

# New York State Department of Labor

## A-750 100 Series

A-750-151

Index 905.1

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
AUGUST 26, 1940

INTERPRETATION SERVICE - BENEFIT CLAIMS  
DETERMINATION OF BENEFITS  
Waiting periods, regular

Matter of Munterfering, 256 App. Div. 151

### REGISTRATION FOR NEW BENEFIT YEAR - BASE YEAR DEFINED (SECTIONS 502.8 AND 504.1 OF LABOR LAW)

A claimant may not accumulate statutory waiting period during a period when he is ineligible for benefits.

During the first three months of 1938, a claimant was not eligible for benefits unless he had earnings equal to eighteen times his benefit rate during the first three calendar quarters of 1937.

Appeal Board Decision: Claimant's registration of April 1, 1938 should be predated to March 16 as he was eligible for benefits on that date. Decision of Referee reversed. (July 7, 1938)

Appealed By: Industrial Commissioner.

Findings of Fact: Claimant registered for benefits on February 1, 1938 and was declared ineligible for benefits during the first quarter of 1938 because he had insufficient earnings during his base year which consisted of the first three calendar quarters of 1937. On March 16 claimant attempted to refile alleging that he had the right to begin his statutory waiting period at any time during the last three weeks of the first calendar quarter of 1938 because he would be entitled to benefits on April 1 on the basis of his earnings in his new base year, the entire calendar year 1937. Local office did not permit claimant to register until April 1. The Referee upheld local office determination and was reversed by the Appeal Board which upheld claimant's right to register on March 16. The Industrial Commissioner appealed to this court pursuant to Section 510.7 of the Labor Law.

Opinion of the Court: Any benefits payable to claimant during the first calendar quarter of 1938 had to be computed on the basis of earnings during the first three calendar quarters of 1937 pursuant to Section 502.8, prior to amendment on April 1, 1938, which reads as follows:

"8. 'Base year' with respect to any employee means the first four of the last five completed calendar quarters immediately preceding the first day of any calendar week

with respect to which benefits are payable to such employee, except that during the first calendar quarter of nineteen hundred thirty-eight,

the base year shall mean the first three of the last four completed calendar quarters immediately preceding the first day of any calendar week with respect to which benefits are payable."

The respondent conceded that his earnings during the first three calendar quarters in 1937 did not equal 18 times his benefit rate.

The Board construed Section 502.8, in order to ascertain the base year applicable to a filing for benefits on March 16, 1938, as follows:

"The first day of the 'week with respect to which benefits are payable' in the case before us would be the first day of the fourth week following March 16. This calculation is arrived at pursuant to the provisions of Section 504.1 of the Labor Law which requires a minimum uninterrupted waiting period of three consecutive full weeks after registration. Hence, April 6, 1938, is the first day of claimant's first compensable week as contemplated in the foregoing definition of 'base year.'"

"April 6, 1938, falls within the second calendar quarter of 1938 and in accordance with the express provisions of Section 502.8 the claimant's base year is therefore the 'first four of the last five completed calendar quarters immediately preceding' April 6, 1938. In other words, the full year of 1937. Since it is conceded that claimant had earnings during 1937 of more than eighteen times his weekly benefit, it follows that on March 16 he had sufficient earnings during his base year to entitle him to benefits."

"We therefore hold that on March 16, 1938, the claimant was entitled to benefits and should have been permitted to register."

The Board held that the respondent's base year on March 16, 1938, was the four calendar quarters in 1937 instead of, as provided by the section in question, the three calendar quarters of 1937 and the result was that the respondent was allowed to accumulate statutory waiting time during a period when he was ineligible for benefits, namely, from March 16 to March 31.

Decision: Claimant was not entitled to register for benefits on March 16 because he was ineligible for benefits during the first three months of 1938. Decision of Appeal Board was reversed.

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A-750-181

Index No. 1030-3

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE

October 23, 1940

INTERPRETATION SERVICE – BENEFIT CLAIMS  
HEARINGS AND APPEALS  
Rules for appeal

Appeal Board Case No.2432-40

PROCEDURE ON APPEALS – EMPLOYER DEFINED – PREVIOUS UNAPPEALED  
REFEREE DECISION BINDING (SECTIONS 502.3 AND 531 OF LABOR LAW)

Referee's decision holding employer subject to Law and not appealed, was final and controlling. Employer could not appeal subsequent decision involving the same period of time and a different claimant.

Referee's Decision: Claimant worked in covered employment. (February 20, 1940)

Appeal By: Employer

Findings of Fact: Claimant was employed by appellant as a baker during 1938. In a previous decision involving a different claimant, another referee determined that appellant was subject to Law on January 1, 1938. The time to appeal from such determination has now fully expired and no appeal has been taken by appellant.

Issue: Whether appellant is subject to Law.

Appeal Board Opinion: The issue must be resolved in the affirmative for the reason that previous decision is final and binding on appellant, and is controlling on this appeal.

Decision: Claimant worked in covered employment. Decision of Referee affirmed.

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A-750-183

Index No. 1030-1

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE  
October 23, 1940

INTERPRETATION SERVICE – BENEFIT CLAIMS  
HEARINGS AND APPEALS  
Reopening of cases

Appeal Board Case No. 2237-40

PROCEDURE ON APPEALS – RIGHT TO RE-OPEN CLAIMS (SECTION 530 OF LABOR  
LAW)

Where referee closes case due to lack of evidence with right to claimant to re-open, his remedy is application to referee to re-open in order to produce additional evidence and not by way of appeal to Board.

