remanded to the Deputy for an initial determination.

The claimant is not liable for refund in the sum of $1,118.00, received as benefits for the weeks ending 6/09/18 through 6/16/18, in accordance with N.J.S.A. 43:21-16(d).

The redetermination of the Deputy is reversed.

The determination of the Director is reversed.

/s/ Sharmila Arunasalam
APPEALS EXAMINER

FA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00158279
Date of Claim: 12/10/2017
Date of Appeal: 08/06/2018
PC : 10
Appellant: Claimant
Mailing Date: 09/11/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Uber Technologies, Inc.

The claimant appealed on 8/6/18 from a redetermination of the Deputy, mailed on 7/31/18, imposing a disqualification for benefits from 6/3/18 through 6/30/18 on the ground that the claimant failed, without good cause, to accept suitable work.

The claimant appealed on 8/6/18 from a Request for Refund from the Director, mailed on 7/31/18, holding the claimant liable for refund in the sum of $1,118 received as benefits for the weeks ending 6/9/18 and 6/16/18 as provided by N.J.S.A. 43:21-16(d).

The appellant failed to register for a duly scheduled telephone appeal hearing on 9/11/18.

FINDINGS OF FACT:

The appellant failed to register for a telephone appeal hearing and pursue the appeal.

OPINION:

As there was no evidence presented to upset the findings of the Deputy, that determination will not be disturbed, and the appeal is dismissed.

DECISION:

The appeal is dismissed.

NOTE: TO REQUEST ANOTHER HEARING, WRITE TO:

APPEAL TRIBUNAL
NEW JERSEY DEPARTMENT OF LABOR

PO BOX 936
TRENTON, NJ 08625-0936

You must include your name, Social Security number, and the **reason why you failed to register.**

/s/ Ian Spurlock
APPEALS EXAMINER

UA

Board of Review
PO Box 937
Trenton, NJ 08625-0937

SS #:
Docket #: DKT00155988
Date of Claim: 06/03/2018
Date of Appeal: 08/27/2018
Mailing Date: 10/15/2018

Decision of the Board of Review

IN THE MATTER OF:

EMPLOYER: UBER TECHNOLOGIES, INC.

The claimant filed a timely appeal from a decision of the Appeal Tribunal mailed August 13, 2018 holding the claimant disqualified for benefits as of May 13, 2018, as she left work without good cause attributable to such work in accordance with N.J.S.A. 43:21-5(a)..

This matter is reviewed on the record below.

FINDINGS OF FACT:

The claimant last worked for the above-named employer as a driving partner from January 1, 2018 through May 16, 2018 at which time the claimant moved to a different region in North Carolina. The claimant informed her employer and was advised that her account would be suspended until they conduct another background and criminal check. The claimant would receive an email as to when the check was complete and she could return to work. The claimant was advised on July 12, 2018 that she could start accepting rides. The claimant stopped claiming benefits as of the week ending July 14, 2018.

OPINION:

The Appeal Tribunal found the claimant quit her job due to relocation. We do not agree. The claimant's separation is tantamount to a temporary layoff as there was no work for her while the employer was conducting a background check. Therefore no disqualification arises under N.J.S.A. 43:21-5(a).

DECISION:

No disqualification arises under N.J.S.A. 43:21-5(a).

The decision of the Appeal Tribunal is reversed.

BOARD OF REVIEW
Joseph Sieber
Nancy Hunt

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00155988
Date of Claim: 06/03/2018
Date of Appeal: 07/13/2018
PC : 40
Appellant: Claimant
Mailing Date: 08/13/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: UBER TECHNOLOGIES, INC.

The claimant appealed on 07/13/2018 from a determination of the Deputy, mailed on 07/05/2018, imposing a disqualification for benefits from 05/13/2018 on the ground that the claimant left work voluntarily without good cause attributable to such work.

The claimant participated in a telephone hearing on 08/08/2018.

FINDINGS OF FACT:

The claimant worked for the above-named employer as a driving partner, from 01/01/2018 through 05/16/2018, at which time the claimant left the work voluntarily. The claimant left the job because of relocation to another area. The claimant relocated on 05/01/2018 to another area of North Carolina known as East Carolina, at which time she informed her employer. She reapplied and underwent another background check until she was re-hired on 07/12/2018.

OPINION:

N.J.S.A. 43:21-5. An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case. This subsection shall apply to any individual seeking unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, including any individual who was employed in the production and harvesting of agricultural crops on a contract basis and who has refused an offer of continuing work with that employer following the completion of the minimum period of work required to fulfill the contract.

