



**Appeal Tribunal**  
PO Box 936  
Trenton, NJ 08625-0936

SS #:  
Docket #: DKT00166621  
Date of Claim: 08/26/2018  
Date of Appeal: 12/21/2018  
PC : 10  
Appellant: Employer  
Mailing Date: 01/29/2019

**Decision of the Appeal Tribunal**

**IN THE MATTER OF:**

**EMPLOYER: Lyft, Inc.**

The employer appealed on 11/09/18 from a determination of the Deputy, mailed on 10/25/18, holding that the services that the claimant performed for the employer were in employment.

The employer appealed on 11/09/18 from a second determination of the Deputy, mailed on 10/25/18, holding the claimant eligible for benefits without disqualification from 8/26/18.

The employer contends that the claimant ceased working without good cause attributable to the work. The employer further contends the claimant was an independent contractor and not an employee.

The matter is decided from information contained in the Division file.

**FINDING OF FACT:**

By fax letter dated January 15, 2019, the employer's attorney requested that the hearing scheduled before the Appeal Tribunal on January 29, 2019 at 9:45AM be postponed because the employer's witness who will participate in the hearing lives in San Francisco, California and is unable to participate in the hearing due to the three-hour time difference. The employer's attorney requested a later hearing scheduled after 12:30PM EST so as to accommodate the three-hour time zone difference for the employer's witness.

**OPINION:**

In this matter, the attorney's request is reasonable and constitutes good cause for a postponement. Therefore, the hearing is postponed without prejudice and the hearing will be rescheduled.

**DECISION:**

The hearing is postponed without prejudice.

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**PLEASE NOTE:** When you receive the **Notice of Phone Hearing** for your next hearing, you must call the Office of Benefit Appeals to register to participate in the hearing or register online immediately. Please call the phone number or use the web address 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 #: DKT00166621  
Date of Claim: 08/26/2018  
Date of Appeal: 11/09/2018  
PC : 10  
Appellant: Employer  
Mailing Date: 12/11/2018

## Decision of the Appeal Tribunal

**IN THE MATTER OF:**

**EMPLOYER: Lyft, Inc.**

The employer appealed on 11/09/18 from a determination of the Deputy, mailed on 10/25/18, holding that the services that the claimant performed for the employer were in employment.

The employer appealed on 11/09/18 from a second determination of the Deputy, mailed on 10/25/18, holding the claimant eligible for benefits without disqualification from 8/26/18.

The employer contends that the claimant ceased working without good cause attributable to the work. The employer further contends the claimant was an independent contractor and not an employee.

The appellant was not able to participate in a duly scheduled phone hearing on 12/11/18.

**FINDING OF FACT:**

The appellant was not able to participate in a duly scheduled phone hearing on 12/11/18 because the appellant's witness was unavailable to participate in the hearing due to a prior commitment.

**OPINION:**

As the appellant was unable to participate in the hearing because the appellant's witness was unavailable to participate in the hearing due to a prior commitment, the appeal is dismissed without prejudice.

The appellant may request another hearing by writing 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.

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**NOTE: To request another hearing, please write to:**

Appeal Tribunal  
New Jersey Dept. of Labor  
P. O. Box 936  
Trenton, NJ 08625-0936

Please include your name, Social Security number, and the reason why you were unable to participate in the hearing.

UA

/s/ Paul Yohannan  
**APPEALS EXAMINER**



**Appeal Tribunal**  
PO Box 936  
Trenton, NJ 08625-0936

SS #:  
Docket #: DKT00166539  
Date of Claim: 08/19/2018  
Date of Appeal: 02/07/2019  
PC : 10  
Appellant: Claimant  
Mailing Date: 03/22/2019

## Decision of the Appeal Tribunal

**IN THE MATTER OF:**

**EMPLOYER:** Lyft, Inc.

The employer appealed on 11/09/18 from a determination of the Deputy, mailed on 10/30/18, holding that the claimant eligible for benefits without disqualification from 8/19/18.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that even if it can be shown that the claimant was an employee of Lyft, the claimant voluntarily chose to discontinue ride sharing opportunities through the Lyft platform without good cause, which fact alone disqualifies the claimant from receiving unemployment insurance benefits.

The employer with attorney, the claimant, and a Deputy auditor participated in a duly scheduled telephone hearing on 3/20/19.

### FINDING OF FACT:

A claim for unemployment benefits was filed as of 8/19/18.

