BOARD OF REVIEW
UNEMPLOYMENT COMPENSATION COMMISSION
OF NEW JERSEY

DIGEST OF DECISIONS

Board of Review
Franklin M. Ritchie, Chairman
Isabelle M. Summers
M. Metz Cohn

Trenton, N. J.
January 1, 1941

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A. ELIGIBILITY FOR BENEFITS

I. Based on Covered Employment

1. Employer Must Have Been Subject

A claimant is eligible for benefits where it appears that his employer had subject status (BR-34); and he is not eligible where it appears employer was not subject. (BR-83)

a. Subject and Non-Subject Employers

An individual who has been employed by both subject and non-subject employers during his base year is eligible for benefits only on the basis of remuneration earned with subject employers. (BR-88)

b. Eight or More Employees

An individual employed by an employing unit not having eight or more employees in twenty different weeks within a calendar year is not eligible under 19(h)(i). (BR-228, 139)

c. Excluded Employment

An individual performing services in employment excluded by Section 19 (i)(7)(G) is ineligible. (BR-49, 86)

d. Termination of Coverage

An individual working for an employer who has been granted valid termination of coverage and not again becoming subject is ineligible. (BR-175)

e. Coverage in New Jersey

Eligibility in this State depends upon coverage of employer in New Jersey. (BR-87)

2. Coverage Is Question of Fact

a. Burden of Proof

The employer's coverage must be affirmatively established (BR-1433); and the burden of proof is upon the claimant to show employer's subject status. (BR-253)

Status is a question of fact. If employer was actually subject, his failure to register or to file wage reports will not deprive claimant of eligibility (BR-81); and the payment of contributions by a non-subject employer will not make claimant eligible. (BR-106, 118)

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

Employees who work for two employers at same time may be counted separately to determine status of both employers. (BR-1818)

b. Facts Control

A claimant is not eligible for benefits if it appears that his employer was not actually subject under the statute in spite of the fact that the employer mistakenly paid contributions and filed wage records. (BR-106)

Determinations by the Unemployment Compensation Commission with respect to employer status are not conclusive as to the payment of benefits. (BR-66)

An individual is eligible for benefits where employer had only seven regular employees but adult son also performed services in return for board. (BR-243)

c. Reports Filed

Benefits will be based upon base year earnings proved by an employee despite the failure of his employer to file wage reports. (BR-58)

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)

Where no wage record has been reported by an employer with respect to a claimant, the burden of proof is on the claimant to establish the fact that he earned the necessary minimum wages in covered employment during his base year. (BR-61)

d. 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. (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)

A claimant is not in covered employment where the employer does not employ eight persons in twenty different weeks in a calendar year and is not otherwise subject although the employer believes he is subject and pays contributions under this mistaken belief. (BR-106)

The Board of Review will determine the wage records, on which benefits are to be based, on the basis of testimony presented before it. (BR-214)

The fact that an employer has erroneously reported an individual's wages to another state will not deprive said individual of benefits in New Jersey if he is eligible therefor. (BR-220)

e. Employer Registered

An employer will be held subject and benefits will be paid to unemployed workers formerly in his employ if it appears that the employer actually was subject, even though said employer has not been registered. (BR-64)

f. Employer Held Non-Subject by Commission

A claimant may be eligible for benefits if it appears that his employer was actually subject even though the employer has been held non-subject by the Commission. (BR-66)

g. 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 is a successor to another employing unit and their combined employment experience brings them within the coverage provisions of the Act. (BR-62)

A claimant employed by an employing unit which has gone through re-organization by purchasing the assets of a subject employer and continuing operation of the business is in covered employment. (BR-252)

A partnership which takes over the business and assets of an individual subject employer becomes automatically a subject employer upon acquisition of assets. (BR-235)

h. Coverage by Reason of Common Control

1.* One Owner

An employer is subject under Section 19(h)(4) if he owns or controls three different businesses which employ, as a group, a total of eight or more individuals. Employees of all the businesses are eligible for benefits. (BR-260)

2.* Common Management

Different businesses which are all controlled by the same group of individuals are regarded as one for the determination of employer status. (BR-245)

Two corporations having the same officers are prima facie regarded as affiliates. (BR-348)

An individual employed by an employing unit which, taken alone, would not be a subject employer may nevertheless be in covered employment if the employing unit is one of several which are owned or controlled by the same interests and the combined employment experience of all, taken as a unit, is sufficient to establish subject status. Each employing unit in the group is a subject employer. (BR-313)

3.* Control Is Question of Fact

An individual who, after serving as an employee, is transferred to a corporation newly created by his employer for the express purpose of performing the same duties formerly rendered by the individual employee, is still in the employ of the original employer despite legal appearances which are contrary to the facts. (BR-146)

The mere fact that an officer of one corporation holds a small amount of stock in and is an officer of another corporation does not, of itself, prove common control. (BR-723, 300)

The use of common premises and the management of one corporation by an officer of another does not, alone, prove common control. (BR-300)

4.* Legal Ownership Not Necessary

Common control sufficient to establish subject status may exist despite diversity of legal ownership. (BR-1800)

5.* Acquisition of Assets

Under Section 19(h)(2), one corporation does not "acquire the organization, trade or business or substantially all the assets" of another merely by receiving an assignment of the accounts receivable of the second corporation, which has other material assets. (BR-723)

i. Coverage Through Sub-Contractors

An individual tailor having less than eight employees who holds himself out to the pbulic as doing dry cleaning work becomes himself a subject employer where he farms out a portion of this work and sufficient individuals in the sub-contractor's establishment perform services on his work to make, counting his own employees, a total of eight or more in twenty different weeks within a calendar year. (BR-1672)

j. Coverage in Fact

1.* Facts of Employment Control

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)

2.* Employment by Agent

Where claimant was employed as a janitor and watchman in a building owned by a bank, which building was managed by and under the control of a management corporation, a subsidiary of the bank, and was paid by the checks of the management corporation said corporation being reimbursed by the bank, but the greater part of his services were performed in the actual operation of the bank, claimant was employed by the bank. (BR-213)

3.* Furtherance of Employer's Business

A claimant hired by the employer as manager for an athletic association of employees, which association is maintained from funds of employees, is in covered employment where the employer exercises control over his activities, did the actual hiring and has the right to discharge. (BR-552)

4.* No Services Performed

A week in which all employees are out on strike is not to be counted as a week of employment in determining the status of an employer. (BR-1433) Dissenting opinion filed.

II. Base Year Earnings

a. Required Minimum a Requisite of Eligibility

An individual who earned less than $80.00 in his base year is not eligible for benefits. (BR-108, 390)

b. Proof of Remuneration Earned

An individual may establish his base year earnings by testimony where the employer has failed to file wage records showing said earnings. (BR-341, 315)

An individual may, by testimony or other evidence, supplement or controvert the records filed by the employer. (BR-154, 315, 254, 153)

c. Sufficiency of Proof

Claimant's uncontroverted testimony with respect to earnings is satisfactory basis for eligibility. (BR-347)

Authentic records are better evidence than uncorroborated oral testimony based on memory alone. (BR-346)

A written statement of earnings, made by an employer who is unavailable for examination, is sufficient basis for a determination of eligibility provided the claimant does not object thereto. (BR-543)

Where the authentic payroll records of the employer, undisputed by the claimant, show that claimant was not in employment and had no earnings during his base year, such records are sufficient basis for a determination that claimant is ineligible for benefits. (BR-395)

d. Substantiation

Claimant who produces a credible witness to substantiate his testimony with respect to earnings, where the employer failed to file wage records, is entitled to receive benefits based on the earnings proven. (BR-384)

A claimant who is unable to prove his earnings himself may prove them by another witness. (BR-381)

Where a claimant cannot prove his exact earnings, a reasonable approximation thereof will be accepted in the absence of contrary evidence. (BR 381, 554)

e. Conflict With Employer's Records

Employer's records are not conclusive and may be disregarded on satisfactory proof of mistake or fraud. (BR-583)

Where authentic wage records conflict with dubious testimony by a claimant, the records prevail. (BR-341)

Wage records kept by an employer and found by a Commission examiner to be satisfactory may be accepted over a dubious record kept by claimant. (BR-375)

Employer's wage records prevail in the absence of concrete proof to the contrary by claimant. (BR-568)

Credible records kept by employee will prevail over dubious and incomplete records of employer. (BR-239)

The value of room and board proven to have been given in return for services rendered will be included in earnings even though not included in employer's records. (BR-783)

III. Only Unemployed Individuals Eligible

There must be a severance of the employer-employee relationship before a claimant is eligible, as an unemployed individual, to receive benefits. (BR-36, 37, 80, 74)

a. Performance of Services

An individual who continues to perform services in his regular employment is not unemployed. (BR-36)

b. Decrease in Earnings

The mere fact that an individual's earnings decrease or disappear during a given period does not make him unemployed. So long as he continues to render services in his regular employment he is ineligible for benefits regardless of the amount of his earnings. (BR-37, 80)

An individual who is definitely laid off by his employer during a slack period but who is called in from time to time for odd jobs is not regularly employed, since the relationship has been severed, and when his earnings are less than $3.00 in any week he is eligible for benefits. (BR-85)

c. On Call By Employer

An individual who is required to hold himself available at all times for a call by his employer and who receives some remuneration for holding himself in readiness is not an unemployed individual. However, the mere fact that he receives pay for holidays which fall within weeks in which he performs no services does not of itself indicate an employment relationship where this is rebutted by other testimony. (BR-100)

1. Total Unemployment; what Constitutes

An individual is eligible for benefits during any week in which he performs no services and receives no remuneration, even though he remains on the employer's list of employees and works in alternate weeks. (BR-27)

An unemployed individual is eligible for benefits for any week in which he does not have regular employment and earns less than three dollars. (BR-45)

a. Severance of Relationship

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 three dollars. (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 "extra" worker is employed only when performing services. Each lay-off is a severance of the employment relationship. (BR-548)

b. Performance of Services

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

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 three dollars per week. (BR-80)

An officer and stockholder of a closed corporation who ceases to draw salary because the corporation has no work available, but who retains his title and who continues to seek work for the corporation, even though he does not receive a direct commission therefor, and who performs some service in his regular employment is not an unemployed individual and is ineligible for benefits. (BR-1808)

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)

c. Intermittent Employment

An individual who is from time to time laid off and later re-employed by the same employer is eligible for benefits in lay-off periods during which he performs no services and receives no remuneration. (BR-84, BR-500)

A claimant who is employed by the National Youth Administration for only one week in each month is totally unemployed the other three weeks in the month where no contract of employment exists and claimant has no guaranty of further employment after any lay-off. (BR-586)

A claimant is unemployed for the weeks he is laid off, although he is periodically laid off and rehired by the same employer. (BR-482)

Periodic unemployment under the same employer permits claimant to recover compensation for the weeks he is out of work, although he is rehired by the same employer, since the relationship of employment is severed each time he is laid off. (BR-483, BR-484, BR-485, BR-512, BR-532, BR-739, BR-740)

d. Receipt of Pay

An individual who, during the period of an indefinite lay-off, receives compensation under a union agreement for holidays, even though such holidays fall within the period of his lay-off, is not employed and is not receiving remuneration, where the money paid him must be regarded as the consideration paid for the signing of the union agreement. (BR-492)

e. Expenses

A member of the National Guard is not ineligible in a week in which he receives National Guard pay of more than three dollars when the necessary expenses in connection therewith actually reduce this amount to less than three dollars. (BR-574)

f. Retention of Rights

An individual may be unemployed even though, after being laid off, he retains seniority rights with his former employer. (BR-198)

g. Gratuities

Receipt by an unemployed individual of a gratuity from his former employer during the course of his unemployment does not make him ineligible for benefits. (BR-285)

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)

h. Self-Employment

A claimant who is engaged in self-employment is not barred from benefits if he is available for work. (BR-510)

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)

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)

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 not an employed individual and may be eligible for benefits. (BR-142)

2. Odd Jobs and Subsidiary Work

A chair pusher who reports, at his own pleasure, as an extra man, is not carried on the payroll, is assigned to work only when no regular men are available and performs no regular services, 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, 43)

An individual who is discharged or laid off but who later accepts subsidiary part-time work with his former employer is eligible for benefits in any week in which his earnings are less than $3.00. (BR-107)

An individual who performs casual work at home, merely to assist a relative who is a regular homeworker, is engaged only on odd jobs and is eligible for benefits in any week in which his remuneration is under $3.00. (BR-246)

Employees who are laid off because of slack period in employer's business but who are hired from time to time by same employer for odd jobs are not regularly employed and are eligible in any week in which their remuneration is less than $3.00. (BR-445, 447, 448, 449, 450)