The Board of Review held a claimant disqualified for benefits under N.J.S.A. 43:21-5(a) because the decision to leave work in New Jersey to relocate was personal and unrelated to the work itself.

The claimant's leaving to relocate is a personal reason. Therefore, the claimant is disqualified for benefits as of 05/13/2018, under N.J.S.A. 43:21-5(a), as the claimant left work voluntarily without good cause attributable to such work.

DECISION:

The claimant is disqualified for benefits under N.J.S.A. 43:2l-5(a) as of 05/13/2018, as the claimant left work voluntarily without good cause attributable to such work.

The determination of the Deputy is affirmed.

/s/ Angelique Henderson
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00155629
Date of Claim: 02/04/2018
Date of Appeal: 10/25/2018
PC : 10
Appellant: Claimant
Mailing Date: 11/23/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Uber Technologies, Incorporated

For good cause shown, this matter is reopened as of 10/25/18.

A telephone appeal hearing was scheduled for 11/21/18.

FINDINGS OF FACT:

The claimant appealed on 07/06/18 from a redetermination of the Deputy, mailed 07/02/18, imposing a period of ineligibility for benefits from 03/04/18 on the ground that the claimant was employed full-time.

The claimant appealed on 07/06/18 from a Request for Refund from the Director, mailed 07/02/18, imposing a liability to refund the sum of $4,048.00 received as benefits for the weeks ending 03/10/18 through 06/23/18 as provided by N.J.S.A. 43:21-16(d).

The appellant was not available to participate in the scheduled appeal hearing as he was at a job interview.

OPINION:

As the appellant was not available to participate in the scheduled appeal hearing as he was at a job interview, the appeal is dismissed without prejudice. This appeal may be reopened upon the appellant's application to the Appeal Tribunal. Any request to the Appeal Tribunal must be received within 180 days of the date of mailing of this decision.

DECISION:

The appeal is dismissed without prejudice.

NOTE: TO REQUEST ANOTHER HEARING, WRITE TO:

APPEAL TRIBUNAL

NEW JERSEY DEPARTMENT OF LABOR

PO BOX 936

TRENTON, NJ 08625-0936

You must include your name, Social Security number, and the reason why you failed to appear.

/s/ Amy Mascelli
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00155629
Date of Claim: 02/04/2018
Date of Appeal: 07/06/2018
PC : 10
Appellant: Claimant
Mailing Date: 08/07/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Uber Technologies, Incorporated

The claimant appealed on 07/06/18 from a redetermination of the Deputy, mailed 07/02/18, imposing a period of ineligibility for benefits from 03/04/18 on the ground that the claimant was employed full-time.

The claimant appealed on 07/06/18 from a Request for Refund from the Director, mailed 07/02/18, imposing a liability to refund the sum of $4,048.00 received as benefits for the weeks ending 03/10/18 through 06/23/18 as provided by N.J.S.A. 43:21-16(d).

A telephone appeal hearing was scheduled for 08/03/18 and rescheduled to 08/06/18.

FINDINGS OF FACT:

The claimant needs additional time to prepare for the appeal hearing.

Division records reflect a claim for benefits was filed effective 02/04/18, establishing a weekly benefit rate of $253.00 and a partial weekly benefit rate of $303.00. Records reflect there were no earnings reported by the claimant for the weeks in question.

OPINION:

As the claimant needs additional time to prepare for the appeal hearing, the appeal is dismissed without prejudice. This appeal may be reopened upon the appellant's application to the Appeal Tribunal. Any request to the Appeal Tribunal must be received within 180 days of the date of mailing of this decision.

The claimant shall provide the Appeal Tribunal with weekly gross wages from the above-named employer beginning from 03/04/18 through 06/23/18. As noted in the Findings of Fact, the partial weekly benefit rate on the claim is $303.00.

DECISION:

The appeal is dismissed without prejudice.

NOTE: TO REQUEST ANOTHER HEARING, WRITE TO:

APPEAL TRIBUNAL

NEW JERSEY DEPARTMENT OF LABOR

PO BOX 936

TRENTON, NJ 08625-0936

You must include your name, Social Security number, and the reason why you failed to appear.

/s/ Amy Mascelli
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00151229
Date of Claim: 04/22/2018
Date of Appeal: 05/21/2018
PC : 10
Appellant: Claimant
Mailing Date: 07/02/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER #1:
EMPLOYER #2: Uber Technologies, Inc.

The claimant appealed on 5/21/18 from a determination of the Deputy, mailed on 5/09/18, holding that the services that the claimant performed for the above named employer #2 were in employment.

The claimant appealed on 5/21/18 from a determination of the Deputy, mailed on 5/09/18, holding the claimant ineligible for benefits as of 4/22/18 on the ground that the claimant was employed full time.

