineligible for benefits merely because he is a corporate officer. (A-134)

A homeworker who reports for work and is informed by the employer that no work is available has become unemployed and the employer-employee relationship has been severed. (A-138)

A claimant laid off indefinitely but whose name is retained on the payroll for a period during which there is no work available to him but he is expected to report from time to time, is held to be totally unemployed, and if otherwise eligible is entitled to benefits. (AT-2)

A claimant who was laid off from his regular employment, but was on several occasions in different weeks recalled to perform work other than his regular work, and for which the remuneration payable to him was not in excess of $3.00 per week, is totally unemployed within the meaning of Section 19 (m) (1) and (2) of the Unemployment Compensation Law. (AT-3)

A claimant who registers for work and files a claim for benefits asserting that he is available for and able to work, but who operates a business from which he receives for himself more than $3.00 a week, is ineligible for benefits since he is not totally unemployed under Section 19 (m) (1) and (2) of the Unemployment Compensation Law. (Appealed) (AT-7)

Claimant, employed in a laundry for more than two years was accustomed to an annual slack season from December to June, during which time she worked but one day a week in the laundry and retained her position on a priority list, accepting other work only in the event it did not interfere with her laundry employment.

HELD - That she was not totally unemployed and is, therefore, ineligible for benefits. (AT-20)

A claimant, who for twenty years has been employed by the same employer as a curtain folder and retained in off-season in other departments on a part-time basis each year, is not totally unemployed during such off-season since she is estopped to deny that the employer-employee relationship continued; even though the amount of work performed and

the remuneration therefor were considerably diminished in this particular season. (AT-21)

Claimant, a department store employee, was laid off and told to report every Wednesday for one day's work per week for which she would receive $2.50. She was available for and able to work.

HELD - Since claimant did not remain in regular employment, and was regarded by employer as merely an "extra," that she was eligible for benefits for each week in which she earned not more than $3.00. (AT-24)

4. Employment

A claimant who is engaged for work and is subject to the control and direction of the employer as to hours and place of work, prices to be charged, forms of daily records, material to be sold and general control by a supervisor, is in employment. (A-42)

An individual hired directly by a representative of the employer, paid a weekly salary by the employer, required to work a stipulated number of hours each day, reporting each morning at employer's office, and filing a daily activity report, is in employment within the purview of Section 19 (i) (6), even though she is an extra employee and employed only during certain business periods. (A-48)

In order to exclude services from "employment" under Section 19 (i) (6), all three of the following conditions must be shown to the satisfaction of the Commission:

> "(A) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

"(B) such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

"(C) such individual is customarily engaged in an independently established trade, occupation, profession or business." (A-48)

An individual who contracts to distribute merchandise limited to the products of the firm for which he works, in a specific territory which is a previously established route, at a price specified by the firm, and which he obtains from the firm, using the firm's motor truck lent to him for an agreed rental plus insurance, gasoline, and oil, and is required to report every morning, is not an independent contractor but is performing services deemed to be employment. (A-124)

In order to remove services performed for remuneration from the classification of employment, it is necessary to meet the requirements of all three subsections of Section 19 (i) (6); namely,

"(A) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

"(B) such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

"(C) such individual is customarily engaged in an independently established trade, occupation, profession or business." (A-124)

Claimant, a musician, who had a contract to furnish music for his employer, a hotel, whose contract was to run indefinitely and could be terminated at any time by either party and called for a definite weekly salary for claimant and for his two assistants, was in employment and entitled to have such salary credited to wages payable during his base year. (A-128)

A claimant is not an independent contractor but is deemed to be in employment where he is employed as a salesman under the direction and control of the employer, selling only the employer's merchandise at prices fixed by the employer. (A-129)

A claimant employed as a solicitor to sell merchandise on the installment plan on a stipulated commission basis in the company of a "crew manager" and who is required to report at the employer's office each morning to be assigned his daily territory and also required to report at the employer's office at the end of each day, as well as to submit a weekly activity report and turn over his orders to the crew manager, is under the direction and control of the employer. (A-129)

A homeworker who has no regular hours of work, no specific day or time to report or receive work, or to deliver the finished goods, and who does the work at home during the spare hours she has from her normal duties as a housewife, is in regular employment. (A-138)

5. Excepted Employment

A claimant whose employer conducted a tree nursery and who was employed as a general laborer in work where he was required to carry top soil, plant flowers and bulbs, transplant trees and hoe weeds, was engaged in agricultural labor. (AT-55)

A claimant who had been employed by a nursery as a watchman whose duties required his attention to the distribution and protection of greenhouses during the greater portion of his hours on duty was not engaged in agricultural labor, even though on occasion he would plant seeds in the greenhouses, and help to make boxes for shipments of products. (A-59)