3. Casual Services Without Remuneration

Casual voluntary services which are rendered purely as a favor to a prospective employer before he opens his regular business, and for which no remuneration is paid or contemplated do not constitute employment. (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, 180. See Schomp v. Fuller Brush Co., 124 N.J.L. 487) or such service is outside the usual course of the principal's business or is performed outside of all the principal's places of business. (BR-269)

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) have been met. (BR-82, BR-499)

The mere fact that a carpenter takes a job under a written contract does not remove him from the statutory definition of employment where it appears that he is actually subject to direction and control. (BR-567)

A taxicab driver who is actually subject to direction and control and who is not customarily engaged in an independently established business is in employment despite the fact that he is operating under a written contract which purports to be merely a lease of a cab. (BR-1229, BR-499)

A written agreement between a taxicab company and a driver may contain not only a lease of a cab but also an agreement for personal services which constitute employment. (BR-1229)

Tips will be regarded as remuneration when they were in the contemplation of both employer and employee at the time of employment, even though the parties executed a written agreement setting forth the amount of wages to be paid but not mentioning tips. (BR-1794)

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) have been met. (BR-82)

A salesman who is designated as a "vender" is, nevertheless, an employee of the company which supplies him with merchandise where, in effect, he receives commissions although they are called discounts from the selling price, provided he is hired by and may be discharged by the supply company. (BR-180)

A salesman for a correspondence school is an employee and not an independent contractor. (BR-1434)

A life insurance agent is in employment. (BR-575)

3. Direction and Control

The burden of proof is on the employer to show that an alleged employee is not subject to direction and control where employee performs services for remuneration. (BR-82)

a. Fact of Control Negates Contract

Control is a question of fact despite the terms of a contract between employer and employee. An instrument which purports to be merely a lease may also contain an agreement for personal services. (BR-1229, BR-449, BR-199)

b. Right to Terminate Services

The right to terminate services at will is control. (Schomp v. Fuller Brush Co., 124 N.J.L. 487; BR-1229, BR-449, BR-102, BR-269)

c. Agency; Collections

A salesman is subject to direction and control where he is required to deliver goods sold and to collect down payments. (BR-578)

d. Limitation of Independent Business

A vacuum cleaner salesman who is not allowed to deal in used machines on his own account is subject to control. (BR-578)

e. Required Use of Specified Forms

A salesman is subject to control where he is required to take orders on forms specified by principal. (BR-199, BR-578, BR-82)

f. Route Fixed by Employer

A deliveryman for a newspaper who is required to cover a fixed route and to service news-stands in the order directed by his principal is subject to control. (BR-242)

g. Requirement of Full Time

An individual who is required, either by contract or in fact, to devote his entire time to one line of work is subject to direction and control. (BR-1229, BR-499, BR-199)

h. Actual Control

A carpenter who is actually subject to control is an employee even though he is paid by the job rather than by time and can choose his own time for working. (BR-171, see also BR-82, BR-578)

A car washer actually subject to control is an employee even though he deducts his remuneration from rental charges collected by him on employer's behalf. (BR-257)

A trust company which acts as trustee for itself and others in liquidation of a property, being itself the chief beneficiary and having complete control in fact of the property, is the employer of a janitor on the premises. (BR-38)

i. Fixing Time and Place of Work

A musician is subject to control when an amusement enterprise can direct the time and place of his playing. (BR-99, BR-59, BR-269)

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)

A member of an orchestra which furnishes music at an amusement pier is an employee of the pier. (BR-269)

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 Section 19(i)(6) and therefore must be regarded as having been in employment and eligible for benefits. (BR-47. Affirmed: Schomp v. Fuller Brush Co., 124 N.J.L. 487)

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 of his own is in employment and is eligible for benefits. (BR-161, BR-499)

An individual does not become customarily engaged in an independently established business merely by securing a municipal license as a taxicab operator. (BR-1229)

7. Remuneration Received Elsewhere

An individual who is employed by a golf club and whose remuneration is collected from caddies but is guaranteed by the club at a fixed amount, 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)

An individual may be in the employ of the principal even though he is paid by check of an agent. (BR-213)

Remuneration paid by an agent of the principal will be included in the wage record. (BR-227)

8. Employee of Employee

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

Wages earned by claimant from another employee of the employer, whether the other employee is an agent or contractor, are credited under Section 19(g). (BR-259)

A worker hired and paid by a real estate agent on behalf of a property owner is the employee of the principal and not of the agent. (BR-38)

A stenographer employed by the District Manager of a corporation, said District Manager being in fact an employee of the corporation, is an employee of the corporation. (BR-227)

9. Employee of Subcontractor

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 construction of a house for a covered employer in the actual employ of a subcontractor 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)

The employees of a cleaning plant who perform services on work sent in by a tailor are to be counted in determining the tailor's status, since the cleaning plant is a subcontractor. (BR-1672)

11. Services Performed in New Jersey

a. No Service in New Jersey

Where claimant performs all services in Florida and employer does not elect to be subject to the New Jersey Act, he is not eligible for benefits in New Jersey. (BR-382)

Where claimant was a salesman who solicited business in New York, where the main office of employer was located, although the factory of the employer was located in New Jersey, claimant was not eligible for benefits in New Jersey since he was not employed in New Jersey. (BR-302)

Service in New Jersey, which is merely incidental to employment in New York, does not constitute employment in New Jersey. (BR-302)

A claimant who performs all his services outside of New Jersey and is not a resident of this State is not eligible for benefits in New Jersey, even though the employer is located in this State. (BR-1782)

An individual who is hired in New Jersey but who performs all his services in another state is not eligible for benefits in New Jersey. (BR-382)

Benefits cannot be charged against the merit rating of an employer for whom an individual performs no services in this State. (BR-576)

b. All Service in New Jersey

President of a corporation organized under the laws and doing business in this State, all services being rendered here, he is eligible in New Jersey. (BR-303)

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

The fact than an employer has erroneously reported wages to another state will not deprive an individual of benefits in New Jersey if he is eligible therefor. (BR-220)

Eligibility for benefits is based upon the facts and will not be affected by any agreement between a claimant and an employer to file reports in another state. (BR-303)

The services of an individual who is hired from time to time, each time for a specific job, are localized in New Jersey with respect to those jobs which are performed in this State in spite of the fact that other jobs may be performed in other states. (BR-734)

Employee who has earned sufficient wage credits in New Jersey may receive benefits based upon earnings here during base year although last employer and employment were in another state within his base year. (BR-576)

c. Base of Operations

The base of operations, rather than the place of direction and control, determines eligibility. (BR-220)

If an individual performs services in New Jersey and in another state and his base of operations is here, he is eligible in this State even though he is subject to direction and control elsewhere. (BR-214)

A salesman who divides his time equally between this and one other state, whose base of operations and whose place of direction and control are here, is in employment in this State. (BR-1615)

A salesman who covers several states, devoting only a small portion of his time to New Jersey, but whose base of operations and whose place of direction and control are both in this State is in employment here. (BR-1615)

d. Place of Direction and Control

A salesman who covers several states, has no base of operations, and whose place of direction and control is in New Jersey, is in employment in this State. (BR-1615)

An individual who performs services both in this and in another state, but whose place of direction and control is here is employed in New Jersey. (BR-156)

An individual who performs services in two states, but who is controlled in New Jersey, is in employment here. (BR-156)

e. Receipt of Benefits Elsewhere No Bar

The fact that another state has mistakenly paid benefits to an individual with respect to the same services upon which he is eligible for benefits in New Jersey does not affect his eligibility in this State. (BR-156)

The fact that claimant, as president of a corporation organized and doing business in New Jersey, signed an agreement that individuals of the corporation would file claims in New York would not bar him from filing a claim for benefits in New Jersey. (BR-303)

f. Facts of Employment Control

Agreement with employer to file claim in another state does not bar claimant's right to benefits in New Jersey where facts show employment in this State. (BR-303)

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 still in employ of original employer. (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, BR-312)

Members of a college fraternity which is operated on a cooperative basis, each member doing a share of the work in connection with the maintenance and operation of a dwelling house and the serving of meals to members, are partners and are not employees of an unincorporated association. (BR-1226)

14. Work With Employer's Knowledge

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

In the absence of evidence to the contrary, it is a reasonable presumption that an employer had actual or constructive knowledge of the work performed by one of its employees for another of its employees. (BR-259)

15. Employment of Minors

A minor who was engaged in part-time employment while attending school, prior to the amendment of April 28, 1938 (Chapter 111 P.L. 1938), is eligible for benefits on wage credits earned prior to the amendment. (BR-299)

A minor is engaged in employment, under the amendment, where he is engaged in full-time work. (BR-299)

A minor whose principal occupation is as a student attending a public school during the school year and who is employed for less than the usual hours observed at his employer's place of business is a part-time worker and is not in covered employment. (BR-301)

A minor student who works only on Fridays and Saturdays in a business in which other workers work six days a week is a part-time worker and is, therefore, not in covered employment. (BR-529)

16. Officers of Corporation

The officers of a corporation are its employees under Section 19(h)(1). (BR-553)

In determining whether a company is a corporation, evidence is material concerning its trade name, telephone listing, garage permit, bank account, legal official documents, and judgments entered against it. (BR-553)

17. De Facto Corporation

A de facto corporation is a corporation within the meaning of Section 19(g).

a. Three elements must be proven to establish de facto corporate existence: (1) a valid law under which such corporations might be incorporated; (2) a bona fide attempt to organize under such a law; and (3) an actual exercise of corporate powers. (BR-553)

V. Excluded Employment

An employer who has eight or more individuals in his employ during twenty different weeks within a calendar year is not a subject employer unless eight or more of these individuals are engaged in non-exempt employment. (BR-149)

Where a claimant was employed part of the time in agricultural labor and the rest of his time in covered employment, he is credited with wage credits based upon that part of his services performed in non-agricultural employment. (BR-260)

1. Agricultural Labor

a. General Type of Work

Landscaping is not agricultural employment. (BR-340)

Services performed in connection with the operation of a dairy which consists entirely of a feeding shed for cows, located in an urban area, no feed or produce of any kind being raised in connection therewith, do not constitute agricultural labor. (BR-157)

b. Exclusion Depends on Work Done

Whether or not a worker performing services 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, BR-40)

Claimant, although employed by an employer engaged in agricultural business, who is one of eight or more persons working for the employer in non-agricultural labor, is eligible for benefits. (BR-528)

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

A stationary fireman who operates a heating plant and does repair work in connection with a hothouse is not engaged in agricultural labor. (BR-48)

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

Employees engaged in maintenance of buildings and packing of plants are not in agricultural labor. (BR-528)

c. Tilling of Soil

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

An individual who digs soil and cultivates flowers is engaged in agricultural labor. (BR-49, BR-86)

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)

d. Associated Work

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)

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

2. Workers on Vessels

Services performed as a member of the crew of a ferryboat on the navigable waters of the United States are excluded from coverage; but services performed entirely on land, even though in connection with the boat's operation, are covered. (BR-339)

a. Member of Crew

A waiter who is hired specifically to serve food in connection with the trial run of a steamer is a member of the crew of the vessel, even though he is not required to sign articles. (BR-378)

1.*Pound Fishermen

Pound fishermen are in covered employment. (BR-1338)

A pound fisherman is not a member of the crew of a vessel and is not in exempt employment where the only navigation involved is a short trip from the shore to the pound and where no special skill or seamanship is required. (BR-1294)

A pound fisherman is not a member of the crew of a vessel. (BR-1338)

2.*Dredges

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)

3.* Ferryboats

Services performed as a member of the crew of a ferryboat on the navigable waters of the United States are excluded from coverage; but services performed entirely on land, even though in connection with the boat's operation, are covered. (BR-339)

b. Navigation

Work on the navigable waters of the United States which is not incidental to navigation is not excepted from coverage under the Unemployment Compensation Law of New Jersey. (BR-1338)

c. Admiralty Jurisdiction

The admiralty jurisdiction of the United States does not deprive the State of New Jersey of its right to apply the Unemployment Compensation Law to services performed on the navigable waters of the United States in the absence of contrary Federal legislation. (BR-1338)

3. Minor Students

a. Principal Occupation

A minor whose principal occupation is as a student attending a public school during the school year and who is employed for less than the usual hours observed at his employer's place of business is a part-time worker and is ineligible for benefits. (BR-301)

b. Part-time Worker

A minor student who works only on Fridays and Saturdays in a business in which other workers work six days a week is a part-time worker and is, therefore, ineligible for benefits. (BR-529)

A minor student is in covered employment, under the amendment, where he is engaged in full-time work or in work which occupies all the hours worked at employer's establishment. (AT-1649) (BR-299)

c. Employment Prior to Amendment

A minor who was engaged in part-time employment while attending school, prior to the amendment to the Law on April 28, 1938, (Chapter 111, P.L. 1938) is eligible for benefits on the basis of wage credits earned prior to the amendment. (BR-299)

4. Scientific or Educational Purpose

A non-profit organization established for the purpose of testing commercial goods and reporting its findings to consumers who subscribe to its service is not exclusively scientific or educational in purpose. (BR-965)

The fact that a corporation uses scientific methods in its work is not sufficient to exclude it from coverage; since it must further appear that its main purpose, as well as the method of its operation, is exclusively scientific or educational. (BR-965)

5. Fraternal Organizations

A college fraternity is not a subject employer where it appears that its members perform services on a mutual basis and not as employees. (BR-1226)

6. Religious Purpose

A worker in a cafeteria which is operated for profit by the Y.W.C.A. and which is open to the public, all the profits being turned over to the organization for the furtherance of its religious purposes, is not in covered employment, since the exclusion from coverage is based upon the purpose of the organization and not upon the method of its operation so long as that does not conflict with its purpose. (BR-1856)

7. Federal Instrumentalities

Federal credit unions are subject employers. (BR-1322)

An employer may be subject under the Unemployment Compensation Law of New Jersey even though it has been designated by the Congress as an instrumentality of the United States where it appears in fact that it is not in reality exercising a governmental function. (BR-1322)

The employment of the janitor of an apartment house acquired by a national bank under foreclosure and which is operated by the bank through an agent is not exempt. (BR-731) Note: A dissenting opinion holds that the bank is continuing to act as an instrumentality of the United States and therefore the employment is exempt.