The claimant and a Deputy participated in a duly scheduled telephone hearing on 6/29/18.

FINDING OF FACT:

The claimant was employed by the above named employer #1 as a cdl truck driver from 2/17/15 until 1/31/18. The claimant was discharged by the employer. The claimant worked Monday to Friday. The claimant started work each day at 11:00AM and worked until the job was done. The claimant earned $28.05 per hour.

A claimant for unemployment benefits was filed as of 4/22/18 establishing a weekly benefit rate of $681.00 and a partial weekly benefit rate of $817.00.

The claimant has been accepting work as a driver from the above named employer #2 since 2/13/18. The claimant has been working 30 to 35 hours per week.

The claimant earned $600.00 for the week ended 4/28/18, and the claimant earned $600.00 for the week ended 5/05/18. The claimant did not claim benefits past the week ended 5/05/18.

The above named employer # 2 provides a transportation service via its software application where individuals seeking transportation can log onto to the employer's software application and be paired

with an available driver. The employer owns and controls the software application that pairs individuals seeking transportation with available drivers. The employer stipulated what type of vehicle the claimant needed to have in order to work for the employer.

While working for the above named employer #2, the claimant was required to give each passenger a rating after each ride. The employer used a star rating system. If the claimant did not give each passenger a rating, the claimant was automatically denied access for additional work through the employer's software application.

The claimant did not have a set schedule while working for the above named employer #2. When the claimant wanted to work for the employer, the claimant turned on the employer's software application and the employer would send the claimant work. When the claimant did not want to work for the employer, the claimant turned the software application off.

The claimant could not have worked as a driver for the above named employer #2 if the employer had not granted the claimant access to the employer's software application that paired the claimant with individuals seeking transportation.

The above named employer #2 paid the claimant by either direct deposit into the claimant's bank account or onto a debit card.

The above named employer #2 set the price of the fares charged to individuals seeking transportation. The employer collected the fares from the individuals seeking transportation and remitted 82 percent of the fares to the driver. The claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation nor was the claimant allowed to negotiate his compensation from the employer.

The claimant used his own car to transport individuals seeking transportation for the above named employer #2. The claimant was responsible for the cost of maintenance, fuel, and maintaining insurance coverage for his vehicle. The employer provided supplemental insurance for the passengers only.

The above named employer #2 did not prevent the claimant from accepting work with other employers.

The claimant never worked out of employer #2's premises. All of the work that the claimant did for the employer was done out of his vehicle.

Other than a standard driver's license, the claimant did not need a special license to work for the above named employer #2. The claimant does not have business. The claimant does not have a business telephone listing or a business website, and does not advertise himself as a business to the general public.

OPINION:

N. J. S. A. 43:21-19 (i) (6) provides:

Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter (R. S. 43:21-1 et seq.) unless and until it is shown to the satisfaction of the division that

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

(b) Such service is either outside the usual course of the business for which such service is

performed, or that such service is performed outside of all the places of business of the enterprise for which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

Where an individual such as the claimant performs services for remuneration, such services are deemed employment unless all three requirements of the above statue, sometimes referred to as the ABC test, are met. When the service relationship fails to meet any of the test, statutory "employment" obtains. ***Gilchrist v. Div. of Employ. Sec., supra, 48 N.J. Super. at 158.***

In this matter, the above named employer #2 did not prevent the claimant from accepting work with other employers and the claimant was free to set his own days and hours of work. However, there is substantial evidence on the record to show that the employer exercised considerable control over the claimant. For example, the employer required the claimant to have a certain type of car in order to work for the employer, the employer unilaterally set the price of the fares that were charged to individuals seeking transportation and the employer set the amount of compensation for the claimant. Another example of control is that the employer controlled the software application that paired individuals seeking transportation with available drivers. In essence, the software application that the employer provided to the claimant was a tool that allowed the claimant to work for the employer. Without that tool, the claimant could not have worked for the employer. Additionally, another example of control is that the claimant was required to give each passenger a rating after each ride, if the claimant did not give the passenger a rating, the claimant was automatically denied access for additional work through the software application. The Appeal Tribunal finds that the claimant was not free from control. Therefore, test A has not been satisfied.

Part B of the test contains two prongs joined by the word "or" which indicates that if one or both of the prongs is true, then part B of the test has been satisfied.

The claimant worked as a driver for the above named employer. The employer provides a transportation service via its software application. The services that the claimant provided for the employer were not outside the usual course of business for the employer. Therefore, the first prong of the test has not been satisfied. However, the claimant never worked out of the employer's premises, the service that the claimant performed for the employer was outside of all the places of business of the enterprise for which the service was performed. Therefore, the second prong of the test has been satisfied. Accordingly, test B has been satisfied.

