

NEW YORK STATE BAR ASSOCIATION



# NYSBA

## Unemployment Insurance Benefits

**Friday, March 20, 2015**

New York State Bar Association  
Albany, NY 12207

**Presented by**

The New York State Bar Association  
The Albany County Bar Association  
and  
Legal Aid Society of Northeastern New York



**UNEMPLOYMENT INSURANCE BENEFITS  
REPRESENTING THE CLAIMANT  
March 20, 2015**

**AGENDA**

8:30 a.m. to 9:00 a.m.	<b><i>Registration</i></b>	
9:00 a.m. to 10:15 a.m.	<b><i>Unemployment Insurance General Overview</i></b>	<b>Paul Mason, Esq. Director of Adjudication &amp; Determination</b> CLE: 1.5 Hour Skills
10:15 a.m. to 11:05 a.m.	<b><i>Basics of Unemployment Disqualifications: Misconduct Reasons for Voluntary Quit Willful Misrepresentation and Overpayment</i></b>	<b>Matthew Tierney, Principal ALJ Christopher Tate, Principal ALJ</b> CLE: 1.0 Hour Skills
11:05 a.m. to 11:15 a.m.	<b><i>Break</i></b>	
11:15 a.m. to 12:30 p.m.	<b><i>Basics of Unemployment Disqualifications: Misconduct Reasons for Voluntary Quit Willful Misrepresentation &amp; Overpayment</i></b>	<b>Matthew Tierney, Principal ALJ Christopher Tate, Principal ALJ</b> CLE: 1.0 Hour Skills, 0.5 Hour Ethics
12:30 p.m. to 1:30 p.m.	<b><i>Lunch</i></b>	
1:30 p.m. to 1:55 p.m.	<b><i>Preparing for Your Hearing</i></b>	<b>Joseph Dougherty, Esq. Brian Hodgdon, Esq.</b> CLE: 0.5 Hour Skills
1:55 p.m. to 2:30 p.m.	<b><i>Mock Unemployment Hearing</i></b>	<b>Panel Presenters</b> CLE: 0.5 Hour Skills
2:30 p.m. to 2:55 p.m.	<b><i>Perspective from the Bench and Appeals</i></b>	<b>Matthew Tierney, Principal ALJ</b> CLE: 0.5 Hour Ethics
2:55 p.m. to 3:30 p.m.	<b><i>Q&amp;A</i></b>	
3:30 p.m. to 4:00 p.m.	<b><i>Closings/Evaluations</i></b>	



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New York State Bar Association**

# **Representing the Claimant**

## **PowerPoint**



**UNEMPLOYMENT  
INSURANCE**  
Representing the Claimant  
March 20, 2015  
**WELCOME**

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Presenters

**PAUL MASON, DIRECTOR OF  
ADJUDICATION & DETERMINATION**

**CHRISTOPHER TATE, PRINCIPAL JUDGE**

**MATTHEW TIERNEY, PRINCIPAL JUDGE**

**JOSEPH DOUGHERTY, ESQUIRE**

**BRIAN R. HODGDON, ESQUIRE**

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**Unemployment Insurance  
Overview**

- Brief History
- The Basics
- Eligibility/Separation issues
- Challenging adverse determinations
- Resources

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### Brief History

- New Deal 1935
- Federal-State Program
- Federal Requirements
  - Payments When Due
  - Fair Hearings
- California Department of HR Development v. Java, 402 U.S. 121 (1971)
  - Claims Filing and Hearing Standards

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### What IS UI?

- Temporary income for eligible workers unemployed through no fault of their own
- Attachment to workforce
- Employer Funded

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### How Does One Qualify?

- Must have earnings in at least two calendar quarters.
- Highest quarter must be minimum of \$1,900.
  - January 1, 2015
- Total base period wages must equal 1½ times the highest quarter wages
- Covered employment
- Unreported or underreported wages

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### What Is The Base Period?

- Basic: the first four of the last five completed calendar quarters prior to the calendar quarter in which your claim begins; or
- Alternate: the first four completed calendar quarters immediately prior to the calendar quarter in which your claim begins.

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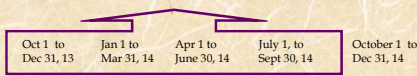
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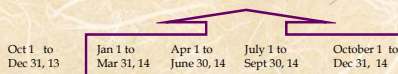
### Establishing the Base Period for Qualifying

First four of the last five completed calendar quarters  
Basic Condition Base Period



Unemployed as of March 20, 2015  
Incomplete Quarter - Unusable  
(Jan 1, 2015 - March 31, 2015 Quarter)

Alternate Base Period



Unemployed as of March 20, 2015  
Incomplete Quarter - Unusable  
(Jan 1, 2015 - March 31, 2015 Quarter)

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### What is the Rate?

- The rate is 1/26th of the high quarter wages to a maximum of \$420. \$10,920 high quarter.
- If the high quarter is \$3,575 or less, the rate is 1/25th of the high quarter wages
- Minimum rate \$100
- If a claimant has earnings in only 2 or 3 base periods (or alternate base period) quarters, the benefit rate is the average of the two high quarters.

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### How Long Does It Last?

- 26 full payments or their equivalent.
- Claim open for one year (benefit year)
- Additional weeks of benefits available in periods of high unemployment

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### Filing a Claim

**Through IVR - Interactive Voice Response**

- Claims may be filed by telephone, in English or Spanish, through an automated IVR system. If additional information is required, the claim remains "Partial" until the claimant speaks with a TCC agent.
- The "partial claim" will be stored in our system; **the claimant will be transferred to the next available agent or must call back** during the same week, no later than Friday.

**Through Internet**

- Claims may also be filed over the Internet, in English or in Spanish. Most are completed without the assistance of a TCC Agent. The claimant will see a Confirmation page, with a Confirmation number showing that the claim is complete and additional steps for claiming benefits.
- If additional information is required, the claim remains "partial" - the claimant is instructed on the website to contact the TCC by phone that same week in order to complete the claim process.
- When a claim is filed on the web, the claimant can complete any questionnaires on-line immediately, rather than waiting for the forms to come in the mail and returning them.

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### Filing A Claim

- An Original Claim (OC) must be filed before a determination can be made on the claimant's Entitlement and Eligibility.
- BEST DONE ONLINE AT [WWW.LABOR.NY.GOV](http://WWW.LABOR.NY.GOV)
  - 7:30AM-7:30PM MONDAY – THURSDAY
  - 7:30AM-5:00PM FRIDAY
  - ALL DAY SATURDAY
  - SUNDAY UNTIL 7PM
- TOLL-FREE TELEPHONE MONDAY-FRIDAY 8AM-5PM
  - NYS STATE RESIDENTS: 1-888-209-8124
  - OUT-OF-STATE RESIDENTS: 1-877-358-5306

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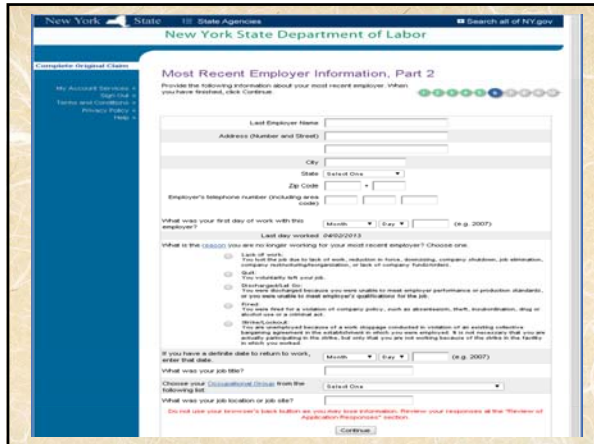
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### Services For LEP Claimants & The Hearing Impaired

- The TCC toll-free number has an up-front language selection menu. There is staff proficient in Spanish, Mandarin and Cantonese.
- For other languages, TCC agents can instantly set up a 3 way conference call with our professional interpretation service, interpretalk.
- The UI Division issues claimant information booklets in the 12 languages most used in NYS.
- Hearing impaired individuals assisted by another person can call the TCC at a specially designated toll free number (1-888-783-1370);
- If using tty/tdd, they can call a relay operator first at 1-800-662-1220, and ask the operator to call the telephone CLAIMS CENTER at 1-888-783-1370.

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### What Happens After OC Is Filed?

**Claimant handbook**

- IVR filers will receive by mail
- On-line filers have option to read on-line or receive by mail.
- Claimants are advised they must read handbook to understand their rights and responsibilities.
- Available in 12 languages and Braille
- Claimants are deemed to have constructive knowledge of contents

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### What Happens After OC Is Filed?

#### Monetary Determination

Completed claims automatically generate:

- Monetary determination (of claimant’s entitlement)
  - Lists employment and earnings reported
  - Advises claimant of weekly benefit rate
  - Provides opportunity to request reconsideration if wages are wrong or employers are missing
    - Can raise if cash wages not reported
  - Hearing rights included in all determinations
- Notices to all potentially chargeable employers
- Not notice of final approval of benefits but that you meet the employment and earnings needed

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### What Happens After OC Is Filed?

#### QUESTIONNAIRES FOR ADJUDICATING ISSUES

- Responses to original claim questions triggers issues
  - Both claimant and employer sent questionnaires
- IVR filers are automatically mailed questionnaires related to any identified issues
- On-line filers have option to complete questionnaires online or have them automatically mailed.
- Additional questionnaires may be mailed manually by staff to claimants and/or employers through letter generator
- Questionnaires may relate to separation-related or other issues.
- Additional contacts may be made if necessary.

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### Notices of Determination

- Fact-Finding and Adjudications
- Notice of Determination: (Gives the disposition of the claim)
  - Denied, you quit your job without good cause
  - Denied, you were discharged for misconduct
  - Denied, you are not available for work
- Must provide legal basis and specific reason
- Hearing rights

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### Results

- Claims with no issues are paid immediately after the claimant certifies to the first compensable week.
- Claims with issues are paid when the issue is resolved or the claimant is advised in writing why benefits can't be allowed.

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### How Does One Qualify For Weekly Payments?