A national bank is not acting as an instrumentality of the United States when it continues to operate an apartment house which it has taken under foreclosure proceedings. (BR-731)

A janitor employed by a national bank for the maintenance of its banking house is excluded from coverage because employed by a Federal instrumentality even though he performs incidental service in connection with the rest of the building. (BR-213)

VI. Available for Work.

a. Burden of Proof

A claimant must be in fact available for work, and his assertion of availability is not conclusive where it is negatived by the circumstances of the case. The tribunal must be satisfied from all the evidence that the claimant is bona fide available for work. (BR-1806)

b. Available in Fact.

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

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 who fails to report at the local office because of absence from home is not available for work. (BR-516)

An individual may be available for work even though he leaves the state during the period of his unemployment, provided he notifies the local office where he can be located and can prove satisfactorily that he was in a position to accept any work offered him in this State. (BR-534)

A pregnant woman who leaves her employment without good cause is not necessarily unavailable for work. (BR-1845)

Claimant, filing a claim one month after giving birth to a child and reporting to the employment office that she was willing to accept part-time employment, is eligible for benefits upon satisfactory testimony that she could have devoted her full time to employment had it been offered. (BR-550)

c. Other Employment.

The test of availability for work is whether the claimant can perform services and not whether he can perform his former duties. (BR-544)

A pregnant woman who leaves her work because she is no longer able to perform it, but who is able to perform other commercially available work of a lighter character, is eligible for benefits. (BR-1474)

d. Employment Must Be Reasonably Procurable.

In order to be held available for work, an individual must be ready and able to perform some type of work which is commercially available. (BR-1438)

A pregnant woman who is unable to continue in her customary former employment is able to work and available for work if she can and will accept work as a domestic. (BR-1797)

e. Unreasonable Limitations.

An individual who is unable to speak English is not available for work if he will accept employment only where an interpreter is provided. (BR-394)

An individual who is employed in alternate weeks is available for work during weeks of unemployment, provided he is willing to accept a permanent job and does not restrict his availability to the weeks in which he is unemployed. (BR-27)

f. Reasonable Limitations.

Claimant is available for work although she is able to work only between eight a.m. and noon, and one to five p.m., since those are normal business hours, where the claimant has to care for a sick sister in the remaining hours. (BR-569)

Claimant held available for work although required to attend school classes from nine a.m. until one p.m. provided he has had employment in the free hours remaining and work during such hours is reasonably available in his community. (BR-587)

Where a claimant has customarily been employed on a night shift, because of family duties during the day, she is considered available for work although she refused to work on a day shift, expressing willingness to work at night, and night work being reasonably available. (BR-573)

g. Removal of Disability

An individual who is engaged in self-employment may be available for work provided he holds himself ready to abandon his self-employment at any time in order to accept new employment. (BR-1305, BR-510)

An individual who is employed in alternate weeks is available for work during weeks of unemployment, provided he is willing to accept a permanent job and does not restrict his availability to the weeks in which he is unemployed. (BR-27)

A woman may be available for work even though she admits that she has children to care for if she can show that she can provide facilities for the care of the children during her absence at work. (BR-1361)

An individual may be available for work even though he is serving a law clerkship for which he receives no remuneration, provided he is willing to abandon the clerkship at any time when work is offered him. He is also an unemployed individual while serving such clerkship. (BR-1545)

h. Intent

A pregnant woman who has notified her employer that she intends to leave because she does not wish to work during pregnancy will be considered unavailable for work in the absence of definite proof of a change in her intention. (BR-1840)

i. Actions of Claimant as Evidence of Intent.

A pregnant woman's failure, after voluntarily leaving her employment, to make any effort to secure any other lighter employment may be made the basis for holding her unavailable for work. (BR-1359) Note: A dissenting opinion holds that, in order to hold a claimant unavailable for work, the positive evidence to that effect must be presented and that mere failure to look for other work is not sufficient ground.

A pregnant woman who is no longer able to perform her regular duties must, in order to be considered available for work, be willing to accept work of a lighter nature even though the pay is less than that of her regular work; and a refusal of such work is a refusal of suitable work and is cause for disqualification. (BR-1767)

j. Change of Intention.

An individual who leaves work in order to be married and with the intention of withdrawing from all employment may nevertheless be available for work after a proven change in intention due to a change in circumstances. (BR-1422)

VII. Able To Work

1. Relation to Former 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)

2. Partial Disability

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 work of a different type. (BR-31)

A claimant who cannot resume work pushing a wheelbarrow, due to a leg injury, but who is able to do work other than that requiring him to stand on his feet all day, is eligible for benefits. (BR-544)

3. Pregnancy

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

A pregnant woman may be able to work and available for work, although she will work only in a small office where she would not be embarrassed by a large number of outsiders. (BR-527)

VIII. Remuneration

1. Effect on Eligibility

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)

Remuneration of more than three dollars in any week received for the performance of jury duty renders a claimant ineligible for benefits. (BR-37)

2. Damages for Breach of Contract

Damages for breach of a contract of employment do not constitute remuneration and cannot be included in wage credits, since employment was ended upon the breach of the contract. (BR-371)

3. N.L.R.B. Awards

In determining wages during claimant's base year, an award of the National Labor Relations Board for back wages is to be considered wages and not damages. (BR-219, BR-510)

4. Drawing Account

A drawing account may be considered as remuneration upon which benefits may be based where it appears that it was in fact a salary. (BR-240)

5. Tips

Tips must be regarded as remuneration where, at the time of employment, both the employer and the employee regard the receipt of tips as part of the consideration for assuming employment. (BR-590)

Tips will be regarded as remuneration when they were in the contemplation of both employer and employee at the time of employment, even though the parties executed a written agreement setting forth the amount of wages to be paid but not mentioning tips. (BR-1794)

6. Bonus

A bonus given a worker by the employer upon separation is remuneration where bonus is given as payment for services previously rendered. (BR-208)

7. Room and Board

The value of room and board given by an employer to an employee as part of the consideration for services rendered must be included in the wage record. (BR-783)

IX. Reporting at Local Office

A claimant is, prima facie, ineligible with respect to any week in which he fails to report at the local employment office. (BR-52)

Claimant is ineligible where failure to report is due to inability to work. (BR-595)

Claimant is ineligible with respect to weeks in which he fails to report (BR-363) unless he can show good cause for failure and can prove ability to work and availability for work. (BR-1908)

X. Waiting Period

When claimant becomes unemployed in last week of a benefit year already fixed and is required to serve that week as a waiting period he will be required to serve a second waiting week after the conclusion of the benefit year before becoming eligible in a new benefit year. (AT-1690)

XI. Filing Claim

The filing of a claim is the basis for payment of benefits. Jurisdiction will not be assumed where no claim has been filed. (BR-140L)

Refusal by Commission's agents to accept a claim sought to be filed is regarded as filing. (AT-1765)

A claim for benefits with respect to a benefit year already in existence on the basis of a prior claim is void for benefits in the existing benefit year; but it may be regarded as a claim filed in advance for a later period. (BR-451)

XII. Ante-dating Claim

A claim for benefits cannot be antedated in the absence of mistake on the part of or caused or induced by the Commission. An individual who, through his own ignorance or neglect, fails to file his claim until the lapse of intervening calendar quarters makes it impossible to include within his base year the periods in which he has earned the requisite minimum must be held ineligible. (BR-55)

An individual who, because he expects to return to work, fails to file his benefit claim cannot have the claim antedated when he finds that his unemployment will extend for a longer period. (BR-563)

Where claimant's failure to file claim is shown to be due to erroneous information given him by agents of the Commission at the time of his attempt to file, claim will be accepted nunc pro tunc. (BR-1908)

B. DISQUALIFICATION FOR BENEFITS

I. Burden of Proof

If the claimant meets the requirements for eligibility for benefits he need not prove freedom from disqualification. The burden of proof is on the employer or the Deputy to sustain a disqualification. (BR-535)

All the circumstances of the case may be considered in reaching a determination. (BR-1806)

A disqualification cannot be sustained by statements made by an employer to the Benefit Bureau prior to the hearing and which are not proven by competent evidence. (BR-547)

II. Date of Disqualification

Disqualification commences as of the date of separation. Where the disqualification period (except in cases under Section 5(d)) fixed by statute expired prior to the date on which benefits were first payable in New Jersey or prior to the date of filing the claim, such disqualification cannot affect any weeks of unemployment thereafter. (BR-547)

III. Voluntary Quit

No disqualification arises unless the quitting of work is without good cause. (BR-35)

If the employer disputes claimant's contention that a wage reduction was the cause of voluntary quit, employer must present evidence to the contrary. (BR-473)

a. Good Cause; What Constitutes

1. Decrease in Earnings

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

A reduction of 20% in wages is good cause for leaving employment. (BR-539)

Where an employer makes a change in piece work rates which a worker honestly believes will result in a material reduction of his earnings, the worker has good cause for leaving his employment. (BR-65, BR-66)

A union member furnished the W.P.A. by a labor union as a non-relief skilled worker has good cause for leaving when his wages are reduced below the union scale. (BR-741)

Neglect of business by employer to the extent that it jeopardizes worker's position is good cause for leaving. (BR-540)

2. Injury to Health

Where work is of such a nature as to cause a nervouse breakdown, the claimant has good cause for leaving. (BR-1366)

Claimant did not leave his work voluntarily without good cause when his duties required him to lift heavy objects and he was found to be suffering from hernia. (BR-572)

Claimant is not disqualified for voluntarily leaving work without good cause where, after twenty-five years of steady employment with the same employer, his rate of pay has been reduced by more than one dollar a day although his earnings after the decrease were $6.00 per day. (BR-473)

An individual has good cause for leaving where the cumulative effect of an act required to be frequently repeated is physically injurious even though there would be no bad effect from a single performance of the act. (BR-1669)

3. Distance from Work

Removal of employer's establishment to a considerable distance from home of worker is good cause for leaving. (BR-7)

4. Overtime Required

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 individual compelled frequently to work fifteen hours a day without overtime pay has good cause for leaving. (BR-345)

5. Seeking Better Employment

Claimant is not disqualified for voluntary quit if she leaves her employment to get other employment at a wage increase of $5.00 per week, and is subsequently laid off. (BR-246)

A claimant has good cause for leaving employment where he has reasonable expectation of bettering his position. (BR-1104)

6. Embarrassment

A claimant does not voluntarily quit without good cause where she is pregnant and refuses to work in a large office where many outsiders and male salesmen cause her much embarrassment. (BR-527)

Embarrassment caused by the attitude of fellow-employees, coupled with hints by employer to resign, is good cause for a pregnant woman to leave work. (BR-1785)

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)

7. Marriage

Claimant is not disqualified because she leaves employment to be married, with knowledge that employer automatically dismisses married female employees. (BR-480)

8. Harrassment by Employer

Claimant is not disqualified for voluntary quit where the foreman caustically told claimant and other employees they could take a vacation and, after he stayed out one day, required him and others to bring in a doctor's certificate to show they were ill. (BR-536)

Where employer, through the actions of his foreman, leads his employees to believe they are laid off, they are not disqualified for benefits because of voluntary quit if they do not come to work. (BR-536)

Frequent and continued verbal tirades of employer toward claimant are sufficient justification for a voluntary quit and claimant is not disqualified for benefits. (BR-526)

An accusation of dishonesty by the employer made to an employee in connection w ith her work, if unjustified, is good cause for claimant leaving her employment. (BR-471)