In ***Gilchrist v. Div. of Employ. Sec., supra, 48 N.J. Super. at 158***, the court concluded that Test C requires that "such individual is customarily engaged in an independently established trade, occupation, profession or business."

Also in ***Hargrove v. Sleepy's LLC*** **220 *N.J.* 289(2015),** the Supreme Court noted that "Part C of the statue is also derived from the common law. This part of the test "calls for an enterprise that exist and can continue to exist independently of and apart from the particular service relationship."

The claimant is clearly not in an independent business that would survive the termination of his relationship with the above named employer #2 as evidenced for the following reasons: First, the claimant does not advertise himself to the general public as a business and has no customers of his own. It is not reasonable to believe that the claimant is engaged in a business when he is not promoting himself as a business and has no customers. Second, the employer controlled the software application that paired individuals seeking rides with the claimant. In essence, the software that the employer provided to the claimant was a tool that allowed the claimant to work for the employer. Without that tool, the claimant could not have worked for the employer. It defies logic to believe that

the claimant is engaged in an independent business when he is dependent on the employer to provide a tool needed to do the job. Third, the claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation or negotiate his compensation from the employer. It is not reasonable to believe that the claimant is engaged in an independent business seeking to make a profit when the claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation or negotiate his compensation from the employer. After all, it is reasonable to expect that an independent contractor would run his business by negotiating compensation for his services that would maximize his profits. Finally, other than a standard driver's license, no special license was needed by the claimant to work for the employer which suggest that the claimant does not have a profession that would exist independently after the claimant's separation from the employer. The Appeal Tribunal concludes that the claimant was not engaged is an independently established trade, occupation, profession or business that would survive the termination of the relationship with the above named employer. Therefore, test C has not been satisfied.

The evidence before the Appeal Tribunal indicates that an employer/employee relationship existed. Therefore, the remunerated services performed by the claimant for the above named employer #2 were in employment, and all monies paid were covered earnings in accordance with N. J. S. A. 43:21-19 (i)(6).

N. J. S. A. 43:21-19(m) (1) provides:

An individual shall be deemed unemployed for any week during which he is not engaged in full-time work and with respect to which his remuneration is less than his weekly benefit rate, including any week during which he is on vacation without pay; provided such vacation is not the result of the individual's voluntary action, except that for benefit years commencing on or after July 1, 1984, an officer of a corporation, or a person who has more than a 5% equitable or debt interest in the corporation, whose claim for benefits is based on wages with that corporation shall not be deemed to be unemployed in any week during the individual's term of office or ownership in the corporation.

N. J. S. A. 43:21-3(b) provides:

With respect to an individual's benefit year commencing on or after July 1, 1961, such individual, if eligible and unemployed (as defined in subsection (m) of *R.S. 43:21-19*), shall be paid an amount (except as to final payment) equal to his weekly benefit rate less any remuneration, other than remuneration from self-employment paid to an individual who is receiving a self-employment assistance allowance, paid or payable to him for such week in excess of 20% of his weekly benefit rate (fractional part of a dollar omitted) or $ 5.00, whichever is the greater; provided that such amount shall be computed to the next lower multiple of $ 1.00 if not already a multiple thereof.

Since the claimant did not have a set schedule for the above named employer #2 and worked anywhere from 30 to 35 hours per week, the claimant is considered to have been employed less than full time for the weeks ended 4/28/18 and 5/05/18. The claimant did not claim benefits past the week ended 5/05/18. The claimant earned $600.00 for the week ended 4/28/18 which is less than the claimant's partial weekly benefit rate of $817.00. Therefore, the claimant is not ineligible for partial unemployment benefits for the period of 4/22/18 through 4/28/18, in accordance with N.J.S.A 43:21-19(m) (1) and N.J.S.A 43:21-3(b).

Similarly, the claimant earned $600.00 for the week ended 5/05/18 which is less than the claimant's partial weekly benefit rate of $817.00. Therefore, the claimant is not ineligible for partial unemployment benefits for the period of 4/29/18 through 5/05/18, in accordance with N.J.S.A 43:21-19(m) (1) and N.J.S.A 43:21-3(b).

DECISION:

performed by the claimant for the above named employer #2 were in employment, and all monies paid were covered earnings in accordance with N. J. S. A. 43:21-19 (i)(6).

The claimant is not ineligible for partial unemployment benefits for the period of 4/22/18 through 4/28/18, in accordance with N.J.S.A 43:21-19(m) (1) and N.J.S.A 43:21-3(b).