- One must be totally unemployed on any day one receives benefit credit.
- One must be ready, willing, and able to work.
- Each day of work or unable to work reduces payment by 1/4.
- One must be actively seeking work
- One must certify to these requirements each week

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### Weekly Certification



- Each week the claimant must participate in a certification session, by automated tel-service system, online or mail
- The claimant is asked a series of questions relating to eligibility (availability, earnings, training, job refusal, etc.)
- The system processes one week's information at a time. Contact must occur each week following the one to be claimed
- Contacts are made Monday Through Friday From 7:30 a.m. Until midnight or Saturday from 12:01 a.m. until Sunday at midnight. Contacts made on Sunday are for the week ending that day
- Web and tel certifications made before 5:30 pm will generate a benefit payment on the next business day

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**Weekly Certification**  
 7:30 AM until Midnight Mon.-Fri  
 Sat. 12:01- Midnight Sunday

**1-888-581-5812**

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7:30 AM until Midnight Mon. - Fri.  
 Sat. 12:01 AM - Midnight Sunday

[http://www.labor.ny.gov/ui/how\\_to\\_file\\_claim.shtm](http://www.labor.ny.gov/ui/how_to_file_claim.shtm)

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Also, certification coupons are made available for claiming benefits by mail. Coupons are in claimant handbooks or may be requested through the telephone call center

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The screenshot shows the 'Unemployment Insurance Benefits Online' page with the 'Work and Earning Status' section. It contains a list of six questions with radio buttons and dropdown menus for selection. The questions are:
 

- During the week ending 1/4/2015, did you refuse any job offer or referral? (Yes/No)
- How many days did you work, including self-employment, during the week ending 1/4/2015? (Choose)
- Excluding earnings from self-employment, did you earn more than \$420? (Yes/No/NA)
- How many days were you NOT ready, willing, and able to work? (Choose)
- How many days were you owed vacation pay or did you receive vacation pay? (Choose)
- How many days were you owed holiday pay or did you receive holiday pay? (Choose)
- Have you returned to work full time? (Yes/No)

 A 'Continue' button is located at the bottom of the form.

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**Disqualifications**

- Misconduct
- Voluntarily quit without good cause or without a "compelling reason"
- Refusal to accept new job
- Failure to conduct work search
- Workers who lose a job under disqualifying conditions must work at a subsequent job and earn 10 times their benefit rate to become eligible for UI
- Claimants must earn 10 times their benefit rate

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## Voluntary Quit



UI Law Section 593.1

UI eligibility requires a good reason for quitting (A reason that may or may not be related to the job)

Claimant must

1) Make the case that a compelling reason existed

Or

2) Have good cause as defined in the UI law

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## Voluntary Separation

- In 2009, Section 593.1 of the UI Law includes reasons that constitute good cause to include any compelling family reason such as:
  - Fear for safety to self or other family members due to domestic violence situations
  - Care for a disabled relative for a period longer than the employer can grant leave
  - Following a spouse who obtains employment outside of a reasonable commuting distance

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## Misconduct In Connection With Employment



Section 593.3

The term "misconduct in connection with employment" is not defined in the statute. However, the Court of Appeals has indicated that "misconduct" is any volitional act or omission that is detrimental to an employer's interests.

Subsequent Appeal Board decisions have indicated that "misconduct" may include acts or omissions off the job as well as on the job, if adverse effect on the employer is demonstrated.

Note: Wages cannot be used if a determination is made

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## Criminal Misconduct

Section 593.4

- Commission of a felony
- Not necessarily with employer
- Affects employer's reputation
- One-year disqualification
- Wages cannot be used if a determination is made

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## Looking for Work

**Work Search Record**

**Name** \_\_\_\_\_ **Unit No.** \_\_\_\_\_

**Address** \_\_\_\_\_ **City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_

**Phone** \_\_\_\_\_

**Employer** \_\_\_\_\_ **Address** \_\_\_\_\_ **City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_

**Phone** \_\_\_\_\_

Date	Activity	Result	Employer	Address	City	State	Zip

- Claimants must seek "suitable work." That is, work in the claimant's recent occupations
- Claimant must be actively engaged in systematic and sustained work search and keep records
- Claimants are required to accept employment that pays the prevailing wage for similar work even if this is less than the claimant earned on the last job or is less than her/his desired salary
- Claimant must be "ready, willing and able" to work

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## Work Search Standards

- Claimants must be engaged in systematic and sustained efforts to find work and provide proof of such efforts.
- Regulations specify weekly work search requirements, exceptions and consequences for failing to comply.
- Random audits will be conducted on work search documentation.

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**“Good cause” for refusal IS defined in the statute (Section 593.2)**

- “No refusal to accept employment shall be deemed without good cause...if,”
- Would interfere with union membership or violate a collective bargaining agreement,
- There is a strike, lockout or other industrial controversy in the establishment,
- The offered work is an unreasonable distance
- Wages, compensation, hours or conditions offered are substantially less favorable to the claimant than those prevailing for similar work in the locality.

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**Refusal Of Employment: Basic Principle**

If a refusal issue arises at any time during a claim there are certain conditions to be satisfied before a claimant may be disqualified. The individual who refuses employment must be a claimant on the day of the refusal, there must be an unconditional offer of a specific job and the claimant has to actually refuse to accept the job not just express reservations about the job.

After receiving 10 full weeks of benefits, a claimant may be referred to and be required to accept employment in a broad range of occupations if the claimant is capable of performing the work. However, the job must pay the prevailing wage and pay at least 80% of the claimant’s base period high quarter wages.

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**PREVAILING WAGE**

In the Matter of Marsh: “refusal is with good cause if the offered wages are more than 10% below a prevailing rate established on the basis of a weighted average of the wages received by the middle 50% of workers in the occupation.”

- Based on yearly Occupational Employment Statistics survey of employers
- Established for local areas
- “UI Cutoff Wage” = 10% below the prevailing wage
- GO TO: <http://www.labor.ny.gov/stats/uiwages.shtm>

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### DETERMINING THE "PREVAILING WAGE"

- HIGH wage: \$12.00 per hour
- MIDDLE wage: \$10.00 per hour
- LOW wage: \$ 8.00 per hour

A claimant would NOT have good cause to refuse (based on wages) at \$9.00 per hour and up.

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### Availability and Capability: Basic Principles

The Unemployment Insurance Law imposes conditions for eligibility for benefits when considering availability and capability:

- 1.) The claimant must be "capable of work". That is, the claimant must possess the physical and mental ability to perform work; and
- 2.) The claimant must be "ready, willing and able to work in his usual employment or in any other for which he is reasonably fitted by training and experience". Claimants who met this condition are considered to be "available" for work.
- 3.) Non- citizens must provide employment authorization document(s) issued by the US Department of Homeland Security in order to be considered available for work.

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### Required Orientation

Employment Services (DEWS) mails the claimant a notice stating the date, time and location of the required orientation session.

Work search requirements are explained

- Suitability and capability
- Prevailing wage and how and where to access data
- Reasonable travel and commuting time and distance
- The effect on benefit claims for refusals based on salary and/or travel distance
- Reemployment Information
- Failure to report may result in delay or disqualification of benefits until report

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## LACK OF TOTAL UNEMPLOYMENT

- Cannot be employed on any part of any day
- Covered or non-covered employment
- Don't have to receive income

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## Other issues on qualifying

### Dismissal/Severance pay

- If a claimant is determined to have dismissal/severance pay that is greater than the maximum benefit rate, he or she would not be eligible for benefits.

### Pensions

- Unemployment benefits will be reduced 100% if the claimant is collecting a pension from a base period employer who contributed to the pension regardless of whether the claimant contributed.

### Requalification for benefits for a new claim

- A claimant must earn 10 times his or her previous weekly benefit rate to re-qualify for UI benefits.

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## Willful Misrepresentations

### **Overpayments and penalties**

- A claimant who makes a willful misrepresentation or false statement will be required to pay back the overpayment, will be charged forfeit days on future UI benefits, and will also be charged a 15% monetary penalty on the overpayment.

### **Civil actions and judgments to recover overpayments**

- The Department may collect willful benefit overpayments by bringing a civil action or by seeking a judgment by a simplified administrative procedure.
- The statute for filing a judgment requires certain notice to the claimant, including proof the claimant responded.

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**Section 597.3 Limitations on Review of Determinations**

Any determination regarding a benefit claim may, **in the absence of fraud or willful misrepresentation**, be reviewed only within one year from the date it is issued because of new or corrected information, or, *if the review is based thereon, within six months from a retroactive payment of remuneration*, provided that no decision on the merits of the case has been made upon hearing or appeal.

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**Section 597.4 Effect of Review (Overpayments)**

4. Effect of review. Whenever a new determination in accordance with the preceding subdivision or a decision by a referee, the appeal board, or a court results in a decrease or denial of benefits previously allowed, such new determination or decision, *unless it shall be based upon a retroactive payment of remuneration*, shall not affect the rights to any benefits already paid under the authority of the prior determination or decision provided they were accepted by the claimant in good faith and the claimant did not make any false statement or representation and did not willfully conceal any pertinent fact in connection with his or her claim for benefits.

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**What If I Disagree With The Outcome?**

- Section 620 - Any party affected by a determination has the right to request a hearing before an Administrative Law Judge.
- Section 621 - Law Judge decisions can be appealed to Appeal Board (20 days).
- Section 624 - Appeal Board decisions can be taken to the Appellate Division of the State Supreme Court (30 days).
- Sole and exclusive remedy

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## Hearings

- All Notices of Determination contain information and instructions for requesting a hearing.
- The Claimant Handbook also advises claimants of their hearing rights and how to request a hearing.
- Three parties:
  - Commissioner of Labor
  - Claimant
  - Employer

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## Employer Protests

### What is a TCC424.2 ?

TCC 424.2 is a notice sent to employers when their hearing request does not state the grounds of their objection to the claimant's eligibility in sufficient detail. It:

- Advises employer this could limit the issues they may raise during the hearing
- Allows 10 days for an employer to respond before the hearing is forwarded to ASO

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## Hearings

**IMPORTANT:** If the claimant remains unemployed while the hearing is pending, the claimant must continue the weekly certification process by calling the Tel-Service line or certifying online or by coupon. A claimant who wins the decision will be paid only for the weeks that were properly claimed and for which the claimant met all eligibility requirements.

Parties will receive "Notice of Hearing" with case number, location, name of judge, issues, and other information.