It is "good cause" for claimant voluntarily leaving employment if, after employee carries out employer's instructions, employer upbraids him with a vile epithet. (BR-333)

A refusal to search a follow-employee is not misconduct; and a leaving of employment because of discipline imposed by the employer for refusal to do so is with good cause. (BR-1664)

9. Avoidance of Strike

No disqualification arises for voluntary quit where claimant left temporary employment on getting word that a strike was about to be called in the plant by a union of which he was not a member and in which he did not wish to participate. (BR-360)

10. Failure to Increase Pay

Failure of an employer to keep a promise to increase wages is good cause for leaving employment. (BR-546)

Failure by an employer to keep a promise of granting a promotion is good cause for leaving employment. (BR-1323)

11. Discharge

The failure of claimant to return to work when told by foreman of the employer that refusal to work overtime would result in discharge, constituted discharge of claimant rather than voluntary quit. (BR-380)

An extra worker who does not work regularly but is called in from time to time does not leave employment but is discharged when she takes a day off and, for that reason, is not recalled by the employer. (BR-548)

b. Without Good Cause

The mere fact that a particular type of work causes a woman to dirty her hands is not good cause for leaving where it appears that the work is not injurious to health. (BR-1228)

A worker who leaves his regular employment, without having any prospect of securing new work, due to a regular seasonal slack period which can be expected to end within a reasonable time, does not have good cause for leaving. (BR-1512)

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)

1. Evidence of Intent

Subsequent actions may prove intent of claimant at time of quitting and may negate allegation of good cause. (BR-508)

Action in later accepting same work as that voluntarily quit may, in the absence of satisfactory testimony to the contrary, indicate lack of good cause. (BR-459)

IV. Refusal to Accept Suitable Work

a. Notice Required

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 await receipt of notice that work is available, there is no refusal to accept work when such notice is not given. (BR-95)

Mere failure to seek work is not per se a refusal of work. (BR-480)

A bona fide effort to seek work is good evidence that there was no refusal of work. (BR-572)

b. Unsuitable Work

No disqualification where work is unsuitable. (BR-238)

1. Lower Earnings

Refusal of work in a lower grade than previously held and at materially lower salary is not refusal of suitable work. (BR-238)

There is no disqualification for refusal to accept work where wages would not overcome cost of transportation. (BR-470)

2. Expectancy of Other Work

A worker who refuses a new line of work because of reasonable expectation of returning shortly to his accustomed employment does not refuse suitable work. (BR-1790, BR-1791)

Claimant is not disqualified where refusal is due to a reasonable and honest expectation of early re-employment at former position. (BR-721)

3. Injury to Health

Excessive heat makes work unsuitable. (BR-1096)

4. Strike

Workers laid off indefinitely prior to a labor dispute stoppage do not refuse suitable work when they refuse to return during the stoppage. (BR-265L)

c. Suitable Work

An employee who gives an obviously ridiculous reason for not accepting employment which is suitable, where the task assigned does not involve a risk to the health, safety and morals of the claimant, is disqualified for benefits. (BR-510)

Claimant who refuses to accept machine work of the same kind she has been accustomed to doing for several years, on the ground that nervousness prevented her from performing the work and that she would be willing to accept work on a less active machine, is disqualified for benefits if she refuses to accept employment on a less active machine, even though she asserts her willingness to accept a different kind of employment. (BR-537)

A claimant who rejects work at the wage prevailing in the community and who has had no experience in or qualifications for more remunerative employment refuses suitable work. (BR-1305)

An electrician does not have good cause for refusing to do maintenance work, without cut in pay, where union rules permit. (BR-609)

d. Misconduct.

1. Intent

Misconduct must be intentional. (BR-570)

Inefficiency is not misconduct. (BR-218)

Mere failure to carry out certain instructions of the employer on a particular occasion, in the light of five years of satisfactory work for the same employer, is not misconduct sufficient to disqualify claimant. (BR-526)

There is no misconduct where worker is discharged for inefficiency without insubordination. (BR-481)

2. Mere Dispute or Protest

A dispute between a worker and his employer with respect to wages is not misconduct. (BR-65)

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 honest interest in his work leads him to resent unfair criticism by violent language, no other employees being present, is not guilty of misconduct connected with his work. (BR-169)

3. Failure to Obey Orders

A refusal to search a fellow-employee is not misconduct; and a leaving of employment because of discipline imposed by the employer for refusal to do so is with good cause. (BR-1664)

It is not misconduct to refuse to take the place of a discharged superior where such action might cause resentment by fellow workers. (BR-782)

4. Strike or Union Activity

It is not misconduct to go on strike. (BR-545)

A discharge for participation in a sitdown strike is a discharge for misconduct. (BR-287)

An employee who engages in union activities during working hours, contrary to the orders of his employer, is guilty of misconduct. (BR-510)

5. Connected with Work

Misconduct at place of employment but after hours and not in capacity of employee is not "connected with work." (BR-1799)

6. Burden of Proof

Employer's contention that claimant should be disqualified for intoxication while working, causing his discharge, must be proved by the employer, and if the employer does not appear to testify to the misconduct claimant will not be disqualified. (BR-150)

A charge of misconduct made by the employer must be substantiated by testimony in order to sustain a disqualification. (BR-471)

7. Effective Date

A disqualification for misconduct is effective on the date fixed by N.L.R.B. as date of discharge where this is not the actual date but wages were ordered paid for a period thereafter. (BR-166)

C. LABOR DISPUTE DISQUALIFICATIONS

"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. 5(d) Disqualification Applies Only to Employees

a. Existing Employment Relationship

Since disqualification arises only where unemployment is due to a stoppage which exists because of a labor dispute at establishment where claimant was last employed, a relationship of employment must be shown. 5(d) disqualification does not affect individuals, not yet employed, who engage in a controversy with a prospective employer. (BR-64L)

A stoppage due to picketing by non-employees is not due to a labor dispute (BR-254L) unless some employees at the establishment join. (BR-244L)

Picketing by discharged employees is not a labor dispute. (BR-195L)

1. Prior Severance

A worker who definitely severs his connection with his employer before the start of a labor dispute is not disqualified under 5(d). (BR-50)

A worker definitely discharged before the start of a labor dispute is not disqualified. (BR-67, BR-557)

2. Later Severance

A worker who, during the course of a labor dispute, definitely severs his employment relationship is not thereafter disqualified. (BR-4)

b. Prior Lay-Off or Quit

A worker definitely laid off or discharged for lack of work prior to the commencement of a labor dispute is not disqualified under Section 5(d). (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-62L)

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. (BR91L)

1. Evidence of Lay-Off

In determining whether there has been a discharge of workers by the employer during a labor dispute, evidence that the employer agreed to allow seniority rights to strikers over new workers, upon their return to work, showed an intention by the employer not to discharge the employees. (BR-177L)

A letter written by the employer to his workers pending a labor dispute, stating that they will be discharged unless they return to work on a certain date, is not conclusive evidence that the employees are discharged if they do not return at that time but may be rebutted by other facts. (BR-177L)

Payment of bonus by employer to employees after return from a strike, despite prior letters notifying employees of discharge, is evidence that the employees had not actually been discharged. (BR-177L)

c. Failure to Rehire

A claimant disqualified under Section 5 (d) but not rehired by the employer when the dispute is settled becomes eligible for benefits immediately upon settlement of the dispute, since his unemployment is no longer due to a stoppage existing because of the labor dispute. (BR-63)

d. Discharge

The bona fide discharge by an employer of all his employees, even though caused by labor difficulties, constitutes a complete severance of the employer-employee relationship. The workers are not disqualified under Section 5(d). (BR-195L)

The establishment of a picket line by discharged employees is not a labor dispute. (BR-195L)

Employees who remain at work during the existence of a labor dispute, but who are laid off by the employer because of their refusal to work at reduced wages, are not unemployed because of a labor dispute. (BR-138L)

e. Offer of Work

If, when a strike is called, the employer offers work to individuals who had been temporarily laid off for a fixed term but not discharged and they refuse to accept such work because of their participation in the strike, they are disqualified under Section 5(d). (BR-23L)

Workers laid off indefinitely are in the same position as discharged workers and are not disqualified if, due to a labor dispute, they do not accept new work with their former employer. (BR-265L)

II. Period of Disqualification ("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)

Although originally unemployment of claimants was due to a stoppage of work which existed because of a labor dispute, causing disqualification, such disqualification under Section 5(d) ceases when there no longer is any work available in the plant of the employer because of a withdrawal of orders by customers. (BR-161L)

A claimant ceases to be disqualified under Section 5(d) as soon as the stoppage of work ceases to be due to a labor dispute, even though he is not immediately recalled. (BR-123)

An individual whose unemployment is due to a stoppage of work which exists because of a labor dispute ceases to be disqualified when his employer hires on a permanent basis a new man in his place and publicly states that the claimant will never be rehired. (BR-369)

Waiting weeks may be served during a period of 5(d) disqualification. (BR-281L)

III. Unemployment Due to Stoppage of Work

1. Stoppage Is Basis For Disqualification

Workers are disqualified where it appears that a stoppage, existing because of a labor dispute, is the proximate cause of their unemployment. (BR-27L)

There is no disqualification without a stoppage, despite existence of labor dispute. (BR-5L, 13L, 18L, 82L, 114L)

a. Stoppage as Proximate Cause

It must appear that unemployment is due directly to stoppage to create disqualification. (BR-20L)

An individual laid off during a labor dispute for reasons not arising from the dispute is not disqualified. (BR-177)

1.* Lay-Off

A worker who remains at work during a labor dispute and is then sent home to await further orders because the employer decides, on account of the stoppage, to abandon all production is unemployed because of the stoppage, it being held that the stoppage is the proximate cause of his unemployment. (BR-738) Note: A dissenting opinion holds that the lay-off and not the stoppage is the proximate cause of unemployment.

An individual who works during a stoppage but is laid off for lack of work available is unemployed because of the lay-off and not because of the stoppage. (BR-463)

Where lay-off is clearly not due to stoppage there is no disqualification since the unemployment cannot be attributed to the stoppage. (BR-195)

2.* Change in Cause

A claimant who continues to work after the commencement of a labor dispute but who later joins the strikers is unemployed because of the stoppage which exists because of the labor dispute after quitting his employment. (BR-519)

3.* Return to Work

A claimant whose unemployment was due to a stoppage of work which existed because of a labor dispute is not relieved from disqualification by reason of the fact that he later returned to work before the labor dispute was settled. (BR-623)

4.* Passing Picket Line

An individual who becomes unemployed because he is unable to pass a picket line, although he desires to do so, is unemployed because of a stoppage of work which exists because of a labor dispute. (BR-745)

5.* Prior Unemployment

An individual who leaves employment for an indefinite period because of illness and who, on recovery, is not recalled to work, is not disqualified even though a labor dispute is then in progress, since his unemployment continues to be due to the original cause. (BR-747)

A worker discharged two months before commencement of a labor dispute is not disqualified during its continuance even though he participates. (BR-111)

6.* Sporadic Employment

Where an individual's employment has been sporadic and he has been accustomed to frequent lay-offs for lack of work, it will be presumed in the absence of evidence to the contrary that his lay-off two days before the commencement of a strike was because of lack of work and not in anticipation of the strike. (BR-1809)

7.* Subsequent Unemployment

An individual who works from the time of the commencement of a labor dispute until the employer permanently closes his plant is not disqualified thereafter even though the labor dispute has not been settled. (BR-12)

An individual who is discharged subsequent to the termination of a labor dispute is not disqualified under Section 5(d). (BR-185)

8.* Sympathetic Stoppage

The unemployment of workers is due to a stoppage of work which exists because of a labor dispute, when a central labor organization withdraws from work members of labor unions not originally engaged in a strike but whose members are withdrawn in sympathy with, and in assistance of, other striking workers. (BR-36L, BR-37L, BR-38L, BR-41L)

9.* Burden of Proof

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)

b. Stoppage Not Cause Where No Stoppage Exists

1.* New Workers Hired

Strikers are not disqualified under Section 5(d) if the employer maintains normal production by hiring other employees, despite the strike at his plant, for, there being no stoppage, the unemployment of the strikers is not due to a stoppage of work. (BR-193L)

2.* All Workers Discharged

The discharge by an employer of all his employees, even though caused by labor difficulties, constitutes a complete severance of the employer-employee relationship and does not create any disqualification under 5(d). (BR-195L)

c. Stoppage Outside Establishment

Employees of a construction contractor who have no dispute with their own employer but who are kept from working by reason of a strike at the plant where they were doing the construction work are not unemployed because of a labor dispute at the establishment where they were last employed. (BR-264L)

d. Lay-off as Cause

1.* Indefinite Lay-off

Workers who have been laid off indefinitely prior to a labor dispute stoppage are unemployed because of the lay-off and not because of the stoppage, and therefore are not disqualified, even though, subsequent to the stoppage, the employer offers to re-employ them and they refuse, since the offer is one of new employment and does not change the original cause of their existing unemployment. (BR-265L)