The claimant is not ineligible for partial unemployment benefits for the period of 4/29/18 through 5/05/18, in accordance with N.J.S.A 43:21-19(m) (1) and N.J.S.A 43:21-3(b).

The determination of the Deputy is modified.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00150533
Date of Claim: 04/01/2018
Date of Appeal: 06/15/2018
PC : 10
Appellant: Claimant
Mailing Date: 07/10/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER #1:
EMPLOYER #2: Uber Technologies, Inc.

The claimant appealed on 5/10/18 from a determination of the Deputy, mailed on 5/03/18, holding the claimant disqualified for benefits from 4/01/18 on the ground that the claimant left work voluntarily with the above named employer #2 without good cause attributable to such work.

This claimant participated in a duly scheduled telephone hearing on 7/10/18.

FINDING OF FACT:

The claimant was employed by the above named employer #1 as a security guard from 2/23/11 until 11/2017 when the employer discharged the claimant after the claimant had an accident with a company vehicle. The claimant worked five to six days from Monday to Sunday. The claimant earned $11.00 per hour.

The claimant worked as a driver for the above named employer #2 from 8/09/17 until 4/06/18 when the employer deactivated the claimant's account because the claimant had more than three moving violations on his driving record in the prior three-year period. The claimant worked 40 hours per week, and earned about $600.00 per week.

A claimant for unemployment benefits was filed as of 4/01/18.

The above named employer # 2 provides a transportation service via its software application where individuals seeking transportation can log onto to the employer's software application and be paired with an available driver. The employer controls the software application that pairs individuals seeking transportation with available drivers.

The claimant did not have a set schedule while working for the above named employer #2. When the claimant wanted to work for the employer, the claimant turned on the employer's software

application and the employer would send the claimant work. When the claimant did not want to work for the employer, the claimant turned the software application off.

The above named employer #2 did not prevent the claimant from accepting work with other employers.

While working for the above named employer #2, both the claimant and the passengers rated each other. The employer could have de-activated the claimant's account if the claimant got a complaint from a passenger.

The claimant was not permitted to have his own passengers in his car while the claimant was transporting passengers for the above named employer #2.

The claimant was not permitted to hire a driver to work in his place using the claimant's account with the above named employer #2.

The claimant could not have worked as a driver for the above named employer #2 if the employer had not granted the claimant access to the employer's software application that paired the claimant with individuals seeking transportation.

The above named employer#2 paid the claimant by direct deposit into the claimant's bank account.

The above named employer #2 set the price of the fares charged to individuals seeking transportation. The employer collected the fares from the individuals seeking transportation and remitted a percentage of the fares to the claimant. The claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation nor was the claimant allowed to negotiate his compensation from the employer.

The claimant used his own car to transport individuals seeking transportation for the above named employer #2. The claimant was responsible for the cost of maintenance, fuel, and maintaining insurance coverage for his vehicle. The employer provided supplemental insurance.

The claimant never worked out of employer #2's premises. All of the work that the claimant did for the employer was done out of his vehicle.

The claimant did not have any responsibility for soliciting new customers.

Other than a standard driver's license, the claimant did not need a special license to work for the above named employer #2. The claimant does not have business. The claimant does not have his own customers and does not advertise himself to the general public as a business. And, the claimant does not have a business telephone listing or a business website.

OPINION:

N. J. S. A. 43:21-19 (i) (6) provides:

Services performed by an individual for remuneration shall be deemed to be employment subject to this chapter (R. S. 43:21-1 et seq.) unless and until it is shown to the satisfaction of the division that:

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

(b) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for

which the service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

Where an individual such as the claimant performs services for remuneration, such services are deemed employment unless all three requirements of the above statue, sometimes referred to as the ABC test, are met. When the service relationship fails to meet any of the test, statutory "employment" obtains. ***Gilchrist v. Div. of Employ. Sec., supra, 48 N.J. Super. at 158.***

In this matter, the above named employer #2 did not prevent the claimant from accepting work with other employers and the claimant was free to set his own days and hours of work. However, there is substantial evidence on the record to show that the employer exercised considerable control over the claimant. For example, the claimant was not permitted to hire a driver to work in his place using the claimant's account nor was the claimant permitted to have his own passengers in his car while the claimant was transporting passengers for the employer. Furthermore, the employer unilaterally set the price of the fares that were charged to individuals seeking transportation and the employer set the amount of compensation for the claimant. And finally, the employer controlled the software application that paired individuals seeking transportation with available drivers. In essence, the software application that the employer provided to the claimant was a tool that allowed the claimant to work for the employer. Without that tool, the claimant could not have worked for the employer. The Appeal Tribunal finds that the claimant was not free from control. Therefore, test A has not been satisfied.