The claimant has been accepting work as a driver from the above-named employer since 8/09/18. The employer de-activated the claimant's account on 10/01/18 after receiving a complaint from a passenger. The employer investigated the matter. The employer re-activated the claimant's account on 10/14/18 after determining that the passenger was at fault.

As of the date of this hearing, 3/20/19, the claimant's account with the above-named employer remains active.

The above-named employer provides a transportation service via its software application where individuals seeking transportation can log onto the employer's software application and be paired with an available driver.

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The above-named employer controls the software application that pairs individuals seeking transportation with available drivers. The claimant could not have worked as a driver for the above-named employer, if the employer had not granted the claimant access to the employer's software application that paired the claimant with individuals seeking transportation.

The passengers rated the claimant. The employer uses a five-star rating system. If the claimant had received a rating that was below a certain threshold, the employer could have deactivated the claimant's account.

The employer uses a cancellation ratio. If the claimant canceled a certain number of rides after accepting those rides, the employer could have deactivated the claimant's account once a certain threshold was reached.

The above-named employer set the price of the fares charged to individuals seeking transportation. The employer collected the fares from the individuals seeking transportation through a third-party payment processor, and the employer paid the claimant through a third-party payment processor.

The claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation, and the employer set the amount of compensation for the claimant.

The claimant was not allowed to negotiate the amount of her compensation from the employer.

The employer kept 25 percent of the fares charged to individuals seeking transportation and compensated the claimant by remitting 75 percent of the fares to the claimant.

The claimant signed a terms of service agreement with the above-named employer which refers to the claimant as an independent contractor.

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

The claimant was free to set her own days and hours of work. When the claimant wanted to work for the employer, the claimant used her smartphone to log onto the employer's software application. Once the claimant logged on to the employer's software application, the employer sent the work to the claimant. The employer sequenced and dispatched the work that was sent to the claimant through the employer's software application.

The claimant did not have to accept a minimum number of work assignments from the above-named employer in order to maintain an active account.

The claimant used her own vehicle to transport individuals for the above-named employer. The claimant was responsible for the cost of maintenance, fuel, and maintaining insurance coverage for her vehicle. The employer provided supplemental insurance as required by law.

The claimant never worked out the employer's premises. All of the work that the claimant did for the employer was done out of her 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 or certification to drive for the above-named employer.

The claimant does not have a business. The claimant does not have her own customers and does not advertise herself to the general public as a business. 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.

Although the claimant signed a terms of service agreement with the above named employer which refers to claimant as an independent contractor, it is unemployment law that determines whether the services that the claimant performed for the above named employer are in employment, and not the written agreement.

Where an individual such as the claimant performs services for remuneration, such services are deemed employment unless all three requirements of the above statute, 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 did not prevent the claimant from accepting work with other employers, and the claimant was free to set her 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 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. Other examples of control are that the employer unilaterally set the price of the fares that were charged to individuals seeking transportation, the employer set the amount of compensation for the claimant, and the employer determined the order of work that was sent to the claimant through the employer's software application. And finally, the employer could have penalized the claimant by deactivating the claimant's account if the claimant got a star rating that was too low, or if the claimant cancelled too many rides after accepting the rides. 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 services 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.

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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 statute 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 engaged in an independent business that would survive the termination of her relationship with the above-named employer as evidenced by the following reasons: First, the claimant was dependent on the employer for individuals seeking rides. Those individuals seeking rides are considered to be customers of the employer because all of the individuals seeking rides that the claimant transported for the above-named employer came to the claimant through the employer's software application. It defies logic to believe that the claimant was engaged in an independent business when the claimant was dependent on the employer for her customers. Second, the employer controlled the software application that paired individuals seeking rides with the claimant. 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 was engaged in an independent business when the claimant was dependent on the employer for a tool that the claimant needed to work for the employer. 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 her 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 her compensation from the employer. After all, it is reasonable to expect that an independent contractor would run her business by negotiating compensation for her services that would maximize her profits. Fourth, other than a standard driver's license, no special license or certification 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. And finally, the claimant does not have a business, the claimant does not advertise herself to the general public as a business, and the claimant has no customers of her own. It is not reasonable to believe that the claimant is engaged in a business when the claimant is not promoting herself as a business and has no customers. The Appeal Tribunal concludes that the claimant was not engaged in 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 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 reads 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...



In this matter, substantial evidence indicates that the claimant never left her job with the above-named employer. Therefore, no disqualification applies accordingly under N.J.S.A 43:21-5 (a) as the claimant did not leave the job voluntarily without good cause attributable to the work. The matter is better reviewed under N.J.S.A 43:21-5 (b).