Referee's Decision: Claimant is ineligible for benefits based on earnings received from covered employer, as there is insufficient evidence to indicate that the claimant was employed by employer during 1937. (January 11, 1940)

Appeal By: Claimant

Findings of Fact: Claimant appeals from the decision of the referee dated January 11, 1940, holding him to be ineligible for benefits based on earnings received from his employers. In his notice of appeal claimant also requests that the hearing be re-opened.

In closing this case the referee stated, " – the claimant did not submit any evidence to substantiate his claim relative to the said employers. This case is being closed in reference to the said employers with leave to the claimant to re-open the same if he obtains evidence at some future time relative to the said employment."

Appeal Board Opinion: The claimant's remedy is not by way of appeal. If claimant is aggrieved by the decision of the referee, and orderly procedure has been provided for him by the decision itself. The local office should have advised him to make application for a re-opening of the case before the referee for the purpose of submitting evidence relative to his employment.

Decision: This appeal is accordingly dismissed.

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A-750-187

Index No 725.5

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE

October 23, 1940

INTERPRETATION SERVICE- BENEFIT CLAIMS  
AVAILABILITY AND CAPABILITY  
Health

Appeal Board Case No. 3065-40

CAPABILITY - AVAILABILITY - CLAIMANT CONFINED IN CONVALESCENT HOME

Claimant, who enters convalescent home to rebuild his health and is not permitted to leave the grounds under penalty of expulsion, has removed himself from the labor market and is not capable of and available for employment.

Referee's Decision: Claimant was not available for employment (May 15, 1940)

Appeal by: Claimant

Findings of Fact: Claimant filed for benefits on April 3, 1940. On April 8, 1940 claimant entered convalescent home to rebuild his health and recuperate from an abdominal operation undergone in February. Although he required no medical care at the home, he was not permitted to leave the grounds under pain of immediate expulsion. While at the home, claimant failed to report on his due date of April 15, 1940. He refiled on April 22, 1940 at which time he reported his stay at the home. Local office suspended his benefit rights from the date of entry into convalescent home.

Issue: Whether claimant was capable of and available for employment during the period of suspension.

Appeal Board Opinion: It is obvious that claimant removed himself from the labor market when he entered the home to rebuild his health. This purpose could not be accomplished if claimant were to accept employment. The conditions surrounding claimant's stay at the home were such as to make it difficult for him to seek or accept employment.

Decision: Suspension of claimant's benefit rights sustained. Decision of referee affirmed.

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A-750-189

Index No. 1320D-9  
1325.6

NEW YORK STATE DEPARTMENT OF LABOR  
UNEMPLOYMENT INSURANCE DIVISION  
ADJUDICATION SERVICES OFFICE

October 23, 1940

INTERPRETATION SERVICE – BENEFIT CLAIMS  
STRIKES, LOCKOUT, etc.  
Termination of

Appeal Board Case No. 2413-40 et al

TERMINATION OF STRIKE – ABANDONMENT OF BUSINESS BY EMPLOYER  
(SECTION 504.2(B) OF LABOR LAW)

Claimants who lost employment on the day on which the employer discontinued business are not subject to an extended waiting period even though an industrial controversy immediately preceded the employer's action.

Referee's Decision: Claimants lost their employment as result of an industrial controversy and extended waiting period applies (February 21, 1940)

Appeal By: Claimants

Findings of Fact: Employer corporation, engaged in printing labels, employed claimants in various capacities. On or about October 4, 1939 claimants became union members. On October 4, union representatives demanded that employer sign union contracts. Employer refused and strike was called. On October 11 temporary agreement provided that employer give employees a \$5.00 weekly increase for 30 days. On November 17 further 60 day extension was agreed upon with additional \$3 weekly increase. This was still below union scale. Negotiations continued until, at final conference on January 18, 1940, employer announced that he had decided to discontinue printing business and intended to become a printing broker. Claimants worked on the morning of January 18. During lunch hour union representatives notified them that negotiations were terminated, that employer had announced his intention of going out of printing business at noon on that day and that their checks would be ready for them. Claimants returned to the shop, cleaned the presses and reported to the employer who handed them their checks. Regular payday fell on January 19. Practically all the work on hand had been completed at noon on January 18. During the afternoon of January 18, members of unions appeared in front of employer's establishment with placards reading " \_\_\_\_\_ Printing Company is unfair to organized labor." Since the closing, the employer has made no attempt to operate his shop as a printing establishment.

Issue: Whether claimants lost their employment as result of a strike, lockout, or other industrial controversy within meaning of section 504.2 of Labor Law.

Appeal Board Opinion: Employer admits that his decision not to accept further work for production but accept orders for printing only as a broker preceded the final conference of January 18. There was, therefore, nothing to negotiate on that date. Any industrial controversy which theretofore existed terminated on January 18 and claimants' loss of employment may not be attributed to that cause. Claimants lost employment because of employer's decision to close printing shop and to become a broker.

Decision: Claimants did not lose their employment as a result of a strike, lockout or industrial controversy in the establishment in which they were employed. Normal waiting period applies. Decision of referee reversed.

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