Part B of the test contains two prongs joined by the word "or" which indicates that if one or both of the prongs is true, then part B of the test has been satisfied.

The claimant worked as a driver for the above named employer. The employer provides a transportation service via its software application. The services that the claimant provided for the employer were not outside the usual course of business for the employer. Therefore, the first prong of the test has not been satisfied. However, the claimant never worked out of the employer's premises, the service that the claimant performed for the employer was outside of all the places of business of the enterprise for which the service is performed. Therefore, the second prong of the test has been satisfied. Accordingly, test B has been satisfied.

In ***Gilchrist v. Div. of Employ. Sec., supra, 48 N.J. Super. at 158***, the court concluded that Test C requires that "such individual is customarily engaged in an independently established trade, occupation, profession or business."

Also in ***Hargrove v. Sleepy's LLC.*** **220 N.J. 289(2015),** the Supreme Court noted that "Part C of the statue is also derived from the common law. This part of the test "calls for an enterprise that exist and can continue to exist independently of and apart from the particular service relationship."

The evidence clearly indicates that the claimant was not in an independent business that would survive the termination of his relationship with the above named employer #2 as evidenced for the following reasons: First, the claimant opened the unemployment claim dated 4/01/18 after employer #2 deactivated the claimant's account which indicates to the Appeal Tribunal that the claimant was dependent on the employer for his livelihood. Second, the employer controlled the software application that paired individuals seeking rides with the claimant. In essence, the software that the employer provided to the claimant was a tool that allowed the claimant to work for the employer. Without that tool, the claimant could not have worked for the employer. It defies logic to believe that the claimant is engaged in an independent business when the claimant is dependent on the employer to provide a tool needed to do the job. Third, the claimant had no real opportunity to make a profit

because the claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation or negotiate his compensation from the employer. It is not reasonable to believe that the claimant was engaged in an independent business seeking to make a profit when the claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation or negotiate his compensation from the employer. After all, it is reasonable to expect that an independent contractor would run his business by negotiating compensation for his services that would maximize his profits. Fourth, the claimant does not advertise himself to the general public as a business and has no customers of his own. It is not reasonable to believe that the claimant is engaged in a business when the claimant is not promoting himself as a business and has no customers. And, finally, other than a standard driver's license, no special license was needed by the claimant to work for the employer which suggest that the claimant does not have a profession that would exist independently after the claimant's separation from the employer. The Appeal Tribunal concludes that the claimant was not engaged is an independently established trade, occupation, profession or business that would survive the termination of the relationship with the above named employer. Therefore, test C has not been satisfied.

The evidence before the Appeal Tribunal indicates that an employer/employee relationship existed. Therefore, the remunerated services performed by the claimant for the above named employer #2 were in employment, and all monies paid were covered earnings in accordance with N. J. S. A. 43:21-19 (i)(6).

N. J. S. A. 43:21-5 provides in part:

An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes re-employed and works eight weeks in employment which may include employment for the federal government and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case.

N. J. S. A. 39:5H-20. Prohibition for applicant, driver to access digital network.

An applicant or driver shall be prohibited from utilizing the transportation network company's digital network as a transportation network company driver or from providing a prearranged ride as a transportation network company driver if:

b. The applicant's or driver's driving record check reveals more than three moving violations in the prior three-year period, or one of the following violations in the prior three-year period…

In this matter, the claimant was separated by the above named employer #2 on 4/06/18 because the claimant had more than three moving violations on his driving record in the prior three-year period. As a result of his driving record, the claimant was statutorily barred from working for the above named employer in accordance with N. J. S. A. 39:5H-20(b). In essence, the above named employer could not allow the claimant to continue working for the employer because the claimant was statutorily barred from employment. The Appeal Tribunal finds that this case should be decided in accordance with **Self v. Board of Review, 91 N.J 453 (1982)**, in which the Court held that an individual will be disqualified for voluntarily leaving work if the individual makes a "departure not attributable to the work." The claimant is considered to have left the job voluntarily because he was statutorily barred from employment as a result of his driving record. The claimant's driving record is not attributable to the job. Therefore, the claimant is disqualified for benefits as of 4/01/18, under N. J. S. A 43:21-5(a), as the claimant left work with the above named employer #2 voluntarily without good cause attributable to such work.

DECISION:

The remunerated services performed by the claimant for the above named employer #2 were in employment, and all monies paid were covered earnings in accordance with N. J. S. A. 43:21-19 (i)(6).