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

An individual shall be disqualified for benefits:

(b) For the week in which the individual has been suspended or discharged for misconduct connected with the work, and for the five weeks which immediately follow that week, as determined in each case.

"Misconduct" means conduct which is improper, intentional, connected with the individual's work, within the individual's control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer's lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse.

In this matter, the claimant was not discharged. The Appeal Tribunal considers the above-named employer to have suspended the claimant on 10/01/18 when the employer de-activated the claimant's account after receiving a complaint from a passenger. Since the employer determined that the passenger was at fault and re-activated the claimant's account, the Appeal Tribunal finds that there is no evidence to indicate that the claimant was suspended for actions that were a willful disregard of the standards of behavior which the employer has the reasonable right to expect of an employee. Therefore, no disqualification arises under N.J.S.A. 43:21-5(b) as the claimant was not suspended for misconduct connected with the work

**DECISION:**

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

No disqualification applies accordingly under N.J.S.A 43:21-5 (a) as the claimant did not leave the job voluntarily without good cause attributable to the work.

No disqualification arises under N.J.S.A. 43:21-5(b) as the claimant was not suspended for misconduct connected with the work

The determination of the Deputy is modified.

/s/ Paul Yohannan  
**APPEALS EXAMINER**

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**Appeal Tribunal**  
PO Box 936  
Trenton, NJ 08625-0936

**SS #:**  
**Docket #:** DKT00166539  
**Date of Claim:** 08/19/2018  
**Date of Appeal:** 01/10/2019  
**PC :** 10  
**Appellant:** Employer  
**Mailing Date:** 02/05/2019

**Decision of the Appeal Tribunal**

**IN THE MATTER OF:**

**EMPLOYER:** Lyft, Inc.

The employer appealed on 11/09/18 from a determination of the Deputy, mailed on 10/30/18, holding that the claimant eligible for benefits without disqualification from 8/19/18.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that even if it can be shown that the claimant was an employee of Lyft, the claimant voluntarily chose to discontinue ride sharing opportunities through the Lyft platform without good cause, which fact alone disqualifies the claimant from receiving unemployment insurance benefits.

The employer with attorney and a Deputy registered to participate in a duly scheduled telephone hearing on 2/01/19.

**FINDING OF FACT:**

The hearing that was scheduled for 12:30PM on 2/01/19 was postponed because the Appeals Examiner assigned to conduct the hearing was unavailable due to illness.

**OPINION:**

In this matter, the hearing was postponed for good cause. Therefore, the hearing is postponed without prejudice and the hearing will be rescheduled.

**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 to register to participate in the hearing or register online immediately. Please call the phone number or use the web address 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 #: DKT00166539  
Date of Claim: 08/19/2018  
Date of Appeal: 11/09/2018  
PC : 10  
Appellant: Employer  
Mailing Date: 12/07/2018

## **Decision of the Appeal Tribunal**

**IN THE MATTER OF:**

**EMPLOYER: Lyft, Inc.**

The employer appealed on 11/09/18 from a determination of the Deputy, mailed on 10/30/18, holding that the claimant eligible for benefits without disqualification from 8/19/18.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that even if it can be shown that the claimant was an employee of Lyft, the claimant voluntarily chose to discontinue ride sharing opportunities through the Lyft platform without good cause, which fact alone disqualifies the claimant from receiving unemployment insurance benefits.

The matter is decided based upon information contained in the Division file.

### **FINDING OF FACT:**

By fax letter dated November 30, 2018, the employer's attorney requested that the hearing scheduled before the Appeal Tribunal on December 10, 2018, at 12:30PM be rescheduled because the employer's witness is unavailable to participate in the hearing due to a prior commitment.

The Appeal Tribunal advised the employer's attorney that the Appeal Tribunal could not grant an adjournment in this matter because the employer is the appellant in this matter. The Appeal Tribunal further advised the employer's attorney that a dismissal without prejudice would be entered on behalf of the employer on the ground that the employer was unable to move the hearing forward on 12/10/18 because the appellant's witness is unavailable to participate in the hearing due to a prior commitment.

### **OPINION:**

As the appellant was unable to move the hearing forward on 12/10/18 because the appellant's witness was unavailable to participate in the hearing due to a prior commitment, the appeal is dismissed without prejudice.

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The appellant may request another hearing by writing 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, please write to:**

Appeal Tribunal  
New Jersey Dept. of Labor  
P. O. Box 936  
Trenton, NJ 08625-0936

Please include your name, social security number, and the reason why you were unable to move the hearing forward on 12/10/18. Thank you.