Where an individual's employment has been sporadic and he has been accustomed to frequent lay-offs for lack of work, it will be presumed in the absence of evidence to the contrary that his lay-off two days before the commencement of a strike was because of lack of work and not in anticipation of the strike. (BR-1809)

2.* Anticipatory Lay-off

Workers laid off by employers in anticipation of a stoppage of work, after the commencement of the labor dispute but before the actual commencement of the stoppage, are disqualified. (BR-240L)

3.* Subsequent Lay-off

A worker who is laid off after the termination of a labor dispute is not subject to disqualification. (BR-732)

4.* Prior Lay-off

An individual who is definitely laid off for lack of work for an indefinite term one day prior to the commencement of a labor dispute is unemployed because of the lay-off and not because of the stoppage of work which exists because of the labor dispute. (BR-17)

e. Recall to Work

1.* Notice Given

An individual who has been laid off prior to the occurrence of a labor dispute is disqualified for benefits from the date on which he has been instructed to return to work, if he finds that a labor dispute is in progress and he then refuses to report for work and participates in the labor dispute. (BR-1317)

A worker temporarily laid off prior to the commencement of a labor dispute becomes unemployed because of a stoppage which exists because of the labor dispute when he refuses to return to work upon being notified to do so. (BR-678)

2.* New Work

A refusal by workers, who have been indefinitely laid off, to return to work on a new type of work until their pay has been fixed in advance does not constitute a labor dispute. (BR-200L)

3.* Temporary Work

An individual who has been laid off prior to the commencement of a labor dispute and who, during the existence of a stoppage due to the labor dispute, is offered temporary work in a new capacity and who is unable to get through a picket line in front of the employer's establishment is not unemployed because of the stoppage of work. His unemployment continues to be due to the original layoff and the work offered him is new work which is not suitable. (BR-1360)

4.* Refusal to Return

A claimant who is laid off with definite instructions to return on a particular date is unemployed because of

a stoppage which exists because of a labor dispute if, because of a labor dispute arising during the period of his lay-off, he refuses to return when notified. (BR-578)

f. Prevention of Work

A prevention of the resumption of work after a lay-off is a stoppage of work. (BR-52L) (But see BR-60 and BR-265L)

The prevention of available production by refusal to continue at work constitutes a stoppage. (BR-109L)

Where the employer, a general contractor, temporarily laid off iron workers engaged in construction work until they were needed, and the workers refused to continue when called back, causing all work to stop, there was a stoppage because of a labor dispute. (BR-166L)

g. Replacement of Workers

1.* Places Filled

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

There is no stoppage if employer is able to maintain normal production by hiring other employees. (BR-193L) (BR-151L)

2.* Discharge of Workers

Discharge of all workers, on demand of a labor union, followed by rehiring of all willing to join the union and a continuance of normal production, does not constitute a stoppage. (BR-28L)

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

h. 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 about 50% of employees go on strike, causing a shut-down, there is a stoppage of work. (BR-171L)

Curtailment of production by more than 50% because of a strike is a stoppage of work. (BR-156L)

1.* Numbers Not Conclusive

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)

2.* One Shift Stopped

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-12L)

3.* Slight Delay

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)

4.* Resumption of Work

Where employer shuts down his plant to clean and repair equipment, and, upon resuming operations, a labor dispute causes 50% of the employees to refuse to work and to picket the plant, curtailing production by 50%, there is a stoppage due to a labor dispute. (BR-175L)

5.* Departmental Stoppage

A stoppage of work may exist when all the glaziers working for an employer engaged in the construction of metal store fronts go on strike, even though other workers employed by the same employer remain at work. (BR-125L)

Where some departments walk out while others remain at work, a stoppage may exist in the closed departments. (BR-87L)

i. Continued Production: Relation to Stoppage.

Maintenance of regular activity through normal means is prima facie evidence no stoppage exists. (BR-58L, BR-18L)

Partial continuance of production, an appreciable amount of available work being held up, does not prevent the existence of a stoppage. (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)

Where, despite a strike, employer was able to fill all orders which came in, there was no stoppage of work, even though the employer could have secured additional orders by solicitation but failed to do so. (BR-150L)

So long as the employer is able to process all available work, there is no stoppage. (BR-150L)

j. 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)

k. 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)

l. 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, BR-151L)

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 are replaced by union workers and production continues. (BR-28L)

m. 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)

Stoppage of work in the plant is not caused by a labor dispute where the employer curtailed production because of business slackness, although no renewal agreement of working conditions has been signed by employer and employees. (BR-14L)

Where employees had a long practice of continuing work although no new agreement had been reached with the employer, the curtailment of production for economic reasons is not a stoppage because of a labor dispute, even though demands had been made by workers prior to the stoppage. (BR-14L)

A strike of employees requiring the employer to shut down his plant at a time when production was sufficient to keep all employees busy was a stoppage because of a labor dispute so long as work remained available, even though subsequently the employer's production fell off to an extent when 20% of his employees could have handled the production. (BR-172L)

A stoppage of work on the part of employees of an electrical contractor, which is caused solely by the refusal of a customer to permit the continuance of work because of unsettled labor conditions in the industry, does not constitute a stoppage of work which exists because of a labor dispute. (BR-139L)

n. 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, BR-280L, BR-282L)

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)

o. Voluntary Shutdown

A cessation of work arrived at voluntarily by agreement between the employer and a labor union, without any pressure being exerted on either side, pending negotiations or a new contract does not constitute a stoppage of work which exists because of a labor dispute. (BR-104L) (BR-105L) (BR-106L) (BR-107L) (BR-108L) (BR-111L) (BR-112L)

A cessation of work caused by joint effort of contractor and his employees to secure better prices from jobber is not a stoppage because of a labor dispute. (BR-110L)

A voluntary closing of his plant by an employer, even though at the request of a labor union, does not constitute a stoppage of work which exists because of a labor dispute. (BR-116L) (BR-117L) (BR-118L) (BR-119L)

A cessation of work by mutual agreement between the employer and a labor union pending negotiation of a new contract does not constitute a stoppage of work which exists because of a labor dispute. (BR-146L)

2. Stoppage: What Constitutes

a. Work Must Be Available

Where no work would be available in any event, for reasons independent of labor dispute, there is no stoppage because of dispute. (BR-3L)

Where work is available but cannot be performed, because of labor dispute, there is a stoppage due to dispute. (BR-20L, 149L)

Where evidence is clear that work was available when strike was called and would have continued but for the strike, stoppage exists because of labor dispute. (BR-147L)

1.* Stoppage Measured by 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)

Testimony by an employer that all striking workers will be re-employed as soon as they consent to work is evidence, subject to rebuttal, that the employer has work available for his employees and that a stoppage of work exists. (BR-103L)

There is no stoppage of work under Section 5(d) where the work normally done by the workers of the employer is done by persons in the employ of customers instead of being given to the employer, and claimants are eligible for benefits although they are on strike. (BR-181L, 193L)

2.* Amount of Work Available

Where employer had enough work to keep employees busy at the time they walked out on strike and would have continued at work but for the strike, workers were disqualified due to stoppage existing because of a labor dispute. (BR-162L)

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)

A strike of employees, requiring the employer to shut down his plant at a time when production was sufficient to keep all employees busy, was a stoppage because of a labor dispute, so long as work was available, although subsequently the employer's work on hand fell off to an extent where 20% of his employees could have handled the production. (BR-172L)

Although available work falls off in anticipation of a strike, the calling of the strike prior to any discharge by the employer constitutes a stoppage caused by a labor dispute if work is available when stoppage occurs. (BR-145L)

3.* Filling Orders from Stock

A stoppage exists where all production is stopped even though the employer continues to fill orders from existing stocks on hand. (BR-155L, 272L)

b. Available Work Must be Stopped

So long as a substantial amount of work which is available for striking workers is stopped, a stoppage of work exists. (BR-199L)

Where work is available but cannot be performed because of the existence of a strike, there is a stoppage of work which exists because of a labor dispute. (BR-149L)

1.* Cessation of Work

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

2.* Amount of Work Affected

A strike causing about 80% of production workers to stop work on a basis operation and causing employer to stop production is a stoppage because of a labor dispute. (BR-157L)

3.* Stoppage of Production

A stoppage of work exists when production is halted, even though the employer continues to fill all orders from stock on hand. (BR-272L)

4.* Majority Walkout

A walkout by a majority of workers is prima facie evidence of a stoppage of work. (BR-174L, 178L, 211L)

5.* No Stoppage Where Work Continues

There is no stoppage of work where production is not materially reduced. (BR-134L, 180L, 192L, 216L)

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 stoppage of work may not exist even though more than twenty percent of the employees refuse to work provided there is no material interference with production. (BR-217L)

There is no stoppage of work where an employer is able to maintain normal service without the use of emergency measures in spite of the existence of a labor dispute. (BR-76L)

No stoppage of work exists where production is maintained at between eighty and ninety percent of normal. (BR-93L)

6.* Attempt to Continue Work

An attempt by the employer to continue work does not prevent the existence of a stoppage where there is a material reduction in normal productivity. (BR-203L)

7.* Voluntary Suspension of Work

A voluntary suspension of work by the employer during the course of a labor dispute, which stoppage can be shown to have been caused by other reasons, is not a stoppage which exists because of a labor dispute. (BR-127L, 130L, 132L)

8.* Amount of Work Stopped

A decrease of 50% in production, provided work remains available, constitutes a stoppage. (BR-94L)

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

A strike affecting 39% of production workers, and reducing production 50%, is a stoppage because of a labor dispute, although employer does not completely close down his shop. (BR-163L)

9.* Change In Amount

Where, during the course of a labor dispute, production is for a time maintained at better than eighty per cent of normal but later falls below that point, the disqualification of workers commences only when it appears that production has been sufficiently curtailed to constitute an appreciable stoppage of work. (BR-126L)

c. Party Causing Stoppage Irrelevant

A shutdown of the plant by the employer constitutes a stoppage of work. (BR-15L) (However, it may not be due to a labor dispute. BR-165L)

Where an employer, as a matter of economic policy and not as an effort to win a dispute, voluntarily closes his plant because of difference with a labor union regarding the employment of workers, and refuses to negotiate further with the union, the stoppage of work does not exist because of a labor dispute. (BR-165L)

Where a strike was called by employees because of the rejection by the employer of the demands made by workers, and the employer subsequently filed a petition in bankruptcy, employees were not disqualified after the date of the filing of the petition in bankruptcy. (BR-170L)

d. Termination of Stoppage

1.* Production Resumed

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

A stoppage terminates as soon as production of all available work is resumed, even though this is less than the normal amount of production prior to labor dispute. (BR-9L)

2.*Work Not Available

Stoppage ends when employer no longer has work available. (BR-34L)

3.*Work Farmed Out

A stoppage of work is not ended when an employer farms out his work as an emergency measure during the course of a labor dispute. (BR-210L)

4.* Failure to Get Material

The failure of an employer to bring in new raw material during the course of a labor dispute does not put an end to the stoppage of work which exists because of the labor dispute where it appears that work was actually available and that the failure to bring in new material was due entirely to the existence of the labor dispute. (BR-212L)

5.* Diversion to Other Plants

Diversion of work to other plants as an emergency measure does not end a stoppage. (BR-223L)

6. Change In Cause

A claimant ceases to be disqualified under Section 5(d) as soon as the stoppage ceases to be due to a labor dispute, even though he is not immediately recalled. (BR-123)

An individual who works from the time of the commencement of a labor dispute until the employer permanently closes his plant is not disqualified thereafter even though the labor dispute has not been settled. (BR-12)

7. Settlement of Dispute

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

IV. Labor Dispute as Cause of Stoppage

1. Proximate Cause

Justification cannot be considered. (BR-27L)

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 may show that a stoppage alleged by employer to be due to a labor dispute is, in fact, due to economic conditions and not to the dispute, even though it is admitted that dispute exists. (BR-27L)

a. Work not Available

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)

Stoppage is not due to labor dispute where the only cause is refusal by jobber to supply work to contractor. (BR-115L)

b. Stoppage Without Dispute

A stoppage of work to secure information from the employer regarding his future intentions toward employees in the plant where claimants were employed is not due to a labor dispute. (BR-137L)

Where a union merely makes certain demands upon the employer and takes no action towards a strike, there is no labor dispute causing a stoppage. (BR-165L)

Where an employer does not hire his workers direct, but workers are furnished by a labor union on request, the refusal of said labor union to furnish workers does not constitute a labor dispute. (BR-201L)

c. Refusal of Wage Cut

A stoppage of work exists because of a labor dispute when employees go on strike because of refusal to accept a decrease in wages. (BR-135L)