The date of the hearing is usually set for 5 to 7 days from the date the notice is received

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**Useful Links**

- NYS Department of Labor: <http://www.labor.ny.gov/>
- Unemployment Insurance Website: <http://www.labor.ny.gov/unemploymentassistance.shtm>
- How to file a UI claim: [http://www.labor.ny.gov/ui/how\\_to\\_file\\_claim.shtm](http://www.labor.ny.gov/ui/how_to_file_claim.shtm)
- Prevailing Wage data: <http://www.labor.ny.gov/stats/uiwages.shtm>
- Interpretation Service Index- Benefit Claims <http://www.labor.ny.gov/ui/aso/interpservice.shtm>
- Filing a claim for unpaid wages: <http://www.labor.ny.gov/workerprotection/laborstandards/workprot/lsdists.shtm>
- UI hearing publications for claimants <http://labor.ny.gov/formsdocs/ui/TC424B.pdf> and <http://labor.ny.gov/formsdocs/ui/TC424A.pdf>

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**From the Appeal Board's website:**

- NYS UI Appeal Board Home page: <http://www.labor.ny.gov/ui-appeal/index.asp>
- Appeal Board Rules and Regs: <http://www.labor.ny.gov/ui-appeal/pdf/appeal-board-rules-and-regulations.pdf>
- The Hearing Process: Frequently Asked Questions: <http://www.labor.ny.gov/ui/claimantinfo/hearingprocess.shtm>
- Q&A about UI Hearings: <http://labor.ny.gov/formsdocs/ui/TC424B.pdf>

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**Materials**

- Claimant Information Booklet
- Notices: Benefit Rate, and Non-Entitlement
- Notices: Disqualification, and Eligibility
- Notice of Administrative Law Judge Hearing
- Decisions: Administrative Law Judge, Appeal Board
- Paul Mason – Telephone (518) 457-4120

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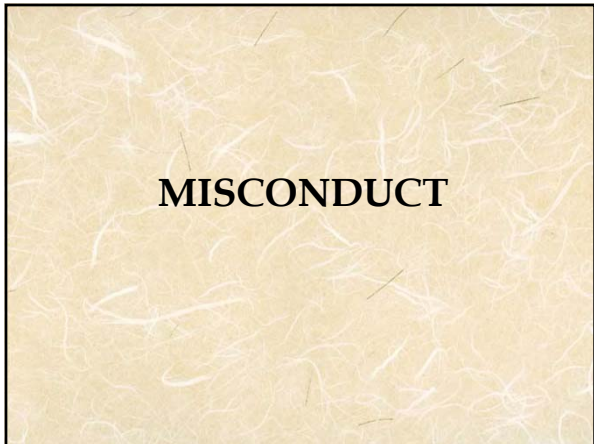
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## Hearings

Hearings held at locations called "hearing sections"  
 Buffalo - Rochester - Syracuse - Troy - White Plains -  
 Brooklyn - Manhattan- Hauppauge - Garden City

The claimant's place of work determines location - claimant lives in Long Island and last job was in Brooklyn = Bond Street/Brooklyn site

A list of authorized claimant representatives may be obtained from the UI Appeal Board.

The Department of Labor sends the claimant's case file to the hearing site and the file should be reviewed by the claimant and representative before the hearing

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## Hearings

The claimant written hearing request must be postmarked within 30 days of the mailing date of the Notice of Determination, and mailed to:

NYS Dep't of Labor  
 PO Box 15131  
 Albany, NY 12212-5131

Sample Request: I have received the Notice of Determination dated January 10, 2005. I disagree with the determination, and I am writing to request a hearing. I will need an interpreter...

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### LABOR LAW SECTION 593. DISQUALIFICATION FOR BENEFITS.

3. No days of total unemployment shall be deemed to occur after a claimant lost employment through misconduct in connection with his employment until he or she has subsequently worked in employment and earned remuneration at least equal to ten times his or her weekly benefit rate.

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**THE INITIAL DETERMINATION OF DISQUALIFICATION:**

EXAMPLES OF FACTUAL BASES:

“You were discharged for being a no-call no-show on October 5, 2012. You were previously warned for excessive absences and calling in absences on July 8, 2012. Your actions rise to the level of misconduct.”

“You were discharged because you were caught sleeping on the job on August 5, 2012. You received the employer’s policy and knew you were supposed to stay awake. Your actions rise to the level of misconduct.”

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**THE INITIAL DETERMINATION OF ELIGIBILITY:**

EXAMPLES OF FACTUAL BASES:

“Although you say that the claimant was fired for being a no call no show on October 5, 2012 and was warned, the claimant says he had to take his daughter to the hospital and was distracted. The claimant had a compelling reason for not calling or being present at work. A disqualification for misconduct will not be imposed.”

“You say that the claimant was discharged for absenteeism and was warned. The claimant denied being fired for absenteeism. You have not responded to our request for additional information regarding the date of the final absence leading to the claimant’s discharge. A disqualification for misconduct will not be imposed.”

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**CHANGE OF BASIS**

In the interest of the speedy administration of justice and without prejudice to the substantial rights of any party and for good cause shown. . . any issue in a case or any other issue related thereto may be heard and decided. . . The administrative law judge must set forth on the record the reason for such action and must inform the parties of the intention to consider the new basis for denying or granting benefits . . . The judge must inform the parties of their rights in this regard and must accord them an opportunity to request an adjournment to adequately prepare for such new basis or issue.

12 NYCRR 461.4(d)

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**EMPLOYER OBJECTION LETTERS**

"(A)n affected party, other than a claimant... must submit a written statement of the factual basis or specific events which such party contends are the grounds for denying benefits to the claimant... of sufficient particularity as to inform the claimant of the facts to which the claimant must be prepared to respond at the hearing."

12 NYCRR 461.1(b)  
(See Matter of Diggle, 101 AD3d 1319)

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**HEARSAY EVIDENCE STANDARD**

Hearsay cannot prevail against the sworn testimony of the claimant where there is nothing in the record which would tend to impeach the claimant's testimony

(MATTER OF PERRY, 37 AD2D 367)  
(See also Matter of Lopez, 102 AD3d 1028, citing Perry)

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**NORMALLY NOT MISCONDUCT**

- Mere inefficiency
- Inadequate performance resulting from inability or incapability
- Inadvertence or ordinary negligence in isolated instances
- Good faith errors of judgment

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**WHAT CAN BE MISCONDUCT**

Conduct detrimental to the employer's interest, or in violation of a known, reasonable work condition is misconduct

Negligence that continues despite repeated warnings

Gross negligence

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**MATTER OF DUNHAM 68 AD3D 1328**

- Policy prohibited credit wagering
- Customary practice to give bar manager lottery tickets without immediately receiving payment occurring several times a week for years
- Knowledge of manager and assistant manager – neither indicated that it was against company interest
- More recent cases citing Dunham: Matter of Lopresti, 108 AD3d 846; Matter of Wright, 101 AD3d 1198)

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**ABSENCES/TARDINESS/FAILURE TO CALL**

Continued absence, after warning, may constitute misconduct.

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**ELEMENTS FOR  
RECORD DEVELOPMENT:**

- Any policy/rule
- Warnings for similar behavior
- Reason for last absence/tardiness

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**MATTER OF MASSUCCI & AD3D 787**

- Lateness due to child care arrangements
- Repeated warnings
- Last incident due to daughter's teacher absence at the day care center when she arrived
- Circumstance beyond her control

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**ACCIDENTS**

Involvement in an accident does not constitute misconduct unless the accident was the result of gross negligence or reckless behavior. Ordinary negligence is not enough.

(Appeal Board No. 546036)

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**ALCOHOLISM**

Alcoholism may excuse misconduct if there is substantial evidence to show that the claimant was (1) an alcoholic; (2) that the alcoholism caused the behavior leading to the claimant's discharge, and (3) that the employee was available and capable of work. Medical evidence may not be necessary to establish that the claimant was suffering from alcoholism.

(Matter of Snell, 195 AD2d 746)

Not all acts are excused by alcoholism

(Matter of Gaiser, 82 AD2d 629; Appeal Board No. 554314)

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**INSUBORDINATION**

Failure to follow the employer's reasonable directive, after warning, and without a compelling reason for not doing so, may constitute misconduct.

Directing inappropriate language toward a supervisor that demonstrated disrespect can constitute misconduct.

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**MATTER OF IRONS 79 AD3D 1511**

- Manager had heated discussion with regional director regarding employer's decision to reduce staff hours
- "did not know how to do his job and that he was an idiot"
- Context of the discussion did not amount to misconduct

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**MATTER OF SOBHANI 247 AD2D 810**

- Calling the employer a bitch and a thief and using other profanities to describe the employer
- Action was in the presence of coworkers and customers
- Prior warnings for directing similar language that such conduct could lead to termination.

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**FIGHTING**

Physical altercation on the job can constitute misconduct, even if the claimant did not throw the first punch.

(Matter of Chisholm, 54 AD3d 1094)

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**FALSIFICATION OF DOCUMENTS**

Intentionally providing material false information on a job application may constitute misconduct.

(Matter of Elsayed, 49 AD3d 936)

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**IN CONNECTION WITH EMPLOYMENT**

Fight with an umpire in an employer softball league in a game held after hours on company property was not connected to the claimant's employment and did not constitute misconduct.

(Matter of Rivera, 96 AD2d 1115)

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**IN CONNECTION WITH EMPLOYMENT**

Felony conviction of public official not connected to his employment still constitutes misconduct for a failure to honor the highest standards of integrity and incorruptibility expected of a civil servant with a public trust.

(Matter of Markowitz, 94 AD2d 155)

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**NEXUS BETWEEN FINAL INCIDENT AND DISCHARGE**

There must be a direct relation in point of time between the offense and the discharge; or a reasonable explanation which will excuse the delay.

(Appeal Board No. 549772)

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**VOLUNTARY SEPARATION  
FROM EMPLOYMENT  
WITHOUT GOOD CAUSE**

**Matthew Tierney,  
Principal Judge**

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**SECTION 501 OF THE LABOR LAW:**

As a guide to the interpretation and application of this article, the public policy of this state is declared to be as follow:

The public good and the well-being of wage earners of this state require the enactment of this measure ... for the benefit of persons unemployed through no fault of their own.

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**LABOR LAW SECTION 593.  
DISQUALIFICATION FOR BENEFITS.**

1. (a) No days of total unemployment shall be deemed to occur after a claimant's voluntary separation without good cause from employment until he or she has subsequently worked in employment and earned remuneration at least equal to five times his or her weekly benefit rate.

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**COMPELLING FAMILY REASON**

**LABOR LAW SECTION 593.  
DISQUALIFICATION FOR BENEFITS.**

1. (b) A claimant shall not be disqualified from receiving benefits for separation from employment due to any compelling family reason.

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**VOLUNTARY LEAVING OF PART  
TIME EMPLOYMENT AFTER LOSS  
OF FULL-TIME EMPLOYMENT**

*Matter of Grandy, 64 AD2d 796 (3d Dept 1978)*

Appeal Board No. 552114.