An individual who is employed as a watchman by a nursery but who, at no time, devotes himself to work in the fields or propagation beds is not engaged in agricultural labor. (A-59)

A claimant who devotes more than seventy-five per cent of his time in the performance of duties which constitute agricultural labor within the meaning of Section 19 (i) (7) (A) of the Unemployment Compensation Law of New Jersey is deemed to be engaged in agricultural labor and, therefore, ineligible for benefits. (A-69)

The improper payment of contributions by the employer and the worker does not alter the status of his employment. (A-69)

The exclusion from coverage of agricultural labor may not be brought within the coverage of the Law by agreement

of the worker and employer, except through a formal election of coverage approved by the Commission. (A-69)

A claimant employed by a nursery as a "pricer" is not engaged in agricultural labor and is eligible for benefits where the nursery employs a total of more than eight individuals for the required period of time in non-agricultural activity. (A-72)

An individual employed as a stone mason by an employer engaged in agriculture who employs less than eight individuals in non-agricultural employment is not eligible for benefits. (A-73)

A claimant whose employer is engaged in selling flowers and plants at retail and who does not raise plants or flowers but obtains them from a wholesaler is not engaged in agricultural employment. (A-74)

A claimant working as a laborer for a manufacturer of greenhouses and engaged in loading and unloading steel assembly sections, glass, and other building materials used in the erection of florists' hothouses, is not engaged in agricultural labor. (A-76)

A claimant who was employed on a nursery farm as a laborer and was required to perform many duties, not all of which were confined to the tilling of the soil, but were necessary to the operation of the farm, was employed as an agricultural worker and, therefore, ineligible for benefits. (A-77)

The term "agricultural labor," as used in Section 19 (i) (7) (A), should be given a general rather than a limited meaning. (A-77)

A claimant who was engaged in agricultural labor on a farm and in a tree nursery and from whose wages workers' contributions were deducted and paid to the Unemployment Compensation Commission is ineligible for benefits. (A-79)

The mistaken deduction of contributions, or failure to deduct contributions, does not either confer coverage upon a claimant nor deprive such claimant from coverage. (A-79)

The collection or non-collection of contributions is entirely immaterial. Where contributions have been erroneously collected or contributed, they may be refunded, but such collection cannot confer coverage upon an individual excluded from coverage by the provisions of the Unemployment Compensation Law. (A-79)

A claimant whose work consisted of performing general labor on a farm and in a tree nursery, hoeing, pulling weeds, spreading fertilizer, and planting trees from cuttings, is engaged in agricultural labor and is, therefore, ineligible for benefits for such employment. (A-80)

Claimant employed by a nursery in work consisting of weeding and hoeing on the farm is engaged in agricultural labor and, as such, is not covered by the Unemployment Compensation Law and is, therefore, ineligible for benefits. (A-81)

The common meaning of the term "agricultural labor" is "tilling of the soil for the purpose of farming." (A-81)

Wages earned by an individual as a laborer in a nursery are not earned in covered employment and may not be credited to his total base year earnings. (A-82)

A claimant who is employed by a nursery as a laborer in the propagation fields and greenhouses, planting seeds, bulbs and flowers, is not in covered employment, but engaged in work exempted from coverage under Section 19 (i) (7) (A) of the Unemployment Compensation Law. (A-85)

6. Claim and Registration

A claimant who fails to report at the local employment office in accordance with the regulations of the Unemployment Compensation Commission of New Jersey may not be regarded as being available for work and is, therefore, ineligible for benefits for each week in which such failure to report occurs. (A-70)

7. Able and Available

A claimant who suffers from a cardiac ailment and is certified to be unable to work by the certificate of a physician is not able to work within the purview of the Unemployment Compensation Law and is, therefore, ineligible for benefits. (A-52)

A claimant who is visibly crippled and incapacitated for most types of work but has worked regularly at home at a trade for a period of eleven years as an employed individual and loses her employment through no fault of her own is able and available for work so long as she is able to pursue her usual occupation. (A-52)

It is not necessary that a claimant for benefits be available for all forms of work. If a claimant is available for work in her usual occupation, she is available for work within the purview of Section 4 (c) of the Unemployment Compensation Act and is eligible to receive benefits. (A-52)

A homeworker who becomes unemployed after having been engaged in this type of work for a number of years and whose home conditions appear not to have changed, must be regarded as being available for work. (A-138)

A female who was pregnant with child and who presents a physician's certificate that she is able to work is considered able to work within the purview of Section 4 (c) of the Unemployment Compensation Law, even though she is not able to perform her former usual work. (A-146)

A female claimant who was pregnant with child and who presents a physician's certificate that she is able to work is deemed to be available for work if she registers for work at the employment office, even though she cannot perform work in her usual occupation but is able to perform work of some sort. (A-146)