/s/ Paul Yohannan  
**APPEALS EXAMINER**

UA



**Appeal Tribunal**  
PO Box 936  
Trenton, NJ 08625-0936

SS #:  
Docket #: DKT00166402  
Date of Claim: 10/07/2018  
Date of Appeal: 01/10/2019  
PC : 10  
Appellant: Employer  
Mailing Date: 01/31/2019

**Decision of the Appeal Tribunal**

**IN THE MATTER OF:**

**EMPLOYER: Lyft Incorporated**

For good cause shown, this matter is reopened as of 01/10/19.

A telephone appeal hearing was scheduled for 01/31/19.

**FINDINGS OF FACT:**

The employer appealed on 11/08/18 from a determination of the Deputy, mailed 10/26/18, holding the claimant eligible for benefits, without disqualification, from 10/07/18.

The employer contends that the claimant was employed as an independent contractor. There were no other issues disputed by the appellant employer.

There is currently an audit investigation being conducted by the Deputy as to the employment status of the above-named employer's workers.

**OPINION:**

As there is currently an audit investigation being conducted by the Deputy as to the employment status of the above-named employer's workers, this matter is remanded to the Deputy.

Parties will maintain their appeal rights, following the Deputy's findings.

**DECISION:**

The matter is remanded to the Deputy as there is a current audit investigation pending.

/s/ Amy Mascelli  
**APPEALS EXAMINER**

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**Appeal Tribunal**  
PO Box 936  
Trenton, NJ 08625-0936

SS #:  
Docket #: DKT00166402  
Date of Claim: 10/07/2018  
Date of Appeal: 11/08/2018  
PC : 10  
Appellant: Employer  
Mailing Date: 11/29/2018

## **Decision of the Appeal Tribunal**

**IN THE MATTER OF:**

**EMPLOYER: Lyft Incorporated**

The employer appealed on 11/08/18 from a determination of the Deputy, mailed 10/26/18, holding the claimant eligible for benefits, without disqualification, from 10/07/18.

The employer contends that the claimant was employed as an independent contractor. There were no other issues disputed by the appellant employer.

A telephone appeal hearing was scheduled for 12/06/18.

### **FINDINGS OF FACT:**

The appellant is not available to participate in the scheduled appeal hearing because of the employer's time zone difference.

### **OPINION:**

As the appellant is not available to participate in the scheduled appeal hearing because of the employer's time zone difference, 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 appellant shall request the hearing be scheduled after 12:30pm EST.**

### **DECISION:**

The appeal is dismissed without prejudice.

NOTE: TO REQUEST ANOTHER HEARING, WRITE TO:

**APPEAL TRIBUNAL**

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**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**

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**Appeal Tribunal**  
PO Box 936  
Trenton, NJ 08625-0936

SS #:  
Docket #: DKT00164606  
Date of Claim: 08/26/2018  
Date of Appeal: 11/14/2018  
PC : 10  
Appellant: Claimant  
Mailing Date: 12/07/2018

**Decision of the Appeal Tribunal**

**IN THE MATTER OF:**

**EMPLOYER: LYFT, INC.**

For good cause shown, this matter is reopened as of 11/14/2018.

The appellant failed to register for a duly scheduled telephone hearing before the Appeal Tribunal on 12/07/2018.

**FINDINGS OF FACT:**

The claimant appealed on 10/10/2018 from a determination of the Deputy, mailed on 10/05/2018, imposing a disqualification for benefits from 08/26/2018, on the ground that the claimant left work voluntarily without good cause attributable to such work.

All interested parties to the appeal are sent a "Notice of Phone Hearing" in advance of the telephone hearing. The notice states, in part, that:

Unlike the Unemployment fact-finding interview, the Office of Benefit Appeals WILL NOT INITIATE A CALL TO YOU UNLESS YOU HAVE REGISTERED FOR THE HEARING AS INSTRUCTED ABOVE. So, please remember to REGISTER NO LATER THAN 3:00 P.M., EST. ON THE BUSINESS DAY PRIOR TO YOUR SCHEDULED HEARING BEFORE THE APPEAL TRIBUNAL.

Your appeal may be dismissed or you may be denied participation in the hearing if you fail, without good cause, to follow the instructions contained in this notice.

In this case, the hearing notice was mailed to the appellant on 11/20/2018. The appellant failed to register for the hearing scheduled for 12/07/2018 and did not request an adjournment. As a result of appellant's failure to register for the hearing or to request an adjournment, no hearing

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was conducted.