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**QUIT RATHER THAN SIGN A  
WARNING**

A claimant who quits rather than sign a warning does not have good cause if the warning indicates that the employee's signature signifies receipt only and provides a space for the employee to write a comment.

(Appeal Board Nos. 553420 and 545689.)

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**SEXUAL HARASSMENT**

Did the employer have a policy prohibiting sexual harassment and a procedure to complain?

Did the claimant follow that procedure and did the employer take appropriate action?

Appeal Board Nos. 534232 and 545363. (In the case of extreme behavior the claimant may quit without first complaining to the employer.)

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**CHANGE IN TERMS AND CONDITIONS OF EMPLOYMENT**

A claimant may have good cause to quit if there has been a change in the terms and conditions of employment; if the change was substantial.

*Matter of Rowe*, 258 AD2d 803 (3d Dept 1999).

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**LABOR LAW VIOLATIONS**

A claimant may have good cause to quit if the employer's operations violate any of the Labor laws.

(Appeal Board Nos. 521427, 502112.)

As a matter of Public Policy there is good cause to expand the basis of an initial determination to include a possible Labor Law Violation.

(Appeal Board No. 545382)

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**TEMPORARY EMPLOYMENT SERVICES**

When the claimant works at assignments obtained through temporary employment agencies, the employment relationship ends when the assignment ends

(Appeal Board No. 562966)

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**QUIT DUE TO MEDICAL REASONS**

A claimant who is compelled to quit due to his or her medical condition may have good cause to leave employment.

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**LACK OF CHILD CARE**

A claimant who quits due to a lack of child care may have good cause.

(Appeal Board Nos. 530052 and 555262.)

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**QUIT IN ANTICIPATION OF DISCHARGE**

A claimant who quits on the assumption that he or she will be fired in the future does not establish good cause

(Appeal Board No 552897)

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**PROVOKED DISCHARGE**

A claimant engages in conduct which transgresses a legitimate known obligation and leaves the employer no choice but to discharge him.

*Matter of Malaspina, 309 N.Y. 413*  
*Matter of James 34 N.Y. 2<sup>nd</sup> 491*

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**WILLFUL  
FALSE  
STATEMENT**

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**LABOR LAW SECTION 594.  
REDUCTION OF BENEFITS FOR FALSE  
STATEMENTS**

A claimant who has willfully made a false statement or representation to obtain any benefit under the provisions of this article shall forfeit benefits for at least the first four but not more than the first eighty effective days following discovery of such offense for which he otherwise would have been entitled to receive benefits. Such penalty shall apply only once with respect to each such offense.

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**RECORD DEVELOPMENT:**

- How did the claimant's employment end?
- What reason, if any, did the employer provide the claimant about how his job ended?
- What choices did the claimant have when he applied for benefits/reopened the claim for benefits?
- What choice did the claimant select?
- Why did the claimant select that choice?

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Willful does not imply criminal intent to defraud but means "knowingly", "intentionally", "deliberately" to make a false statement

(Matter of Vick, 12 AD2d 120)

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**EXCEPTIONS:**

1. MISTAKE OF LAW

Where a claimant would be required to draw a legal conclusion in order to accurately report her status, the failure to reach the correct legal conclusion does not constitute a willful false statement.

(Matter of Valvo, 57 NY2d 116)

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**EXCEPTIONS:**

2. INADVERTENCE

A finding of inadvertence precludes a finding of willfulness.

(Matter of Forbes, 181 AD2d 956)

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**EXCEPTIONS:**

3. REASONABLE BELIEF THAT REPORT IS ACCURATE

Selecting "discharged unable to meet employer standards" instead of "discharged/fired" when the claimant was fired because she had been held absent without calling for three consecutive days found not to constitute a willful misrepresentation. Claimant could not discern any real difference between the two options for discharge. Regular attendance could be considered a standard.

(Appeal Board No. 537456)

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Choosing "lack of work" as the reason for separation when filing a claim did not constitute a willful false statement when the employer has indicated it was having massive layoffs, even though he was permitted to resign in lieu of discharge.

(Appeal Board No. 543636A)

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Choosing "lack of work" as the reason for separation when filing a claim did not constitute a willful false statement when the claimant could not return to work because of a medical issue, and the employer sent claimant a termination letter stating that claimant's loss of work was due to "downsizing".

(Appeal Board No. 540711)

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**EXCEPTIONS:**

4. DISCLOSURE TO THE DEPARTMENT OF LABOR

Where a claimant disclosed the incident leading to her discharge to the Department of Labor prior to receipt of her first benefit check, her selection of laid off due lack of work did not constitute a willful misrepresentation .

(Matter of Marquez, 107 AD2d 959)

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**EFFECTS OF A WILLFUL FALSE STATEMENT**

1. IMPOSITION OF FORFEITURE PENALTIES

Generally, a forfeiture penalty of 4 effective days is imposed if no overpayment results from the offense.

If an overpayment results from the offense, an 8 effective day penalty is imposed.

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**EFFECTS OF A WILLFUL FALSE STATEMENT**

2. RECOVERABILITY OF OVERPAYMENT

Benefits are recoverable under Labor Law Section 597(4) if the claimant made a willful false statement to obtain benefits.

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**PREPARING FOR  
UNEMPLOYMENT  
INSURANCE HEARINGS**

Joseph M. Dougherty, Esq.  
Brian R. Hodgdon, Esq.  
Hinman Straub PC

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Getting Ready for the  
Hearing

“Preparing For Your Unemployment Insurance  
Hearing: A Claimant’s Guide”

Translators are provided for hearings

“Interpretation Service Index” of rules based on Appeal Board  
and Court decisions is available on-line:  
<http://www.labor.ny.gov/ui/aso/interpservice.shtm>

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### Receiving the Case

- Legal Aid Society
- Albany County Bar Association
- Representative List Maintained by UI Board
- Notice of Appearance
- Pro-Bono or Fee
- Prior Related Hearings

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### Reviewing The File and Preparing Your Case

- In person review
- Requests for case files
- Review of Claimant and Employer Statements
- Do your homework
- Preparing the Claimant
- Continued Certification
- Claimant’s statement v. Employer’s Statement
- Mistakes or Omissions in Claimant’s statement to DOL examiner
- Submission of additional documents
- Are there additional causes of action against the Employer (Business Development)

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**THE HEARING**

- A brief note on telephone hearings
  - Laying the groundwork
  - Tell your Claimant's story using facts not case law
- Interaction with the ALJ
  - Be respectful
  - Prepare your Claimant for procedure
  - The ALJ did not rule against your Claimant
  - Respectfully make necessary objections and if overruled simply ask it to be noted for the record and move on

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**THE HEARING**

- Direct Examination
  - Prepare your Claimant
  - Let the ALJ conduct his or her examination
  - Don't recount the ALJ's examination expand or enhance
    - now you testified that [] can you tell me a little more about that?
    - You mentioned x what else can you tell me about that?
  - Willful misrepresentation and understanding screen shots
- Claimant Witnesses
  - Witnesses are sequestered
  - Evaluate the need for witnesses
  - Prepare your witness
- Cross-Examination
  - Be polite
  - Personal knowledge
  - Documentation
  - Employer policy or simply a targeted Claimant

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**THE HEARING**

- The Employer representative
  - Did he or she bring the right witness
  - Prepare your Claimant for Cross
  - Assist the ALJ in preventing the representative from testifying for the employer
- Presenting evidence
  - Formal rules of evidence do not apply
  - Stick to formal introduction of evidence procedure
  - Don't allow the employer to read documents not marked and reviewed
  - If surprised take a moment with your Claimant
  - Submit additional evidence prior to the hearing or if necessary bring additional evidence to the hearing (make copies)

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**THE HEARING**

- Building the record
  - Tailor your questions to existing case law and UI Board Decisions
  - Admit necessary documents into evidence to preserve for appeal (nothing is automatically part of the record even if it is in the file)
  - Have objections noted for the record
  - Have document subpoena requests noted
  - Ask for subsequent hearing if necessary
- Closing arguments
  - If there is case law or UI Board Decisions directly on point use them if not stick to the facts
  - Use Employer admissions and point out any instances of Claimant direct knowledge that contradicts hearsay testimony of the Employer.

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**APPEALS**

- Compressed time-frame
- Letter briefs to UI Board Appeals
- Board decisions are brought before the Third Department based on the Record

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**Benefits of Pro-Bono Representation**

- Civic duty
- Benefit to the Claimant and his or her family
- Administrative proceeding experience
- Business opportunities
- CLE credit

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# Mock Hearing Script



HEARING  
JULIET VAN WINKLE

RE Review Examiner, Harold Glare  
VW Claimant, Juliet Van Winkle  
CD Claimant's Attorney, Clark Darrow  
SP Employer's witness, Simone Pure  
PS Employer's Agent, Patricia Standing

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RE: The tape recorder is on. Before going on tape, I have explained the procedure I will be following today. Is that right, Mr. Darrow?

CD: Yes.

RE: Ms. Standing?

PS: Yes.

RE: And have both parties had the opportunity to examine the file before the hearing?

CD and PS: Yes.

\*RE: This is a hearing in ALJ Case No. #112-01010, being heard by Harold Glare, a duly appointed Administrative Law Judge of the Unemployment Insurance Appeal Board. This hearing is taking place on October 4, 2012 at the department's office located in Troy, New York, and the time is presently four minutes after one. The hearing arises as a result of an appeal by the claimant from a determination issued by the Department of Labor disqualifying the claimant for misconduct under section 593.3 of the Labor Law, effective September 20, 2012. The basis of that determination states "You were discharged for sleeping on the job in violation of a reasonable and uniformly enforced rule or policy of the employer. Such discharge is due to deliberate misconduct within the meaning of the unemployment insurance law."

Present at the hearing are the claimant, Juliet Van Winkle, and her attorney, Mr. Clark Darrow. Also present for the employer is Simone Pure, Operations Manager of the employer, Zodiac International Corp., and the employer's agent, Patricia Standing.

I will now enter the exhibits into the record. Exhibit 1 is a request for separation and wage information mailed by the employer on September 23 after a mailing date of September 20, and it is timely. Exhibits 2A and 23 are statements of the employer and the claimant on departmental forms TCC 413. Exhibit 3 is the notice to claimant of disqualification, which says: "You were discharged for sleeping on the job in violation of a reasonable and uniformly enforced rule or policy of the employer. Such discharge is due to deliberate misconduct within the meaning of the unemployment insurance law." Exhibit 4 is the claimant's request for hearing, and it is timely. Exhibits 5A, 5B and 5C are the notices of hearing to the claimant, the employer,



and the employer's agent. Does anyone have any objections to the exhibits?