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, BR-172L)

a. Intervening Bankruptcy

Where a strike was called by employees because of the rejection by the employer of the demands made by workers, and the employer subsequently filed a petition in bankruptcy, employees ceased to be disqualified after the date of the filing of the petition in bankruptcy. (BR-170L)

b. Refusal to Return

Employees who are temporarily laid off because of lack of work are disqualified from the time when they are notified to return and refuse to do so. (BR-166L)

3. Notice to Workers.

Where workers were laid off and it is not shown that they were informed of 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 workers, the stoppage 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)

Where employer was notified that the union had cancelled its contract with him and that the workers had taken a vote to strike, he was justified in closing his plant, which manufactured perishable goods, and the resulting stoppage existed because of a labor dispute. (BR-154L)

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 employer due to justified fear of violence by strikers is a stoppage which exists because of a labor dispute. (BR-86L)

7. Refusal to Work

A stoppage caused by the refusal of employees to work on goods furnished by a jobber against whom they have a grievance exists because of a labor dispute. (BR-43L, BR-48L, BR-49L)

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

Employees laid off prior to a strike, who, when recalled, refuse to return because of a dispute over terms of employment, are unemployed due to a stoppage because of a labor dispute from date of refusal to return. (BR-173L) (But see BR-265L)

A stoppage exists because of a labor dispute when employees strike because of a wage cut. (BR-135L)

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 labor dispute, jobber refuses work to contractor, consequent stoppage at establishment of contractor is not due to labor dispute. (BR-60L)

Where, during a labor dispute, jobber withdraws all materials from contractor, leaving the latter without work available, and it does not appear that withdrawal was due to labor dispute, the stoppage ceases to be due to labor dispute on date of withdrawal of materials. Burden of proof is on employer to show that they were withdrawn by reason of the labor dispute. (BR-81L)

There is no labor dispute where the only cause of stoppage is a refusal by a jobber to supply work to a contractor employing under-paid help. (BR-115L)

A stoppage caused solely by refusal of customer to permit contractor to continue work because of labor conditions is not a stoppage because of labor dispute. (BR-139L)

Where a jobber refuses to ship goods to a contractor because of a dispute between the jobber and a labor union, no dispute existing between the labor union and the contractor, the consequent stoppage of work is not due to a labor dispute at the establishment of the contractor. (BR-83L)

The withholding of work by jobber from contractor, even though at request of labor union, is not a stoppage because of a labor dispute. (BR-101L)

10. Abandonment of Business

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)

a. Anticipatory Liquidation

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)

b. Resultant Liquidation

Where a threatened strike is a contributing cause for permanent liquidation of business but liquidation commences before walkout consequent stoppage is not due to labor dispute. (BR-280L)

c. Bankruptcy

Where a strike was called by employees because of employer's rejection of their demands, and subsequently the employer filed a petition in bankruptcy, employees were not disqualified from the date of the filing of the petition in bankruptcy, since employer was unable to furnish work from the date of the filing. (BR-170L, 282L)

11. Voluntary Shutdown

a. Pending Contract

A cessation of work arrived at voluntarily by agreement between the employer and a labor union, without any pressure being exerted on either side, pending negotiations for a new contract, does not constitute a stoppage of work which exists because of a labor dispute. (BR-104L, BR-105L, BR-107L, BR-106L, BR-108L, BR-111L, BR-112L, BR-146L)

b. No Dispute

A voluntary closing of his plant by an employer, even though at the request of a labor union, does not constitute a stoppage of work which exists because of a labor dispute. (BR-116L, BR-117L, BR-118L, BR-119L)

A voluntary cessation of work caused by a joint effort of a dress contractor and his employees to secure better prices from a jobber does not constitute a stoppage of work which exists because of a labor dispute. (BR-110L)

A voluntary shutdown 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)

c. Outside Dispute

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)

Where no dispute exists between an employer and his employees but, because of pressure by an outside labor union which demands the displacement of said employees and their replacement by its members, the employer is compelled to stop work, such cessation of work is not a stoppage of work which exists because of a labor dispute at the establishment where claimant was last employed. (BR-194L)

d. Shutdown Following Dispute

Where an employer voluntarily ceases operations, following a dispute with a labor union, and does not negotiate further with the union, but it is clear that this was not done to enforce his demands, the stoppage does not exist because of a labor dispute. (BR-165L)

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)

A stoppage of work exists because of a labor dispute where all production is stopped by reason of a strike, even though the employer continues to fill orders from existing stocks. (BR-155L)

There is no stoppage of work where an employer is able to maintain normal service without the use of emergency measures in spite of the existence of a labor dispute. (BR-76L)

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-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 does not exist because of a labor dispute. (BR-59L)

A stoppage caused by refusal of jobber to furnish material on account of belief that the possibility of a labor dispute may delay deliveries is not a stoppage because of a labor dispute. (BR-71L)

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, consequont stoppage exists because of labor dispute. (BR-78L)

c. Fear of Violence.

The shutdown 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)

V. Labor Dispute; What Constitutes

1. Controversy Must Exist

If there is no controversy between employer and workers there is no stoppage because of labor dispute. (BR-137L)

Any contest between an employer and his workers with respect to the terms, conditions or tenure of employment is a labor dispute. (BR-98L)

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

A stoppage to secure information from employer regarding future intentions toward employees is not due to a labor dispute. (BR-137L)

Where a jobber refuses to ship goods to a contractor because of a dispute between the jobber and a labor union, no dispute existing between the labor union and the contractor, the consequent stoppage of work is not due to a labor dispute at the establishment of the contractor. (BR-831)

A labor dispute may exist in spite of the fact that there has been no actual rejection of demands by a labor union where the strike is called because of the labor union's objection to further delay. (BR-266L)

A refusal by workers who have been laid off to start a new type of work until their pay has been fixed in advance is not a labor dispute. (BR-200L)

a. Refusal to Work

A refusal by workers to perform services pending negotiations of their demands constitutes a stoppage of work which exists because of a labor dispute. (BR-98L)

Where employer does not hire workers direct, but workers are furnished by labor union on request, the refusal of union to furnish workers is not a labor dispute. (BR-201L)

b. Willingness to Work

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 because of a labor dispute. (BR-84L)

A stoppage of work on the part of employees of an electrical contractor which is caused solely by the refusal of a customer to permit the continuance of work because of unsettled labor conditions in the industry, does not constitute a stoppage of work which exists because of a labor dispute. (BR-139L)

c. New Work

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)

d. Demand for Union Recognition

A strike called to determine which union should be the bargaining agency is a labor dispute. (BR-92L, 176L)

A strike caused by an effort to compel the recognition of a labor union is a labor dispute. (BR-220L, 244L, 252L)

e. Demand for Contract

A strike caused by a demand for a new contract is a labor dispute. (BR-245L)

Expiration of union contract prior to walkout does not prevent walkout from being a labor dispute. (BR-208L)

f. Demands by Employer

A strike caused by the employer's demand for punishment of individuals responsible for a prior strike is a labor dispute. (BR-249L)

Shutdown of the plant by employer in anticipation of a general labor dispute which, at the time of the shutdown, involved only 17% of the employees, is not stoppage of work caused by a labor dispute. (BR-12L)

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)

g. Demand for Wages Due

A labor dispute exists where workers strike to secure wages due them but unpaid. (BR-274L)

h. Controversy Between Employer and Employees

Picketing of a plant by non-employees in an effort to force recognition of a labor union is not a labor dispute. (BR-254L)

Where some employees join in the picketing, there is a labor dispute from the time when they begin to participate. (BR-244L)

2. Demand and Refusal

a. Negotiations Without Dispute

Where union merely negotiates with employer, but takes no action toward a strike, there is no labor dispute. (BR-165L)

b. Refusal to Work

A concerted refusal by workers to perform work on material furnished by a jobber disapproved by their labor union constitutes a labor dispute. (BR-70L)

Refusal by workers, at the command of their business agent, to perform work on goods furnished by an objectionable contractor constitutes a stoppage of work which exists because of a labor dispute, even though the workers do not have any other disagreement with their own employer. (BR-31L) (BR-70L)

A stoppage of work which is caused by the refusal of a jobber to furnish material on account of his belief that the possibility of a labor dispute may delay deliveries is not a stoppage of work which exists because of a labor dispute. (BR-71L)

c. Action as Refusal

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

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

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

A strike called because the employer refuses to sign a new contract is a labor dispute. (BR-69L, 190L, 191L)

d. Failure to Act as Refusal

Failure of employer to pay wages due when demanded, because of his financial inability to do so, is tantamount to a refusal. (BR-274L)

Failure of employer to sign contract within time is a refusal. (BR-266L)

e. Demand by Employer; Strike

A demand by an employer for a reduction of wages, followed by a concerted refusal of workers to perform services, constitutes a stoppage of work which exists because of a labor dispute. (BR-74L)

A cessation of work caused by refusal of employer to permit employees to work until labor union has signed a contract constitutes a stoppage which exists because of a labor dispute, provided the employer actually has work available. (BR-167L)

f. Demand by Workers; Strike

A dispute between workers and employer with respect to processes of manufacture is a labor dispute. (BR-63L)

A strike called to determine which union should be the bargaining agency is a labor dispute. (BR-92L, 176L)

A stoppage of work which exists because of a labor dispute occurs when workers go on strike because of the refusal of the employer to sign a new agreement. (BR-159L)

3. Lockout

A lockout 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.)

A strike called by the employer of a contractor in an effort to compel work done by the employees of contractor's principal to be turned over to them is a labor dispute. (BR-205L)

4. Jurisdictional Dispute

A jurisdictional strike is a labor dispute. (BR-66L)

a. Recognition of Union

A refusal of employees to work unless a particular union is recognized as their bargaining agent constitutes a stoppage of work which exists because of a labor dispute.(BR-124L)

b. Rival Unions

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)

c. Organization of Plant

A cessation of work caused by a strike called in order to compel the union organization of the employer's plant is a stoppage of work which exists because of a labor dispute. (BR-183L, 184L, 185L, 186L, 187L, 188L, 189L)

d. Closed Shop

A strike for a closed shop is a labor dispute.(BR-202L)

Signing by employer of closed shop contract with one of two unions is a discharge of members of other unions. Refusal of discharged individuals to work is not a labor dispute. (BR-129L)

e. Refusal to Work With Non-Union Men

A strike called by union workers because of their refusal to work alongside non-union workers is a labor dispute. (BR-204L)

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)

A cessation of work caused by the refusal of the employer to permit his employees to work until their labor union has signed a contract constitutes a stoppage of work which exists because of a labor dispute, provided the employer actually has work available. (BR-167L)

A strike to enforce immediate payment of wages due is a labor dispute. (BR-274L)

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)

The establishment of a picket line by discharged employees is not a labor dispute. (BR-195L)

7. Refusal to Work

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)

Where a new type of work is entered upon, and, owing to absence of plant manager, new terms with respect thereto have not been agreed upon, the failure of the workers to perform services during the manager's absence does not constitute a stoppage caused by a labor dispute. (BR-40L)

a. Enforcement of Demands

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, employer transferred workers to shipping department constitutes a labor dispute. (BR-79L)

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

b. Recognition of Union

A refusal to work prior to the recognition of a particular labor union as the collective bargaining agency for all workers in an establishment is a labor dispute. (BR-22L)

Refusal of workers who have been laid off for a definite period to accept a recall to work because of the refusal by the employer to accept their demands for recognition of a specific labor union as bargaining agent constitutes a stoppage of work which exists because of a labor dispute. (BR-8L)

c. Enforcement of Objections

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)

Refusal by workers, at the command of their business agent, to perform work on goods furnished by an objectionable contractor constitutes a stoppage of work which exists because of a labor dispute, even though the workers do not have any other disagreement with their own employer. (BR-31L)

A demand by an employer for a reduction of wages, followed by a concerted refusal of workers to perform services, constitutes a stoppage of work which exists because of a labor dispute. (BR-74L)

d. Recall to Work

Where laborers were laid off for a definite period prior to a strike, but refused to return when requested to do so by the employer, they were disqualified from benefits because of a labor dispute from the date of their refusal to return. (BR-173L)

e. Negotiations Pending

A refusal by workers to perform services pending negotiation of their demands constitutes a stoppage of work which exists because of a labor dispute. (BR-98L)

8. Justification

Justification for a labor dispute cannot be considered in determining whether or not the participants are disqualified for benefits. (BR-27L, 148L)

A strike to enforce payment of wages due is a labor dispute. (BR-274L)

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)

Shutdown of the plant by employer in anticipation of a general labor dispute which, at the time of the shutdown, involved only 17% of the employees, is not a stoppage of work caused by a labor dispute. (BR-12L)

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, 179L, 206L, 207L)

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)

Members of subsidiary labor unions who go on strike at the call of a central labor organization are unemployed due to a stoppage of work which exists because of a labor dispute and are participants in said dispute. (BR-67L, BR-131L, BR-136L)