The claimant is disqualified for benefits as of 4/01/18, under N. J. S. A 43:21-5(a), as the claimant left work with the above named employer #2 voluntarily without good cause attributable to such work.

The determination of the Deputy is affirmed.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00150533
Date of Claim: 04/01/2018
Date of Appeal: 05/10/2018
PC : 10
Appellant: Claimant
Mailing Date: 06/07/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER #1:
EMPLOYER #2: Uber Technologies, Inc.

The claimant appealed on 5/10/18 from a determination of the Deputy, mailed on 5/03/18, holding the claimant disqualified for benefits from 4/01/18 on the ground that the claimant left work voluntarily with the above named employer #2 without good cause attributable to such work.

This claimant and employer #1 participated in a duly scheduled telephone hearing on 6/07/18.

FINDING OF FACT:

The Notice of Phone Hearing was sent in error to the above named employer #1. The Notice of Phone Hearing should have been sent to the above named employer #2.

OPINION:

In this matter, the Notice of Phone Hearing was not sent to the above named employer #2. Consequently, the above named employer #2 did not have the opportunity to register to participate in the phone hearing scheduled before the Appeal Tribunal on 6/07/18. Therefore, the hearing is postponed without prejudice and will be rescheduled in order to send written notice to the interested parties.

DECISION:

The hearing is postponed without prejudice.

PLEASE NOTE: When you receive the **Notice of Phone Hearing** for your next hearing, you must call the Office of Benefit Appeals immediately to register to participate in the hearing. Please call the phone number printed on the **Notice of Phone Hearing** to register. Thank you.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00145632
Date of Claim: 01/14/2018
Date of Appeal: 03/18/2018
PC : 10
Appellant: Claimant
Mailing Date: 04/10/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: UBER TECHNOLOGIES, INC.

The claimant appealed on 03/18/2018 from a determination of the Deputy, mailed on 03/06/2018, imposing a period of ineligibility for benefits from 02/18/2018 on the ground that the claimant was unavailable for work.

The appellant failed to register for a duly scheduled telephone appeal hearing on 04/10/2018.

FINDINGS OF FACT:

The appellant failed to register for a telephone appeal hearing and pursue the appeal.

OPINION:

As there was no evidence presented to upset the findings of the Deputy, that determination will not be disturbed, and the appeal is dismissed.

DECISION:

The appeal is dismissed.

NOTE: TO REQUEST ANOTHER HEARING, WRITE TO:

APPEAL TRIBUNAL
NEW JERSEY DEPARTMENT OF LABOR
PO BOX 936
TRENTON, NJ 08625-0936

You must include your name, Social Security number, and the **reason why you failed to**

appear.

/s/ Angelique Henderson
APPEALS EXAMINER

UA

Board of Review
PO Box 937
Trenton, NJ 08625-0937

PATERSON, NJ 07503

SS #:
Docket #: DKT00145017
Date of Claim: 11/12/2017
Date of Appeal: 04/28/2018
Mailing Date: 05/24/2018

Decision of the Board of Review

IN THE MATTER OF:

EMPLOYER: UBER TECHNOLOGIES, INC.

The claimant filed a timely appeal from a decision of the Appeal Tribunal mailed April 9, 2018.

This matter is reviewed on the record below.

FINDINGS OF FACT AND OPINION:

The Findings of Fact and Opinion as developed by the Appeal Tribunal have been carefully examined.

Since the appellant was given a full and impartial hearing and a complete opportunity to offer any and all evidence, there is no valid ground for a further hearing.

On the basis of the record below, we agree with the decision reached.

DECISION:

The decision of the Appeal Tribunal is affirmed.

BOARD OF REVIEW
Joseph Sieber
Nancy Hunt

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Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00145017
Date of Claim: 11/12/2017
Date of Appeal: 03/12/2018
PC : 10
Appellant: Claimant
Mailing Date: 04/09/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: UBER TECHNOLOGIES, INC.

The claimant appealed on 03/12/2018 from a determination of the Deputy, mailed 02/28/2018, imposing a disqualification for benefits from 09/17/2017, on the ground that the claimant left work voluntarily without good cause attributable to the work.

The claimant, with interpretation, participated in a telephone hearing on 04/06/2018.

FINDINGS OF FACT:

The claimant worked for the above-mentioned employer, as a driver, from 08/05/2014 through 09/20/2017, when he was involved in an accident with his vehicle. At that point, he informed the employer that he was unable to continue working as he was unable to obtain another vehicle. Lack of transportation was the only reason that he left the job, as owning a vehicle was a prerequisite of employment.