\*CD: I object to Exhibit 2B, the claimant's statement on form TCC413. I do realize that hearsay is acceptable in these hearings, but the claimant is entitled to have you admit and consider only substantial evidence. These statements are not even statements of the employer and the claimant, but merely the service representative's notes on what she thought they told her. They aren't adopted by the parties at all. They are not substantial evidence.

RE: These statements come in as part of the official record, and as you know, I'm going to basically decide the case based on what I hear today from the parties. I'm going to start with a few questions of the claimant. Did you work for Zodiac International Corp. from 1/25/99 until 9/9/10?

CD: Excuse me, Mr. Glare; it's my understanding that because this is a discharge case, the employer has the burden of proof, and you would start off by questioning them.

\*RE: That's correct, counsel, but first I'm going to get a little background information from the claimant. Did you work for Zodiac International Corp. from 1/25/99 until 9/9/10?

VW: That sounds right.

RE: What was your job title?

VW: Metal fabricator. Welder.

RE: What were your hours?

VW: They fluctuated. Sometimes I'd work 12, 14 hours. Sometimes a double shift or more.

RE: Were you considered full-time?

VW: Yes.

RE: What was your rate of pay?

VW: \$14.60 an hour.

RE: Were you a member of a union?

VW: Yes.

RE: What is the reason you are no longer working at Zodiac?

VW: They fired me.

RE: Who fired you?

VW: Simon(e) Pure. She's the operations manager.

RE: Did she tell you why you were being fired?

VW: For sleeping on the job.

RE: At this point I'll turn to the employer. Ms. Pure, was the claimant discharged?

SR: Yes, she was.

RE: Did you discharge her?

SP: Yes I did.

RE: What was the reason you discharged her?

SP: She was found sleeping on the job.

RE: Are you the one who found her?

SP: No, she was found by the shift supervisor.

RE: Did you see her sleeping?

SP: Yes, I did.

RE: What is your position in the company?

SP: Operations Manager.

RE: So what led up to the claimant's discharge?

SP: Well [reads from a memo], on 9/8/10 at 2:24 a.m.

CP: Objection, I would ask that the Examiner instruct the witness to testify from her memory, if she *has* any.

\*RE: Ms. Pure, you can consult your notes if you want to, but *if* you read from them you'll have to show the claimant's attorney.

SP: Oh, okay. Well, at about 2:24 Julie's shift supervisor came up to me and told me—

CD: Objection, hearsay.

RE: Now counsel, you know we don't go by the rules of evidence in here. I know its hearsay and I'll give it the weight it deserves. Please continue your answer, Ms. Pure.

SP: Well her supervisor told me she was sleeping. And it wasn't break time, because the whistle had blown. So I went over with him to Julie's work station, and I saw her with her head down on her workbench. I called the shop steward over, it took a couple or three minutes for him to get there, then we all looked at our watch, and it was 2:28 or 2:29, and I said, "Jack," that's the shift

supervisor, "what do you want to do about this?" And he said, "It's a second offense, she'll have to be terminated." So I said wake her up. So he said her name 3 or 4 times, and she didn't wake up, and then he called over a female employee and she shook Julie's arms, and then she blinked a few times and sat up straight.

RE: And did you tell her she was fired at that time?

SP: No, because I wanted to check whether there was a first offense on file. So I sent her home pending investigation.

RE: Did you ask her to explain why she was sleeping?

SP: I didn't ask her and she didn't say.

RE: So what happened next?

SP: It took about 10 minutes to get her coat on and escort her out the door. Then I went in to the office and looked at her personnel folder. And I found there was a written warning there from January, 2006 for sleeping on the job.

RE: Do you have that with you?

SP: Yes I do. [Hands document to RE.]

RE: Did you bring a copy for the claimant?

\*SP: No I didn't.

RE: Well, I'll make copies later for the claimant if she wants them. I'm going to mark this as Exhibit 6. So, Ms. Pure, when did you discharge the claimant?

SP: After I found the written warning, I talked with our HR person, and had her write a letter of termination. The next morning when Julie reported to work, I told her we were terminating her and gave her the letter.

RE: You made up your mind to discharge her on the 8<sup>th</sup>?

SP: That's right.

RE: Now, Ms. Pure, does the company have a rule against sleeping on the job?

SP: We do. It's in our handbook. [Shows handbook to RE]

RE: I don't suppose you have a copy for the claimant?

SP: Sorry, no.

RE: Show it to counsel. Any objection?

CD: No objection. I'll need a copy of this too.

RE: Exhibit 7. The rule says, "Offenses Subject to Termination: blah, blah, blah, #5, sleeping on the job." Did the claimant have a handbook?

SP: She would have gotten one when she started working for us.

RE: Do employees have to sign for their handbook?

SP: They do now. They didn't then. I wasn't here.

RE: Other than the handbook, is there any way Ms. Van Winkle would know that she could be fired for sleeping on the job?

SP: Well, she was warned about it last year. The warning said she could be fired if it happened again.

RE: Did anyone go over the rule with her at that time?

CD: Objection to the extent that the question calls for hearsay.

RE: Just answer yes or no, Ms. Pure.

SP: Yes.

RE: Ms. Pure, did you go over the rule with her?

SP: No, her shift supervisor did.

CD: Note my objection.

\*RE: Your objection is noted. Counsel, once again, you know that we take hearsay in these hearings, and if we keep having these technical objections, we're not going to be able to finish-in-an hour.... Now, Ms.-Pure, this may seem like a silly question, but I have to ask it: Why does the employer have a rule against sleeping on the job?

SP: Well, basically productivity. I mean, employees who are sleeping are not productive.

RE: And is everyone treated the same way if they're caught sleeping on the job?

SP: It's never happened in my three years as operations manager.

RE: Didn't you just tell us that the claimant was warned within the last two years?

SP: Well, at the time, she was only seen sleeping by one person, and we feel that at least two people have to see someone sleeping in order to terminate them.

RE: Besides not being seen by two people, are there any other exceptions?



\*SP: There might be. If there were mitigating circumstances.

RE: Any questions, Ms. Standing?

PS: Just a few. Ms. Pure, does your company normally keep the original or a copy of a written warning in the employee's file?

SP: Yes.

PS: And are they written down at the time the warning takes place?

SP: Yes.

PS: Do you know who signed this warning?

SP: Yes, it was Jack Sprat, Julie's Shift supervisor at the time. I'm familiar with his writing and his signature.

PS: No further questions.

RE: Ms. Darrow?

CD: Prior to the incident, Ms. Van Winkle complained about the ozone in her work area, didn't she?

SP: Not to me.

CD: But she complained to her steward and her supervisor, and you were made aware of the complaints, isn't that true?

SP: Yes.

CD: She said the ozone was making her drowsy, didn't she?

SP: I heard that, yes.

CD: And she asked for a local exhaust system to be installed over her bench, didn't she?

SP: That was completely unnecessary. The size of the area is big enough that you don't need a local system. She has an exhaust on her welding torch.

CD: So the company never installed a local exhaust system over her bench, did it?

SP: No, we didn't. Didn't need to.

CD: There's no signature by my client on this warning, is there?

SP: No.

CD: Yet there's a space for the employee to sign, to acknowledge they have received it, isn't there?

SP: We ask them to sign.

CD: So you have no personal knowledge that Ms. Van Winkle received this warning, do you?

SP: Jack Sprat told me he gave it to her and she refused to sign.

CD: With regard to the 9/9/10 incident, the company knew that Ms. Van Winkle was taking an antihistamine for rhinitis at that time, didn't it?

PS: Objection, I don't see the relevance.

RE: Yes, Mr. Darrow, what is the relevance?

\*CD: Mr. Glare, as an offer of proof, my client was taking an antihistamine at the time, and this type of medication makes people drowsy.

RE: I'm going to give counsel a little latitude here, but let's not drag this out.

SP: We had been told in the past that she was taking some kind of medication for an irritation. I don't know if we were told an antihistamine.

CD: You are aware, aren't you, that drowsiness is a side effect of antihistamines?

SP: I don't know anything about that.

RE: He's not a pharmaceutical expert, counsel. Anything further? We need to move this along.

CD: Yes, Ms. Pure, when you saw the claimant at 2:24 or thereabouts on September 8, did she have a pillow?

SP: No.

CD: An-alarm-clock?

SP: No.

CD: In fact, she had a half-finished cup of coffee on the bench, didn't she?

SP: I didn't notice.

CD: You testified that in your 3 years as manager no one else was caught sleeping on the job?

SP: Besides Julie, last year.

CD: So you don't know whether there were other people who slept on the job and it wasn't brought to your attention.

SP: Right, if I didn't know about it, then I didn't know about it. I guess that's pretty self-evident.

CD: No further questions. I would respectfully request leave to conduct the initial direct examination of Ms. Van Winkle.

RE: And why is that?

\*CD: I think the claimant is entitled to present her own case in her own way, to make a full and free statement of her claim, and to have the assistance of counsel in doing it. These are rights she has under the standard rules of adjudicatory procedure. I'm her attorney and she's retained me to present her case. I think I can do this most efficiently and cohesively if I'm allowed to conduct the direct examination.

RE: Well, it's my responsibility to conduct this hearing, and I am going to ask the questions here, and when I'm finished, you can have an opportunity to ask your client whatever questions you wish, as long as they're relevant.

CD: Thank you.

RE: Now, Ms. Van Winkle, were you in fact sleeping on the job?

VW: When?

RE: On September 8, 2010.

VW: Well, I probably did doze off that time. The other time, the time they say they warned me, I wasn't sleeping, and I told them that.

RE: Did they give you a written warning? •

VW: No. They said they were going to, but they didn't.

RE: Were you aware of the employer's rule against sleeping on the job?

VW: I've never seen it enforced in the plant.

RE: But are you aware that they had a rule?

VW: I knew I wasn't supposed to sleep on the job. That's sort of normal.

RE: But were you aware of the employer's rule?

VW: You mean a written rule? No.

RE: Did you ever get a handbook from them?

VW: I might've, when I started working. I got something about benefits and leaves and stuff

RE: (Shows Claimant Exhibit 7). Did you receive a copy of this?

VW: The cover was a different color. I don't know. I didn't read the whole thing.

RE: Did anyone ever explain the rule to you?

VW: Not especially, I mean, I knew you weren't supposed to sleep on the job.

RE: Do you know *why* you fell asleep on the job?