A strike by workers in protest against the discharge of one of their number is a labor dispute. (BR-196L)

A refusal to work until individuals discharged by employer are reinstated is a labor dispute. (BR-57L)

A refusal by workers to perform services on a specified type of work or on certain types of equipment is 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)

A strike called to enforce a closed shop constitutes a labor dispute. (BR-202L)

A strike called by union workers because of their refusal to work alongside non-union workers is a labor dispute. (BR-204L)

A stoppage of work which exists because of a labor dispute occurs when workers go on strike because of the refusal of the employer to sign a new agreement. (BR-159L)

A cessation of work caused by the refusal of the employer to permit his employees to work until the labor union has signed a contract, constitutes a stoppage of work which exists because of a labor dispute, provided the employer actually has work available. (BR-167L)

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. (BR-12L)

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)

A strike by workers in protest against the discharge of one of their number constitutes a labor dispute. (BR-196L)

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)

11. Recognition of Labor Union

A refusal of employees to work unless a particular union is recognized as their bargaining agent constitutes a stoppage of work which exists because of a labor dispute. (BR-124L)

12. Demand for Wages Due

A strike to compel payment of wages due is a labor dispute. (BR-274L)

VI. Dispute at Establishment Where Last Employed

1. Applies Only to Employees

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)

2. Different Establishments

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)

A strike called by a labor union which has members employed in a number of plants and which causes a stoppage of work in each of these plants constitutes a stoppage of work which exists because of a labor dispute at the establishment where workers were last employed. (BR-122L, 123L)

Where two corporations occupy the same building but one union represents the workers of both corporations and calls a strike, the labor dispute is at the establishment where the workers were last employed. (BR-213L)

Where an employer is engaged on several jobs outside his establishment and a union representing all his employees calls a strike affecting all the jobs, the labor dispute is at the establishment where the workers are employed. (BR-246L)

A strike called by a labor union which has members employed in a number of plants and which causes a stoppage of work in each of these plants constitutes a stoppage of work which exists because of a labor dispute. (BR-122L, 123L)

A stoppage of work may exist when all the glaziers working for an employer engaged in the construction of metal store fronts go on strike, even though other workers employed by the same employer may remain at work. (BR-125L)

3. Outside Dispute

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)

Where different subcontractors take different parts of one complete job but each subcontractor has control over its own employees, the place of work of each subcontractor must be regarded as his establishment; and disputes between one employer and other employers or outside labor unions cannot be regarded as labor disputes at the establishment where claimant was last employed. (BR-194L)

Employees of a contractor who have no dispute with their own employer but are kept from work by a strike at the plant where they were doing construction work are not unemployed because of a labor dispute at the establishment where they were last employed. (BR-264L)

Where a jobber refuses to ship goods to a contractor because of a dispute between the jobber and a labor union, no dispute existing between the labor union and the contractor, the consequent stoppage of work is not due to a labor dispute in the establishment of the contractor. (BR-83L)

4. Dispute in Another State

A claimant who loses employment in another state because of a labor dispute is disqualified for benefits with respect to previous earnings in New Jersey during the continuance of the stoppage of work which exists because of the labor dispute in the other state. (BR-126)

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 rehired by the employer when the dispute is settled becomes eligible for benefits immediately upon termination of the stoppage. (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)

Where employees went on strike, and shortly thereafter there was no work available because of a withdrawal of orders by customers until strikers returned to work, claimants were disqualified only so long as work was available for them. (BR-161L)

Claimant who, after becoming unemployed as a result of a labor dispute, is rehired by the same employer but is later laid off for lack of work, is eligible for benefits after the date he is laid off. (BR-593, 594)

A strike being called, and all production stopped, a few workers who continued to work on back orders, not requiring production, and who were laid off for refusal to work machines after back orders were filled, were disqualified from the time of their refusal for participation in the labor dispute. (BR-160L)

VIII. Relief From Disqualification

1. Burden of Proof on Claimant

Where unemployment is due to a stoppage which exists because of a labor dispute, the burden is on the claimant to show reason for exemption from disqualification. (BR-120L, 131L, 493)

2. Lay-Off

An individual laid off for lack of work is not disqualified even though a labor dispute occurs at employer's plant during period of his unemployment. (BR-159)

An individual who is working during the course of a labor dispute and is laid off 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)

3. Termination of Stoppage

Where, during a labor dispute, the employer liquidates business and lays off employees, their unemployment is not due to a stoppage because of a labor dispute. (BR-221)

4. Refusal to Participate

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)

5. Lack of Knowledge

Lack of knowledge that a labor dispute exists does not relieve an individual from disqualification when he leaves his work in concert with others at the commencement of a strike and is a member of a grade or class of workers of which some members are participating in the strike. (BR-15)

6. Membership in Grade or Class

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) despite non-membership in labor union involved. (BR-1)

Participation compelled by force is not itself ground for disqualification; but where individual is a member of a grade or class some members of which are voluntarily participating, he is disqualified. (BR-634)

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)

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)

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. Grade or Class

1.* Type of Work

Where another member of the group to which a claimant admits that he belongs is a participant in a labor dispute, the claimant is disqualified, even though he did not himself participate. (BR-1052)

Membership in a grade or class depends upon the type of work done by the individual. A "utility man" used in production work may be in a grade or class separate from other production workers. (Aurich v. Kieckhefer Container Co., 125 N.J.L. 55)

Quarry workers and road pavers, working for the same employer, constitute separate grades or classes of workers. (BR-182L)

Factory workers may be regarded as being in a separate grade or class of workers from truck drivers and helpers. (BR-197L, BR-209L)

A. Production Workers

Non-production workers may be regarded as being in a separate grade or class from production workers.

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 which has caused a complete cessation of operations at the plant. (BR-19L)

Furnace men constitute a separate grade or class from production workers. (BR-657)

A floor boy is in a different grade or class from ordinary production workers. (BR-18, BR-19, BR-20, BR-21)

The production department and the finishing department constitute separate grades or classes of workers. (BR-251L)

A construction worker is not in the same grade or class with production workers. (BR-856)

B. Maintenance Workers

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)

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)

Furnace men constitute a separate grade or class from production workers. (BR-621)

Boiler repair men constitute a separate grade or class from production workers. (BR-657)

An automotive repair man is in a separate grade or class from production workers. (BR-662)

C. Sales Force

A salesman is in a different grade or class from production workers. (BR-120)

D. Office Force

An office worker is in a different grade or class from production workers. (BR-137, BR-852)

A shipping clerk is in a different grade or class from production workers. (BR-223)

E. Different Work in Same Department

A bookkeeper may constitute a separate grade or class from other office workers. (BR-491)

A stenographer is in a separate grade or class of workers from clerks in the same department.(BR-498)

Workers are not disqualified because of participation in a labor dispute by a person nominally attached to their department where it appears that this individual's duties are entirely different from theirs. (BR-1148)

F. Difference Must Be Real

Green sand core makers and sand core makers are not in different grades or classes. (BR-559)

A bench molder in an iron foundry is not in a sepa rate grade or class of workers from other molders in the establishment. (BR-461)

G. Crew of One Machine

Where several individuals constitute a crew in the operation of a single machine, they are all in the same grade or class even though each does not perform exactly the same duties as the others. (BR-807)

A loader on a machine, which requires the services of a crew of several persons, is not in a separate grade or class from others working on the same machine, even though his duties are different from those of other members of the crew. (BR-1012)

2.* Union Eligibility

An individual who is not permitted to vote in a union recognition election, because of his classification, is not in the same grade or class with workers who are permitted to vote. (BR-533)

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, BR-591)

A claimant who is related to an officer in the employer company, and who is refused membership in the union of production workers for that reason is not a member of the same grade or class of workers as the others and is not disqualified from benefits although himself engaged in production. (BR-718)

A handyman who is not eligible for membership in a plumbers' union is in a separate grade or class from journeymen plumbers. (BR-2)

A helper who is not allowed to vote at union meetings is not in the same grade or class with journeymen. (BR-376)

3.* Supervisory Capacity

Superintendents and office workers constitute a grade or class of workers separate from that composed of production workers. (BR-96L)

A foreman is not in the same grade or class of workers with workers under him. (BR-328)

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 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)

An assistant foreman is in a separate grade or class from workers under him. (BR-250)

4.* Degree of Skill

The amount of skill and training required for a particular job must be considered in determining whether or not individuals employed on that job are members of a separate grade or class of workers. (BR-728, BR-729)

Highly skilled workers and semi-skilled workers may be regarded as being in separate grades or classes. (BR-158L)

An apprentice is not in the same grade or class of workers with journeymen. (BR-214L)

Yarn examiners, being highly skilled, constitute a separate grade or class from other workers in a textile mill. (BR-649)

5.* Confidential Position

A secretary to the president of a corporation is in a separate grade or class from other office workers. (BR-497)

6.*Separate Departments

Workers in separate departments may be regarded as members of separate grades or classes. (BR-169L)

A strike in a single department may disqualify only workers employed in that department. (BR-250L)

Where some departments walk out and others remain at work, employees in the striking departments are disqualified for benefits, while the others are not disqualified provided there is a real difference between the types of work performed in different departments. (BR-87L)

Day shift and night shift workers may be regarded as belonging to separate grades or classes of workers. (BR-113L, BR-133L)

The production department and the finishing department constitute separate grades or classes of workers. (BR-251L)

An office worker is in a different grade or class from production workers. (BR-137)

7.* Only Worker in Plant

An individual who is the only person in the establishment performing a particular type of work constitutes, by himself, a separate grade or class of worker. (BR-16)

Where office workers were involved in a labor dispute, the only clerk in the sales department charged with the maintenance of sales records was in a separate grade or class. (BR-511)

The only color mixer employed at a plant is in a separate grade or class from the other workers. (BR-128)

The only toolmaker in a plant constitutes a separate grade or class of worker. (BR-454)

8.*Casual Worker

An officer of an employer corporation who sometimes helps out in production work, this being purely incidental to his regular duties, is not in the same grade or class with regular production workers. (BR-513)

7. Participation

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 their disqualification ceases with the settlement of the dispute, provided their unemployment is no longer due thereto. (BR-51L)

Strikers who cannot be recalled to work, because of economic conditions, after settlement of a labor dispute are no longer participating. (BR-73L)

A member of a labor union is not disqualified for benefits even though his unemployment is due to a stoppage of work which exists because of a labor dispute if he does not participate in or finance and is not directly interested in the dispute and is not a member of a grade or class of workers any member of which participates, etc. therein. (BR-330) (The above decision was later reversed on other grounds.)

a. Separate Group

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

Where only one group goes on strike, causing a complete stoppage at the establishment, other groups thrown out of work by such stoppage but which are not participating, etc., in the dispute are not disqualified. (BR-53L)

b. Separate Establishments

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. Sympathy Strike

The unemployment of workers is due to a stoppage of work which exists because of a labor dispute, when a central labor organization withdraws from work, members of labor unions not originally engaged in a strike but whose members are withdrawn in sympathy with, and in assistance of other striking workers. (BR-36L, BR-37L, BR-38L, BR-41L)

Members of a labor union who walk out in sympathy with striking members of another labor union become participants in the strike by their action. (BR-206L, 207L)

d. Reason Immaterial

A claimant who participated in a labor dispute by joining pickets from time to time, was disqualified although his reason for so doing was fear of being called a "scab." (BR-582)

e. Evidence of Participation

Acceptance of food baskets by an individual from a labor union which is conducting a strike at the establishment where he was last employed does not make him a participant in the strike where it appears that the baskets were given as a matter of charity and no assistance in the strike was required as a condition of receipt. (BR-809)

8. Directly Interested

A claimant who is directly interested in a labor dispute is disqualified even though not a participant. (BR-1097)

a. Overt Act

An individual is not directly interested in a labor dispute where he is not a member of the labor union making demands, even though he might be benefited by the granting of such demands, where he makes no overt act to indicate his approval thereof. (BR-324; affirmed by N.J. Supreme Court in Aurich v. Kieckhefer Container Co., 125 N.J.L. 55)

b. Union As Agent

Every member of a labor union which makes demands with respect to terms of employment is directly interested in a resulting labor dispute, unless he disassociates himself from the actions of the union. (BR-808)

A member of a labor union who, during the course of a labor dispute, attends meetings of the said labor union, even though he does not vote, is directly interested in the labor dispute conducted by the said union. (BR-1158)

c. Revocation of Agency

A member of a labor union who disclaims in writing any interest in demands made it is not bound by its actions and may be held to be not directly interested in the labor dispute. (BR-1031)

A member of a labor union is directly interested in a labor dispute conducted by his union even though he votes against the strike. (BR-1125)

A member of a labor union who makes a public, effective revocation of the union's agency is not directly interested. (BR-892, 905) Note: Dissenting opinion filed with respect to what constitutes an effective revocation of the agency.