OPINION:

N.J.S.A. 43:21-5. An individual shall be disqualified for benefits:

(a)For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case. This subsection shall apply to any individual seeking unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, including any individual who was employed in the production and harvesting of agricultural crops on a contract basis and who has refused an offer of continuing work with that employer following the completion of the minimum period of work required to fulfill the contract.

N.J.A.C. 12:17-9.1, Disqualification for Voluntary leaving- General Principles, provides:

(e)An individual's separation from employment shall be reviewed as a voluntary leaving work issue where the separation was for the following reasons, including but not limited to:

1.Lack of transportation;

The claimant contends that he never quit the job; the only reason he left was because he was in an accident and lost his transportation. However, while the Appeals Examiner is sympathetic to the claimant's situation, in order to avoid disqualification under N.J.S.A. 43:21-5(a), a claimant must demonstrate that the reason for leaving the work was work connected. A claimant who leaves work for a personal reason, no matter how compelling, is subject to disqualification. ***Self*** v. ***Board of Review***, 91,***N.J.***453(1982). Therefore, the claimant's contention is rejected.

Substantial evidence established that the claimant left work because of a lack of transportation. Consequently, he is disqualified for benefits under N.J.S.A. 43:21-5(a) as of 09/17/2017, as the claimant left work without good cause attributable to such work.

DECISION:

The claimant is disqualified for benefits as of 09/17/2017, under N.J.S.A. 43:21-5(a) as the claimant left work voluntarily without good cause attributable to the work.

The determination of the Deputy is affirmed.

/s/ Dawn Gardenhire
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00142935
Date of Claim: 01/07/2018
Date of Appeal: 02/12/2018
PC : 10
Appellant: Claimant
Mailing Date: 03/12/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Uber Technologies, Inc.

The claimant appealed on 02/12/17 from a determination of the Deputy, mailed on 02/09/18, imposing an indefinite disqualification for benefits from 01/14/18, on the ground that the claimant voluntarily quit work without good cause attributable to such work.

The claimant participated in a telephone hearing on 03/09/18.

FINDINGS OF FACT:

The claimant had been employed with the above-named employer part time only as a ride share driver. The claimant was employed full time with another employer while working part time with the above named employer in order to supplement his income from full time job only. As of 01/17/18, due to the loss of his full time job, the claimant discontinued working for the above named employer. The claimant has not worked after 01/17/18 as of the date of the Tribunal's hearing.

OPINION:

N.J.S.A. 43:21-5 An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case. This subsection shall apply to any individual seeking unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, including any individual who was employed in the production and harvesting of agricultural crops on a contract basis and who has refused an offer of continuing work with that employer

minimum period of work required to fulfill the contract.

N.J.A.C. 12:17-9.2 Voluntarily leaving secondary part-time employment

(a) A worker, who is employed by two or more employers, one of which is full-time and the other(s) part-time work, who is separated from the full-time employment and becomes eligible for benefits, and subsequently voluntarily leaves the part-time employment, shall be subject to a partial disqualification for voluntarily leaving the part-time employment. An individual may avoid partial disqualification if he or she can establish good cause attributable to such work as defined in N.J.A.C. 12:17-9.1(b). The partial disqualification amount is determined by dividing the total part-time earnings during the eight-week period immediately preceding the week in which the separation occurred by the total number of weeks the individual worked in that part-time employment during the eight-week period. The partial earnings amount is then deducted from the partial weekly benefit amount. The partial disqualification shall remain in effect until the individual becomes reemployed and works eight weeks in employment, which may include employment for the Federal government, and he or she has earned in employment ten times the individual's weekly benefit rate, as determined in each case.

1. An individual, who leaves part-time employment and, without prior knowledge, is subsequently separated from full-time employment, shall not be disqualified for leaving the part-time employment.

2. Personal reasons for leaving part-time employment which arise from the loss of the full-time employment may constitute good cause attributable to such work.

(b) A worker who is employed by two or more employers on a part-time basis and who leaves one employer voluntarily without good cause attributable to such work shall be subject to disqualification for voluntarily leaving work.

Appeals Tribunal docket # 00142931 has held the claimant indefinitely disqualified for benefits as of 01/07/187 In view of such disqualification, the determination under this appeal has been rendered academic. Although the claimant worked part time for the above named employer while working full time for another employer, N.J.A.C. 12:17-9.2(a) provides for a partial disqualification only for a claimant who is separated from the full-time employment and becomes eligible for benefits, and subsequently voluntarily leaves the part-time employment. In view of the period of disqualification imposed by Appeals Tribunal docket #00142931, and as the claimant did not become eligible for benefits following his separation from the full time employment, the issue of the claimant's separation from employment with the above named employer is academic.

DECISION:

The issue of the claimant's separation from employment with the above named employer is academic.