\*VW: There's two things. Three, really. First, I had complained about the ozone for two a half years. The welding creates these gases — one of them is ozone. One thing ozone does is, it makes you tired. Makes you sleepy. The ventilation isn't too good around my bench, so the ozone is in my breathing area. Then too, I had this on-and-off irritation in my nose, rhinitis, and I had to take this antihistamine -- Rynatan -- for it. It also makes me sleepy. And third, I had worked a double shift the day before, so I was tired to begin with.

RE: Did you tell them this when they woke you up?

VW: They didn't give me a chance to tell them anything. They just, they shook me, and then Simone Pure was saying, OK, you're sleeping on the job, punch out, go home. So I put my stuff away, put my coat on, punched out. They walked me out of there.

RE: Did they tell you you were fired, or suspended, or anything?

VW: No, just "OK, you're sleeping on the job, punch out, go home." I asked them, what are you going to do? They said, "We'll let you know."

RE: Did you know the medication was making you sleepy?

VW: Yes.

RE: Did you ask for a leave of absence?

VW: No. See, I told them I was taking the medication on and "off. This was two years ago. It was like a chronic thing that would flare up. I think it might've had something to do with the welding gases on the job, too. It wasn't like I could take two days or two weeks off and cure it. So I had to work with it.

RE: Did you report to work the next day?

VW: Yes.

RE: What happened?

VW: I went to punch in, and Jack Sprat was there at the time clock, and he said, Pure wants to see you, and he goes with me to Pure's office, and Pure is there with a personnel person, Janice something, and Sprat closes the door, and we're all in there, and Pure hands me a letter and says, we're terminating you for a second offense, sleeping on the job. Janice will tell you about your benefits.

RE: Did you explain why you were sleeping?

VW: They didn't give me a chance. They didn't want to hear it.

RE: Any questions, Mr. Darrow?



CD: Yes. Ms. Van Winkle, did you fall asleep during work time?

VW: No, it was on my break.

RE: What time do you take your break?

VW: Usually 2:00 to 2:10, 2:15, but sometimes if I'm in the middle of a job at 2:00, • then I'll finish the job and then break.

\*RE: So what time did you take your break that day?

VW: Maybe 2:05, 2:10, I know I was working when break started. I don't remember if I heard the whistle for end of break.

RE: How long was break supposed to be?

VW: Supposed to be 10 minutes, but everyone takes 15, sometimes 20.

RE: You can resume, Mr. Darrow.

CD: Was there anything you had done that day to avoid falling asleep?

VW: Yes, I had gotten a cup of coffee, which I don't usually have, because I was worried about falling asleep.

CD: Were you able to stay awake at that time?

VW: I tried, I couldn't.

CD: Did you think you could be terminated for sleeping on the job?

VW: Let's put it this way. I believed I could be terminated for sleeping on the job, that's why I was worried about it. Because when I talked about going to OSHA about the ventilation, that's when they threatened to give me a warning about sleeping on the job.

CD: Would you briefly describe the circumstances that led up to the threat of a warning?

PS: Objection, this is really off the subject.

CD: The employer brought in the prior warning.

\*RE: Well, I'll give counsel a little latitude, but I won't permit you to dwell on this, counsel.

CD: Thank you. Would you briefly describe the circumstances that led up to the threat of a warning?

VW: I had talked to Sprat about going to OSHA because the company didn't do anything about a local exhaust system, which I needed because of the gases from the welding, and he said they already had OSHA come to check it out and OSHA said they didn't have to do anything. And that was the end of that, I thought, except that a week later I was working behind the curtain for, like 40,45 minutes — they put a curtain around my area and Jack comes by, opens the curtain, and says, you're sleeping on the job, I'm going to give you a warning. And I said, no, I'm not sleeping, and if you give me a warning, I'll grieve it. They never showed me any warning.

\*CD: Do you have any reason to believe you were treated any differently from anyone else who slept on the job?

VW: Absolutely. There are other people who sleep on the job, and they don't get disciplined.

CD: How do you know this?

VW: I see other people sleeping.

CD: Do you have any reason to believe that management is aware of this?

CW: Sure they are, they're right in the same area, they see, they know. One person who sleeps is Sprat. Sits in his office and puts his feet right up on the desk and leans back in his chair and closes the door. No way they don't know. One time I saw Ms. Pure wake him up.

SP: (Shakes head.)

CD: Anyone else you know of?

VW: My foreman, Vinnie His mother. She goes up to the break room and lies down on the couch. I've seen her there when I've gone up there for break.

CD: Mr. Glare, at this I'd like to offer two exhibits. One is an information sheet. Ms. Van Winkle, please tell the Examiner what it is?

VW: This is something I got from OSHA when I asked questions about the welding gases. It says here that ozone makes you sleepy, and it says that sometimes even if you have a torch with a built-in exhaust system, you need an outside exhaust system.

CD: I have a copy for the employer.

RE: I'll take that as Exhibit 8.

PS: Excuse me, Mr. Glare, I object to this, we have no idea where this is from, or what it is, and it doesn't say that the claimant's work area needed a local exhaust system, just that some areas do.

RE: Well, I'll give it the weight it deserves. Anything else, Mr. Darrow?

CD: Yes, I'd like to offer another document. Ms. Van Winkle, could you identify this for the Examiner, please?

VW: This is something I got from the pharmacist, that shows the drug I take, Rynatan, that it's an antihistamine, basically, and that antihistamines make you drowsy.

PS: Again, I object, there's no documentation that the claimant was taking medication on this particular day.

RE: Anything else, Mr. Darrow?

CD: I have a few more questions. Ms. Van Winkle, what led you to believe that your work area needed a local exhaust system in addition to the built-in exhaust on your welding torch?

\*VW: Well, for one thing, I would get sleepy, even when I wasn't on the medication. And I know that's a problem with ozone. This would happen especially after they put a curtain around my area. That cut off the circulation completely. So the ceiling was high, but they, like, obstructed the air flow,

CD: Were you in fact taking medication that day?

VW: Yes, I took it once in the morning, once at lunchtime, so I had had it around 11:30.

RE: Anything else, counsel?

CD: Not at this time.

RE: Ms. Standing?

PS: Do you have a doctor's note that says you were taking the medication that day?

VW: I didn't have to go to the doctor every time I needed to take the medicine. The doctor gave me a prescription and told me when to use it. I would use it for a week or two, then I would get better. Then I might have to use it again. I had a renewable prescriptions that would last maybe six months at a time before I'd have to go check in with the doctor again.

PS: You were working with ozone for two years, weren't you?

VW: Yes.

PS: And you had this irritation on and off for two years?

VW: Yes.

PS: And you had worked double shifts before, too didn't you?

VW: Yes.

PS: You said you fell asleep during your break?

VW: Yes.

PS: But you weren't in the break room, were you?

VW: No, I stayed at my bench, because I wanted to go over some blueprints.

PS: Isn't it true that you had already had your break and come back?

VW: No.

PS: You don't have any evidence that any manager ever caught anyone else sleeping on the job

and didn't discipline them, do you?

VW: I know they knew. I was there, they were there. Everyone knew. PS: No further questions.

RE: Does anyone want to add anything else?

SP: First, I have never seen anyone sleeping on the job, except Julie, and second, we had an environmental engineer come in and say that we didn't need to do anything about ventilation in Julie's work area.

CD: Objection, hearsay, opinion, lack of foundation, relevance, materiality.

RE: I'll give it the weight it deserves. Does anyone have anything else to add? Any additional evidence?

\*CD: One additional question for Ms. Van Winkle: Did you grieve your discharge?

VW: Yes.

RE: All right, it is now six minutes of two, and I will close the hearing.

CD: Excuse me, I would like the opportunity to sum up, and I would like to submit these proposed findings of fact and rulings of law.

RE: I'll allow each of the parties a minute to sum up. Mr. Darrow?

CD: There is no rule violation here: lack of notice of rule, unreasonableness as applied, lack of uniform enforcement, employee's inability to comply with rule.

There is no deliberate misconduct here: state of mind not disqualifying; my client was subjected to stupefying influences, the circumstances suggested she was just trying to stay awake.

The claimant's discharge is more likely attributable to the claimant's complaints about the unhealthy workplace conditions rather than any rule violation.

RE: Ms. Standing?

RS: Claimant knew of the rule against sleeping and the rule is reasonable, the claimant's testimony about non-uniform enforcement is credible; there is no documentation that she was taking medications that day; she had been subject to exactly the same conditions over the years, so there is no excuse for falling asleep on this occasion; finally, she didn't ask her employer for a leave of absence to attend to any medical problem.

RE: It is now exactly two o'clock. This hearing is closed.



## GROUP DISCUSSION

What decision do you think should be rendered by the ALJ?

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Why?

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# **Questions and Answers About Your Unemployment Insurance Benefits Hearing**





## Questions and Answers About Your Unemployment Insurance Benefits Hearing

This pamphlet answers basic questions about your unemployment insurance benefits hearing. It explains how you should prepare for the hearing and what rights you have at the hearing.

Si le gustaría obtener una copia de este folleto en el español, comuníquese con el Central Telefónico de Reclamos o a la Sección del Juez de Derecho Administrativo (Administrative Law Judge Section) donde ocurrirá su audiencia

### **Can I Delay the Hearing?**

Yes. You may “adjourn” (delay) the hearing if you have a good reason. You must explain the reason to the ALJ and the ALJ will decide whether or not it is adequate. Examples of good reasons are:

1. You have an emergency.
2. You want a lawyer and haven’t been able to get one.
3. You haven’t been able to meet your lawyer.
4. You need more time to gather evidence.

If possible, you should ask for a delay before the hearing date by writing or calling the ALJ Section. If the ALJ does not grant a delay before the hearing, you must go to your hearing and request a delay in person. If you can’t go yourself, you may send a representative along with a signed explanation as to why you could not attend. If the ALJ denies your request for a delay, the ALJ will hold the hearing.

### **What Happens if I Miss a Hearing?**

If you miss the hearing, the ALJ may hold the hearing without you and decide your case without considering your side of the story.

If you miss the hearing for a good reason (e.g., you had a medical emergency or no legal representation), you should apply to the DOL to reopen your case, so that the ALJ can hear your side of the story. If the ALJ finds that you had a good reason, s/he will reopen it.

### **What Happens if Your Former Employer Misses a Hearing?**

If you request the hearing but your former employer misses it, the ALJ may hold the hearing and decide your case without considering their side of the story. After the hearing, your former employer may apply to reopen the case. If the ALJ finds that your former employer had a good reason, s/he will reopen it.

If your former employer requests the hearing but misses it, then the ALJ will automatically decide the case in your favor.