9. Union Membership

A member of a labor union is not disqualified for benefits even though his unemployment is due to a stoppage of work which exists because of a labor dispute if he does not participate in or finance and is not directly interested in the dispute and is not a member of a grade or class of workers any member of which participates, etc. therein. (BR-330) (The above decision was later reversed on other grounds.)

Every member of a labor union, which makes demands with respect to terms of employment, is directly interested in a resulting labor dispute, unless he disassociates himself from the actions of the union. (BR-808)

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A member of a labor union who, during the course of a labor dispute, attends meetings of the said labor union, even though he does not vote, is directly interested in the labor dispute conducted by the said union. (BR-1158)

A member of a labor union is directly interested in a labor dispute conducted by his union even though he votes against the strike. (BR-1125)

10. Layoff

a. Severance of Relationship

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)

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)

b. Discharge

Selection of one of two competing labor unions by an employer amounts to a discharge of the employees who belong to the union not selected by the employer. (BR-129L)

Discharge of employees because of a slack season prior to a strike is not stoppage of work caused by a labor dispute and does not disqualify claimants. (BR-152L)

c. Replacement

Where employer, after due notice to employees who were on strike and who refused to return to work, replaced them with other employees, there was a severance from employment and the disqualification was removed. (BR-175L)

d. Work During Dispute

Employees who remain at work during the existence of a labor dispute, but who are laid off by the employer because of their refusal to work at reduced wages, are not unemployed because of a labor dispute. (BR-138L)

e. New Work

Workers definitely laid off prior to a labor dispute are not disqualified even though they refuse, because of the strike, to accept new work offered them by their former employer. (BR-265L)

f. Anticipatory Lay-off

Workers laid off by employers in anticipation of a stoppage of work, after the commencement of the labor dispute but before the actual commencement of the stoppage, are disqualified. (BR-240L)

g. Prior Lay-off

A worker, who is laid off indefinitely two days before the commencement of a labor dispute, is not subject to disqualification under Section 5(d). (BR-796)

11. 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 not members of a grade or class participating, etc. in a labor dispute are not disqualified under Section 5(d) even though their failure to report for work is due to fear of violence by pickets. (BR-88L)

12. Sympathy Strike

Where all the employees in a plant strike to force a wage increase which applies to only one department, all the workers are participating in the labor dispute. (BR-26L)

Workers who strike in sympathy with members of another group or class 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)

13. 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; and those discharged are also disqualified where they refuse to recognize the discharge and join the strike. (BR-12L)

14. 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)

15. New Employment

An individual who voluntarily leaves his employment, permanently severing the employer-employee relationship, during the course of a labor dispute in which he is not participating is not thereafter subject to disqualification under Section 5(d). (BR-4)

An individual who leaves his employment during the course of a labor dispute and later secures new employment elsewhere on a permanent basis is not, after leaving, subject to disqualification under Section 5(d) during a period of unemployment during the course of the labor dispute. (BR-6)

An individual's disqualification under Section 5(d) terminates as soon as he accepts bona fide permanent employment with another employer, even though he loses this employment during the continuance of the original labor dispute and later returns to employment with his first employer. (BR-998)

IX. Unemployment Not Subject to Disqualification

1. Lay-Off

A worker who is laid off for lack of work prior to or 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, 195)

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. Securing New Employment

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 lay-off 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)

b. Replacement of Workers

Where employer, after due notice to employees who were on strike and who refused to return to work, replaced them with other employees, there was a severance from employment and the disqualification was removed. (BR-175L)

c. Subsequent Lay-Off

A worker who is laid off after the termination of a labor dispute is not subject to disqualification under Section 5(d). (BR-732)

d. Recall to Work

Notice by employer that unless the employees on strike returned to work they would be replaced by other workers is not, per se, a voluntary discharge, even though the employees did not return to work at that date. (BR-163L)

e. Refusal to Work

Employees who remain at work during the existence of a labor dispute, but who are laid off by the employer because of their refusal to work at reduced wages, are not unemployed because of a labor dispute. (BR-138L)

2. New Employment

A claimant who, after he becomes unemployed as a result of a stoppage of work existing because of a labor dispute, is rehired by the same employer, but is subsequently laid off for lack of work, is eligible for benefits from the time he is laid off. (BR-594)

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 bona fide employment with another employer under circumstances which make it 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)

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)

a. Refusal to Recognize Discharge.

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)

b. Prior Discharge

A claimant who is discharged two months prior to the occurrence of a labor dispute and who remains unemployed during the said labor dispute is not subject to disqualification under Section 5(d). (BR-11)

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)

Discharge of employees because of a slack season, prior to a strike, is not stoppage of work caused by a labor dispute and does not disqualify claimants. (BR-152L)

c. Failure to Re-Employ

Where workers who were engaged in a labor dispute are not re-employed 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)

d. Separation During Strike

Employees discharged from employment pending or during a strike are not disqualified from benefits from the date of the discharge. (BR-166L)

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)

Where work continues to be available for some workers during the course of a labor dispute, an employee who has been working after the commencement of the dispute, but who leaves because of illness, is not subject to disqualification. (BR-32)

e. Subsequent Discharge

An individual who is discharged subsequent to the termination of a labor dispute is not disqualified under Section 5(d). (BR-185)

f. Evidence of Discharge

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, 166L)

Employees who are temporarily laid off because of lack of work are disqualified from the date of recall by the employer if they refuse to return to work. (BR-166L)

a. Cause of Unemployment

An individual who leaves his employment for an indefinite period because of illness and who, on his recovery, is not recalled to work by the employer is not disqualified even though a labor dispute is then in progress, since his unemployment continues to be due to the original cause. (BR-474)

A worker who is laid off temporarily prior to the commencement of a labor dispute becomes unemployed because of a stoppage which exists because of the labor dispute when he refuses to return to work upon being notified to do so. (BR-678)

An individual who has been laid off prior to the occurrence of a labor dispute is disqualified for benefits from the date on which he has been instructed to return to work if he finds that a labor dispute is in progress and he then refuses to report for work and participates in the labor dispute. (BR-1317)

b. Picket Line

An individual who has been laid off prior to the commencement of a labor dispute and who, during the existence of a stoppage due to the labor dispute, is offered temporary work in a new capacity and who is unable to get through a picket line in front of the employer's establishment is not unemployed because of the stoppage of work. His unemployment continues to be due to the original layoff and the work offered him is new work which is not suitable. (BR-1360)

c. Severance of Relationship

Workers indefinitely laid off prior to a labor dispute stoppage do not refuse suitable work when they refuse to return during the stoppage where it appears that the employment relationship was severed before the stoppage. (BR-265L)

X. Return to Work

A claimant whose unemployment was due to a stoppage of work which existed because of a labor dispute is not relieved from disqualification with respect to unemployment during the stoppage by reason of the fact that he returned to work before the labor dispute was settled. (BR-623)

XI. Replacement of Worker

An individual whose unemployment is due to a stoppage of work which exists because of a labor dispute ceases to be disqualified when his employer hires on a permanent basis a new man in his place and publicly states that the claimant will never be rehired. (BR-369)

XII. General

1. Evidence

The payment or denial of benefits must be based upon the actual facts of a situation; and the Board of Review is not precluded from examining the facts of the case because one of the parties has made an untrue statement. (BR-201L)

2. Effect of Decision

A general decision by the Board of Review with respect to a stoppage of work at a particular plant does not preclude the right of any individual worker to be heard separately. (BR-153L)

XIII. Jurisdiction

The Board of Review will not take jurisdiction with respect to a labor dispute where no claims for benefits have been filed for workers. (BR-140L)

XIV. Misconduct

Participation in a strike is not misconduct. (BR-545)

Participation in a sit-down strike is misconduct. (BR-287)

D. PROCEDURE

1. Right to Appeal

A claimant who is erroneously denied benefits by the deputy may apply to the Board of Review for relief. (BR-22, BR-23)

An appeal must be accepted and filed even though it appears baseless. (AT-1765)

2. Reporting at Local Office

A claimant is not eligible for any week in which he fails to report to the local employment office unless he proves availability for work by other means. (BR-1616)

3. Failure to Appear

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

4. Withdrawal of Claim

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

5. Power to Reopen

The Board of Review may reopen a decision more than twenty days after the date thereof on a showing of mistake of fact or law. (BR-227)

6. Direct Appeal

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

7. Labor Dispute

No claimant is barred, by reason of a decision in a mass labor dispute case, from an individual hearing. (BR-153L)

8. Ante-dating Claim

A claim will not be antedated (BR-55) except in case of error attributable to the agency. (BR-1616)

A claim for benefits will not be predated merely because a claimant did not know at an earlier date that he could file a claim. (BR-1318)

9. Waiver of Benefits

The fact that claimant, as president of the corporation organized and doing business in New Jersey, signed an agreement that individuals of the corporation would file claims in New York would not bar him from filing a claim for benefits in New Jersey. (BR-303)

10. Dismissal of Appeal

An appeal may be dismissed when the claimant fails to prosecute. (BR-51)

Where a claimant fails to prosecute his appeal, the case may be returned to the deputy without determination without depriving the claimant of his right to appeal from a subsequent determination by the deputy. (BR-446)

11. Burden of Proof on Appeal

A decision of an Appeal Tribunal will be affirmed where an appellant fails to produce any testimony which would tend to controvert the decision. (BR-344)

When a rehearing is granted by the Board of Review after the rendition of a decision, the burden of proof is on the applicant for the rehearing to show that the original decision was incorrect. (BR-385)

A letter written by a claimant is not sufficient grounds for a decision. The decision must be based on testimony. (BR-804)

The burden of proof is on the deputy, in an appeal taken by him to show the incorrectness of an Appeal Tribunal decision, and if the deputy fails to sustain this burden, the Appeal Tribunal decision will be affirmed. (BR-1841)

Findings of fact made by an Appeal Tribunal will not be set aside except on the basis of conclusive evidence. (BR-1420)

12. Failure to File Claim

A claimant who fails to file a claim for benefits because he expects to return to work within a short period cannot have his claim predated when it turns out that his unemployment will continue for a longer period. (BR-563)

13. Conflict of Laws

The Board of Review is not bound by rulings of Federal agencies issued subsequent to the enactment of the Unemployment Compensation Law of this State. (BR-1338) (BR-1328)

The Board of Review does not have the power to set aside a regulation of the Unemployment Compensation Commission of New Jersey simply because it is "arbitrary or unreasonable" where the Statute has given the Commission the power to make such regulations. (BR-1430)

A state agency is not bound by an act of Congress which is unconstitutional; and the Board of Review may order the payment of benefits where it appears that such act of Congress is unconstitutional. (BR-1322)

A national bank is not acting as an instrumentality of the United States when it continues to operate an apartment house which it has taken under foreclosure proceedings. (BR-731)

14. Benefit Weeks

Benefit weeks become fixed as soon as a benefit year has been established, and they may not thereafter be changed. (BR-1430)

RULES WITH RESPECT TO APPEALS AND APPEAL PROCEDURE

A. Organization of the Board of Review.

1. 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.

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

3. 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 majority thereof. In the event of the absence or 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 absence or incapacity.

B. Organization of Appeal Tribunals.

4. (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.

5. 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 4 (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.

6. 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 5, shall be heard and decided by a single member Tribunal.

C. Appeals to Appeal Tribunals.

7. 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 Board of Review or 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 transmitted forthwith to the Deputy

and 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. 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.

9. 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 relevent 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.

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.

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 of Review.

D. Appeals to the Board of Review.

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 Board of Review or 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 transmitted forthwith to the Deputy and 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.

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 12 shall file, with the Board of Review or 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 transmitted forthwith to the Deputy and 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 appear 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 five 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.

14. Hearing of appeals.

(a) Except as provided in rule 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, as provided in rule 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.

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 12 and 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 14 for the hearing of appeals by the Board of Review.

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.

(b) 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 rules 4, 5, 6, and 7 for the hearing of appeals before appeal tribunals.

17. Determination of Appeals.

(a) Following the conclusion of any hearing on an appeal, the Board of Review shall immediately announce its findings of fact and its decision with respect to the appeal. The decision shall be in writing and shall be signed by at least a majority of the Board of Review. 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. A quorum of the Board of Review must be present when any decision is voted.

(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.

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 in response to a subpoena ad testificandum and mileage at the rate of five cents per mile from the residence of the witness to the place of hearing and return.

(c) Witness fees at the rate of $1.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of five cents per mile from the residence of the witness to the place of hearing and return.

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.

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 with respect to any claim for benefits shall not exceed 10% of the amount involved in the claim (or $24.00); such fee shall not exceed ten dollars except in cases where more than one hearing is held, but shall never exceed more than ten per cent of the amount involved in the claim.

(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.

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.