Availability for work is not limited to availability for work in the claimant's previous occupation. It is sufficient for the purpose of establishing eligibility for benefits that the claimant is available for work of some sort. (A-146)

A claimant who, from all appearances, is unfit to work and who, on the request of the appeals examiner, submits a doctor's certificate which states, "That he is in no condition

to perform any kind of physical labor," is not able to work within the purview of Section 4 (c) of the Unemployment Compensation Act of the State of New Jersey. (A-147)

A claimant who reports the day after his regular reporting day, offering a rather trivial reason for non-regular reporting and, after proper warning, thereafter repeats the same act, offering another trivial reason, has made himself unavailable for work for the latter week and is ineligible for benefits for that week. (A-148)

An unemployed individual who returns to high school, pending his reemployment, is available for work if he is willing to relinquish his high school studies in favor of suitable work. (AT-1)

8. Voluntary Leaving

A claimant who leaves his employment because he is dissatisfied with his remuneration but fails to bring his dissatisfaction to the attention of the employer has left work voluntarily and without good cause. (A-29)

A claimant who receives remuneration which is the same as that paid to other workers doing similar work in the same area and who leaves his employment after the refusal of a request for an increase in pay leaves his employment voluntarily and without good cause. (A-33)

A claimant who, because of a change in wage policy from a weekly salary to an hourly basis, which change does not substantially affect his total weekly earnings, leaves his employment without consulting or approaching his employer, has left work voluntarily and without good cause. (A-140)

A change in wage policy from a weekly salary to an hourly basis, which substantially approximates claimant's prior weekly earnings, is not sufficient to constitute good cause for voluntarily leaving employment. (A-140)

A claimant who resigns her position because of her marriage to a co-worker in an establishment which does not approve of husband and wife being simultaneously employed by it, has left work voluntarily but with good cause and is not, therefore, disqualified for benefits. (A-139)

A claimant who quits because he desires to secure work of a different type for which he would be fitted by reason of a course of study he had been pursuing at night, leaves work voluntarily without good cause. (AT-5)

A claimant, who quits because she has completed a course in a business college and desires a more lucrative job, leaves work voluntarily without good cause. (AT-6)

The claimant who refused to accept orders from his employer as to the type of work which should be performed, and left his work after engaging in a heated exchange of words with his employer which he considered amounted to a discharge, has left work voluntarily without good cause. (AT-10)

A decrease in the amount of work available for claimant, a laborer, from regular employment to four days' work in a period of several months, constitutes good cause for leaving work voluntarily. (AT-16)

Claimant who is changed from one type of work to another type of work which causes physical illness, and which

is to her physically unbearable, has good cause for voluntarily leaving employment after refusal of request to be transferred. (AT-17)

Claimant left employment on November 23, 1938 in order to go into business for himself transporting coal. In about a month his business failed, and his truck was repossessed. He could have returned to his former employers, but failed to do so.

HELD - That he was eligible for benefits, since, even if he were disqualified for leaving work voluntarily without good cause, the maximum disqualification period had expired prior to the filing of claim for benefits. (AT-23)

9. Misconduct

An individual allegedly discharged for a known act of misconduct occurring approximately two weeks prior to the date of discharge has not been discharged for misconduct in connection with his work where it is shown that the act of misconduct was only a contributing factor and not the direct cause of the discharge. (A-44)

A claimant who is discharged because he threatened an immediate superior with bodily violence in response to necessary working instructions is discharged for misconduct in connection with his work and is subject to the required disqualification under Section 5 (b). (A-111)

A claimant who was laid off because of lack of work but is selected for discharge, together with several other employees, because the employer is dissatisfied with

his work, is not discharged for misconduct in connection with his work. (A-135)

Where the proximate cause of a claimant's discharge is lack of work and the employer's dissatisfaction with the claimant's work contributes indirectly to the discharge, the claimant is not discharged for misconduct in connection with his work. (A-135)

In order for a claimant to be subject to disqualification for discharge for misconduct connected with his work, it must appear that such misconduct is the proximate cause of the discharge and not an indirect or contributing cause. (A-135)

A claimant who is discharged because a garnishment has been issued against his wages by one of his creditors is not guilty of misconduct connected with his work, and if otherwise eligible is entitled to benefits. (AT-8)

The claimant, a teacher in a private business school, while under indictment on a charge of embezzlement, attempted to intimidate a pupil for the purpose of utilizing the pupil's testimony at claimant's trial, and was thereupon discharged by the employer. Subsequently, claimant was found guilty of embezzlement and placed on probation.

HELD - That while conviction of embezzlement is not necessarily grounds for disqualification under 5 (d), since it appeared that embezzlement was not connected with claimant's work, yet the use of claimant's position for the purpose of intimidating a student was an act of misconduct connected with claimant's work, and claimant's discharge, therefore, is subject to disqualification under Section 5 (d). (AT-9)