### **When Will I Receive the ALJ’s Decision?**

You should receive a decision within three weeks. If you do not, you should call the DOL or the ALJ Section where you had your hearing (the phone number is on the Notice of Hearing).

### **What if I Disagree with the ALJ’s Decision?**

You can appeal the ALJ’s decision. An appeal is a formal request to a “higher” level, called the Appeal Board to review whether the ALJ’s decision is correct.

You can request an appeal either by 1) submitting a completed form to the Appeal Board, or 2) sending a letter to the DOL stating that you wish to appeal the decision. Your request must be postmarked within 20 days of the date stamped on the ALJ’s decision. Your former employer may also appeal.

If you did not appear at the hearing, you may not appeal the ALJ’s decision, but you may request that the ALJ reopen your case.

### **What Happens When a Decision is Appealed?**

After you submit your request for an appeal, you may submit a written statement to the Appeal Board which explains why the ALJ’s decision is wrong. An attorney or someone else can help you prepare your statement. Your former employer will also be allowed to submit a statement.

Before you submit your statement, you should review the transcript of your hearing. (The transcript is the written record of everything said at the hearing.) You can get the transcript by writing to the Appeal Board after you receive a “Notice of Receipt of Appeal” and before your statement is due. You should ask the Appeal Board on what date the transcript will be ready and whether you can submit your statement twenty days after that date.

If the Appeal Board finds that there was a problem with your hearing, it will send your case back to the ALJ for another hearing or it will hold a hearing itself.

If the Appeal Board decides that the ALJ’s decision was wrong, it will overturn the decision.

### **What if I Win But My Former Employer Appeals?**

Your former employer (or the DOL) may appeal a decision decided in your favor. You can submit a written statement opposing the appeal. If you do submit such a statement, you have the same rights as if you had lost the hearing and brought an appeal yourself. For example, you may review the transcript and/or consult an attorney.

***If the Appeal Board overturns a decision in your favor, you may have to repay your benefits.***

### **What is a Hearing?**

A hearing is an informal trial held to determine whether or not you are entitled to unemployment insurance (“UI”) benefits. It is conducted by an Administrative Law Judge (“ALJ”) at the New York State Department of Labor (“DOL”).

### **Who is the Administrative Law Judge?**

The Administrative Law Judge, also called an ALJ, is an employee of the UI Appeal Board of the DOL. The ALJ must ensure that all parties have a fair chance to be heard, present evidence, and get a fair decision. After the hearing, the ALJ will issue a decision about whether or not you are entitled to UI benefits.

### **Why Have a Hearing?**

You can request a hearing to challenge the DOL’s decision to deny your benefits. The DOL will notify you of the decision and the reason for the denial by mail in a “Notice of Determination.” If you disagree with the reason, you may request a hearing by sending a letter to the DOL. Your request must be postmarked within 30 days of the date on the Notice of Determination. Your former employer can request a hearing to object to the DOL’s decision to grant your benefits. This hearing is held to determine whether your former employer’s objection is correct.

### **Who Can Attend the Hearing?**

- You and someone who can help you present your case. This person can be a lawyer, an authorized agent, union representative, or just a friend.
- Your former employer or their representative(s), which may include a lawyer.
- You and your former employer both have the right to bring witnesses.
- The DOL may send a representative to defend its decision.

### **Can I Examine My File Before the Hearing?**

Yes. At any time before the hearing, you may call the ALJ Section to arrange to see your file.

### **What Should I Bring to the Hearing?**

You should bring any papers you have received from the UI Division of the DOL. You should also bring any papers or other evidence that will support your position such as contracts, letters, pay stubs, arbitration decisions, collective bargaining agreements, employee handbooks or manuals, doctor’s notes, and photographs.

During the hearing, you should ask the ALJ to accept these papers into the record. In deciding your case, the ALJ can consider only those papers or other evidence identified at the hearing and accepted into the record after the other side had an opportunity to review them.

Your former employer can also ask the ALJ to accept evidence and the ALJ can admit papers from your file into the record. You have the right to review any evidence before the ALJ accepts it for the record.

### **What Happens at a Hearing?**

To begin the hearing, the ALJ will identify the parties and the issues to be addressed at the hearing. The ALJ may then ask questions of you, your former employer, and any witnesses either side may have. The ALJ may hear your former employer’s side of the story first. All testimony will be tape-recorded and taken under oath. Either side can present papers or other physical evidence.

You, your former employer, and your respective lawyer(s) or representative(s), may also ask questions of any witnesses. This is called “cross-examination.” If you have trouble, you can ask the ALJ for help.

During the hearing, the ALJ may decide to consider new questions about your case not identified in the “Notice of Determination” or the employer’s objections. If new questions are considered, the ALJ must have a good reason for considering them and must explain that to you. If you are not prepared to discuss a new question, you have a right to “adjourn” (delay) your hearing to prepare.

At the end of the hearing, both you and your former employer can give closing statements summarizing your arguments.

### **Can I Bring Witnesses?**

Yes. You can bring any individual(s) to the hearing that can provide information to the ALJ that supports your position. Your former employer may also bring witnesses. You, your former employer, and the ALJ will be able to question all witnesses.

### **What if I Can’t Get the Evidence or Witnesses I Need?**

If you need a document, or other evidence, which will help you prove your case, but you can’t get it from the person who has it, the ALJ can help you. The ALJ can force the person who has the evidence to deliver it by issuing a paper to them called a “Subpoena.” (Sa-pee-na). You can ask the ALJ to issue a subpoena and if they grant your request, the ALJ will delay the hearing so that the subpoena can be delivered.

Similarly, if you need an important witness to come to your hearing, but the witness refuses, you can ask the ALJ to force the witness to appear by issuing a subpoena. Again, this will cause the hearing to be delayed.

If you don’t need an ALJ’s help to get a paper or witness, but you need time to get it, you can ask the ALJ for more time. The ALJ will only give you more time if you have a good reason for requesting it.

If you have a witness who is willing to testify but cannot, for whatever reason, come to the hearing, you can ask the ALJ to permit the witness to testify by telephone.

Your former employer and the DOL have the same rights to get evidence or witnesses.

### **Can I Bring a Lawyer or Someone to Help Me?**

Yes. You can bring a lawyer or anyone else to the hearing to help you. If you can’t afford to hire a lawyer, you may be able to get one free through your local Legal Aid Society or Legal Services office. Only a lawyer or a registered agent can charge a fee to help you (and then only if you win). Anyone can help you who does not charge a fee. Your former employer can also bring a lawyer or agent.



# **Hearings Before Unemployment Insurance Administrative Law Judges**





NYS Department of Labor  
Unemployment Insurance Division

## Hearings Before Unemployment Insurance Administrative Law Judges

This information is provided by New York State Department of Labor (“DOL”) to answer basic questions about your upcoming hearing before an Unemployment Insurance (“UI”) Administrative Law Judge (“ALJ”) at the UI ALJ section. For more information, read the pamphlet *Questions and Answers About Your Unemployment Insurance Benefits Hearing* (form TC424B), which you should have received in the mail from the DOL. It is also available at <http://www.labor.ny.gov/formsdocs/ui/formsandpublications.shtm>.

**To protect your rights** while you are unemployed you should continue to certify for benefits and to report in person as directed. Any correspondence related to your case should include both the ALJ case number and your social security number.

### **Who is the Administrative Law Judge (“ALJ”)?**

The ALJ is an impartial (fair) decision-maker whose judgment is independent of the DOL. The ALJ will conduct your hearing, carefully review all the facts in your case, and make a decision about whether you (the claimant) are entitled to UI benefits.

### **How Can I Prepare for the Hearing?**

You have the right to retain a lawyer or other representative to represent you at the hearing. A lawyer who represents a claimant may charge a fee, which is limited by law. A non-attorney who represents a claimant may not charge a fee unless the non-attorney is an agent registered with the Appeal Board. Fees are payable to claimant’s representatives only if a claimant receives benefits as a result of a hearing and the Appeal Board approves the fee. If you cannot afford to hire a lawyer, you may be able to get free representation through your local Legal Aid Society or Legal Services Program. For the *List of Attorneys and Authorized Agents* (form TC424.4) go to <http://www.labor.ny.gov/uiappeal/> and click on the Resources tab.

You have the right to review your entire case file prior to the hearing.

If you have any questions, contact the UI ALJ section at 1-877-880-3322 or the DOL’s Telephone Claims Center (“TCC”) at 1-888-209-8124 (if you reside in New York State) or 1-877-358-5306 (if you reside outside of New York State).

### **How Will the ALJ Conduct the Hearing?** During the hearing, the ALJ will:

- a. Identify all parties present and briefly outline the issues involved;
- b. Take testimony from all parties under oath or affirmation;
- c. Question parties and witnesses to obtain the necessary facts;
- d. Assist parties in asking questions of witnesses;
- e. Rule on which documents or testimony may be admitted into evidence;
- f. Issue subpoenas for relevant records and for persons to appear to testify;
- g. Permit parties to use documents from the case file in presenting their case.

### **What Are My Rights at the Hearing?** During the hearing, you have the right to:

- a. Testify on your own behalf;
- b. Bring an attorney or other person to represent you;
- c. Have witnesses testify on your behalf;
- d. Offer documents, records and other evidence into the record;
- e. Ask the ALJ to subpoena documents to be presented and witnesses to testify on your behalf;
- f. Ask questions of (or “cross examine”) opposing parties and adverse witnesses;
- g. Ask the ALJ to assist you if you are having trouble asking questions;
- h. Decline to answer any question that you do not understand;
- i. Explain or refute any evidence against you;
- j. Request a delay (or “adjournment”) to a later date for a good cause;
- k. Make a statement at the end of the hearing to explain why you are entitled to UI benefits or to explain points which were not raised or clarified during the hearing.

### **What Happens After the Hearing?**

After the hearing, the ALJ will issue the Decision and Notice of Decision informing you whether or not you are entitled to UI benefits. It will be mailed to you as soon as possible after the hearing.

In the Decision and Notice of Decision, the ALJ will set forth the facts found from evidence, the reasons for the findings, and the decision itself.

Information in the Decision and Notice of Decision will also explain how to file an appeal to the Appeal Board if you disagree with the ALJ’s decision.

If you cannot understand the ALJ’s decision, you may call the DOL’s TCC and request an explanation.

*If the ALJ or the Appeal Board determines that you are overpaid benefits, you may have to repay the benefits.*



## Audiencias antes

### Los Jueces de Derecho Administrativo del Seguro por Desempleo

El Departamento de Trabajo del Estado de Nueva York ("DOL") provee esta información para contestar preguntas básicas sobre la audiencia que usted va atender antes un Juez de Derecho Administrativo ("ALJ") del Seguro por Desempleo ("UI") en la Sección del ALJ. Para más información, lea el folleto *Preguntas y Respuestas Sobre su Audiencia de los Beneficios del Seguro por Desempleo* (formulario TC424B) que debe de haber recibido por el correo del DOL. También esta disponible en <http://www.labor.ny.gov/formsdocs/ui/formsandpublications.shtm>.

**Para proteger sus derechos** mientras que esta desempleado, usted debe de continuar reclamando beneficios y presentándose en persona como se le indica. Cualquier correspondencia relacionada con su caso debe incluir el número del caso (N.º del ALJ) y su número de seguro social.

#### **¿Quién es el Juez de Derecho Administrativo ("ALJ")?**

El juez de derecho administrativo (ALJ) es un tomador de decisión imparcial (justo) cuyo juicio es independiente del DOL. El ALJ conducirá su audiencia, estudiará cuidadosamente todos los hechos de su caso, y tomará una decisión de si usted (el reclamante) tiene el derecho a los beneficios de UI.

#### **¿Cómo me Preparo para la Audiencia?**

Usted tiene el derecho de ser representado por un abogado u otro representante en la audiencia. Un abogado puede cobrar honorarios pero dichos honorarios están limitados por la ley. Una persona que no es un abogado no puede cobrar un honorario por representar a un reclamante, excepto si dicha persona es un agente registrado con la Junta de Apelaciones ("AB"). Los honorarios son pagables solamente si un reclamante recibe beneficios como resultado de una audiencia y si el honorario esta aprobado por la AB. Si usted no puede pagar por un abogado, podría obtener representación gratis a través de su local de la Sociedad de Ayuda Legal (Legal Aid Society) o del Programa de Servicios Legales (Legal Services Program). Por *La Lista de Abogados y Agentes Autorizados* (el formulario TC424.4S) váyase a <http://www.labor.ny.gov/uiappeal/>.

Usted tiene el derecho de revisar el expediente entero relacionado con su caso antes de la audiencia.

Si usted tiene algunas preguntas, puede llamar a la sección del ALJ al 1-877-880-3222 ó el Central Telefónica de Reclamos ("TCC") al 1-888-209-8124 (si usted reside en el estado de Nueva York) ó al 1-877-358-5306 (si reside fuera del estado de Nueva York).

#### **¿Cómo Conducirá la Audiencia el ALJ?** Durante la audiencia el juez de derecho administrativo (ALJ):

- Identificará los litigantes presentes y delinearé brevemente las controversias del caso;
- Escuchará testimonio bajo juramento o afirmación de los litigantes;
- Interrogará a litigantes y testigos para obtener información necesaria;
- Ayudará a litigantes en la interrogación de testigos;
- Decidirá que documentos o testimonios pueden ser presentados como evidencia;
- Expedirá citaciones para obtener documentos pertinentes al caso y para personas comparezcan a dar testimonio.
- Permitirá a los litigantes el uso de documentos del expediente del caso para la presentación de su argumento.

#### **¿Cuáles son Mis Derechos en la Audiencia?** Durante la audiencia, usted tiene los derechos de:

- Dar testimonio a su favor;
- Llevar a un abogado u otro representante para representarte;
- Presentar testigos que darán testimonio a su favor;
- Presentar documentos, archivos u otra evidencia al récord;
- Pedir que el ALJ citar documentos para presentar y testigos para dar testimonio a su favor;
- Interrogar (o "repreguntar") a personas y testigos de la parte contraria;
- Pedir asistencia del ALJ si tiene dificultad en interrogar;
- Negar de contestar cualquier pregunta que no entiende;
- Explicar o refutar cualquier evidencia en contra de usted;
- Pedir un retraso (o un "aplazamiento") hasta una fecha más tarde por una causa justificada;
- Hacer una declaración al final de la audiencia para explicar por que usted tiene el derecho a los beneficios de UI u otros puntos cuales no fueron presentados o clarificados durante la audiencia.

#### **¿Qué Sucederá Después de la Audiencia?**

Después de la audiencia, el juez de derecho administrativo (ALJ), emitirá la Decisión y Notificación de Decisión informándole si usted tiene o no tiene el derecho al los beneficios de UI. Se le enviará dicha decisión por correo lo más pronto posible.

En la Decisión y Notificación de Decisión, ALJ presentará los hechos descubiertos a través de la evidencia presentado, las razones usadas para llegar a la decisión y dicha decisión.

Información en la Decisión y Notificación de Decisión también explicará como solicitar una apelación a la Junta de Apelaciones si usted no esta de acuerdo con la decisión del juez de derecho administrativo (ALJ).

Si usted no entiende la decisión del juez de derecho administrativo (ALJ), puede llamar al TCC y pedir una explicación.

*Si el ALJ o la Junta de Apelaciones determina que se le sobrepagaron beneficios, podría tener que devolver los beneficios.*

# **BIOGRAPHIES**



**Joseph Dougherty, Esq.** is a member of the Firm's Labor and Employment and Litigation departments. He represents a wide variety of clients in addressing issues that arise in and out of the workplace. Mr. Dougherty regularly advises employers and employees on labor and employment as well as commercial litigation matters. He has represented clients in administrative matters before the United States Department of Labor, Equal Employment Opportunity Commission, Financial Industry Regulatory Authority, National Labor Relations Board, NYS Division of Human Rights, NYS Department of Labor, NYS Department of Tax and Finance, NYS Retirement System, NYS Public Employment Relations Board, NYS Workers' Compensation Board, NYS Department of Health, state legislature and federal and state courts.

Mr. Dougherty's practice includes various aspects of the public and private employer/employee relationship, including: negotiating employment contracts and separation agreements, restrictive covenants, disciplinary procedures, alternative dispute resolution, sexual harassment and discrimination, wage and hour (NYS/FLSA), independent contractors and contingent workers, prevailing wage, I-9 compliance, OSHA, substance abuse and drug testing, class action litigation as well as other employment-related matters.

In addition, Mr. Dougherty is experienced in mass/class litigation including representation in connection with the failure of various NYS self-insured trusts involving hundreds of millions in claims in state and federal litigation and representation in connection with multiple FLSA class action lawsuits.

Mr. Dougherty has lectured on myriad topics related to NYS and federal labor and employment laws, including management training programs to avoid sexual harassment and EEO problems, compliance with the Americans with Disabilities Act, the Family and Medical Leave Act, and the New York State Civil Service Law. Moreover, he has conducted educational conferences for in-house attorneys and human resource professionals on a wide range of other labor-management issues.

Mr. Dougherty is a 2002 graduate of Hamilton College and a 2006 graduate of Albany Law School. He is admitted to practice in New York, the United States Court of Appeals for the 2d Circuit, and the United States Federal District Court, Northern District of New York.

**Brian Hodgdon, Esq.** is an associate of the Hinman Straub's Labor and Employment and Litigation departments. He represents a wide variety of clients in addressing issues that arise in and out of the workplace. Mr. Hodgdon advises employers and employees on labor and employment as well as litigation matters. He has represented clients in administrative matters before the Equal Employment Opportunity Commission, Financial Industry Regulatory Authority, NYS Division of Human Rights, NYS Department of Labor, NYS Retirement System, NYS Workers' Compensation Board, state legislature and federal and state courts.

Mr. Hodgdon joined the firm in April 2013, after serving in the United States Navy as a Judge Advocate, where held positions as a military prosecutor and counsel to senior military officials. Mr. Hodgdon also worked for the NYS Supreme Court, Appellate Division, Third Department and is a 2007 graduate of Albany Law School and a 2004 graduate of the College of the Holy Cross. He is admitted to practice law in New York, New Jersey, and the United States Federal District Court, Northern District of New York.

**Paul Mason, Esq.** is the Director of Adjudication and Determination in the Unemployment Insurance (UI) Division of the New York State Department of Labor. He oversees the Adjudication Services Office, the Liability and Determinations Section, the Employer Accounts and Adjustments Sections and the UI Tax Collections Section. The Adjudication Services Office reviews and prepares appeals of the Commissioner's determinations for hearings, represents the Commissioner at UI hearings, prepares Commissioner appeals of UI ALJ hearings decisions, and provides legal guidance on UI statutes, regulations, case law and policies to UI Division staff. He also reviews and prepares Federal and State UI legislation. Mr. Mason previously served in the Counsel's Office as the Associate Attorney for Federal programs and as a Senior Attorney. He started working for the State in 1994 and served as a Senior Attorney in the Office of Real Property Services, the Office of General Services and the Office of Children and Family Services. Mr. Mason represented indigent clients as a staff attorney for the Criminal Defense Division of Legal Aid Society of New York City from 1990-1994. He is also a mediator.

**Hon. Christopher Tate** has been employed by the Unemployment Insurance Appeal Board since October 1996. He was appointed Principal Administrative Law Judge in March 2009. His duties include supervising and managing the daily operations at the Appeal Board, supervising training of new ALJs and ongoing training of tenured ALJs, performing legal research on novel or complex areas of law, and maintaining uniformity in the application of UI law. Prior to March 2009, he worked as a Senior Administrative Law Judge beginning in April 2008. His duties included supervising ALJs in Appeals. Prior to April 2008, he served as an Administrative Law Judge both in the hearings and appeals sections. He has worked for a private law firm in 1996. He has worked as an Assistant District Attorney in the Kings County District Attorney's office for over three years from 1992 through 1995. He received his JD degree from Brooklyn Law School in the spring of 1992. He received a BA degree from Bucknell University in the spring of 1989. He graduated from Shaker High School in 1985. He currently lives in Niskayuna with his wife and three children.

**Hon. Matthew J. Tierney** is currently a Principal Administrative Law Judge with the Unemployment Insurance Appeal Board (UIAB) and has supervisory responsibilities over the Buffalo, Garden City, Hauppauge, Rochester, Syracuse and Troy hearing offices. A 1983 graduate of Albany Law School, he started his 18 year career with the UIAB in the appeal unit and after approximately two years became a hearing officer on a full time basis. In February of 2008 he was appointed to the position of Senior Administrative Law Judge and became the supervisor of the Troy hearing office. From January through May of 2009 he was appointed an acting Principal Administrative Law Judge and supervised the upstate New York hearing sections. Prior to joining the UIAB he served for six years as a Senior Assistant Counsel in the New York State Senate. He currently lives in the Albany area with his wife and two children.