**OPINION:**

**N.J.A.C. 1:12-14.4 Failure to appear**

(a) If the appellant fails to appear for a hearing before an appeal tribunal, the appeal tribunal may proceed to make its decision on the record or may dismiss the appeal on the ground of nonappearance unless it appears that there is good cause for adjournment.

The appeal is dismissed in accordance with **N.J.A.C. 1:12-14.4(a)**, as the appellant failed to register for the telephone hearing nor request an adjournment.

**DECISION:**

The appeal is dismissed in accordance with **N.J.A.C. 1:12-14.4(a)**.

**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, claimant's Social Security number and/or docket number, and the **reason why you failed to register for the telephone hearing.**

/s/ Clayton Barker  
**APPEALS EXAMINER**

UA



**Appeal Tribunal**  
PO Box 936  
Trenton, NJ 08625-0936

**SS #:**  
**Docket #:** DKT00164606  
**Date of Claim:** 08/26/2018  
**Date of Appeal:** 10/10/2018  
**PC :** 10  
**Appellant:** Claimant  
**Mailing Date:** 11/07/2018

## **Decision of the Appeal Tribunal**

**IN THE MATTER OF:**

**EMPLOYER:** LYFT, INC.

### **POSTPONEMENT DECISION**

The claimant appealed on 10/10/2018 from a determination of the Deputy, mailed on 10/05/2018, imposing a disqualification for benefits from 08/26/2018, on the ground that the claimant left work voluntarily without good cause attributable to such work.

### **FINDINGS OF FACT:**

The appeal is hereby postponed, without prejudice for the reason(s) noted below.

The employer's representative/legal counsel was unable to appear for the hearing at the scheduled time.

### **OPINION:**

The appeal is postponed without prejudice. The case will be rescheduled as soon as possible. The employer's representative/legal counsel is located in San Francisco, California, which has a three (3) hour time difference. Please take that into consideration when rescheduling the matter.

This decision applies only to the period covered by the determination from which the appeal was filed.

### **DECISION:**

The appeal is postponed without prejudice.

UA

/s/ Clayton Barker  
**APPEALS EXAMINER**



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

**SS #:**  
**Docket #:** DKT00162993  
**Date of Claim:** 03/18/2018  
**Date of Appeal:** 11/26/2018  
**Mailing Date:** 01/04/2019

## **Decision of the Board of Review**

**IN THE MATTER OF:**

**EMPLOYER#1: LYFT INC.**  
**EMPLOYER #2: UBER**

The claimant filed a timely appeal from a decision of the Appeal Tribunal mailed November 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 and the allegations of the appellant 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 #: DKT00162993  
Date of Claim: 03/18/2018  
Date of Appeal: 11/05/2018  
PC : 10  
Appellant: Claimant  
Mailing Date: 11/09/2018

**Decision of the Appeal Tribunal**

IN THE MATTER OF:

**EMPLOYER #1: LYFT INC**  
**EMPLOYER #2: UBER**

For good cause shown, this matter is reopened as of 11/05/18.

The claimant participated in telephone hearings on 11/01/18 and 11/05/18.

The decision is based on testimony adduced at both hearings.

**FINDINGS OF FACT:**

The claimant appealed on 10/05/18 from a determination of the Deputy, mailed on 10/05/18, imposing a disqualification for benefits from 01/28/18 on the ground that the claimant left work voluntarily without good cause attributable to such work.

The claimant appealed on 10/05/18 from a determination of the Deputy, mailed on 10/05/18, imposing a period of ineligibility for benefits from 09/16/18 on the ground that the claimant was unavailable for work.

The claimant was employed by Employer #1 as driver, from 08/01/17 through 02/02/18, when he was discharged from the job.

As a driver, the claimant had the option to cancel a ride upon his discretion, as there were no policies pertaining to the cancellation of rides.

On 02/02/18, upon picking up a passenger, the claimant discovered the destination. The claimant perceived the destination to be far and as it was late at night, the claimant decided to cancel the ride. The claimant was terminated the same day due to his

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cancellation rate.

The claimant worked for Employer #2, from 08/01/17 through 03/17/18, when he was separated from work.

Per Division records, a claim for benefits was filed as of 03/18/18, which established a weekly benefit rate of \$252.00 and a maximum benefit amount of \$5,292.00.

No benefits were paid from 09/09/18.

As of 09/09/18, the claimant was willing to work a maximum of 30 hours per week due to his school attendance.

**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 claimant was discharged by the above-named employer and did not intend to leave the job. Therefore, no disqualification applies under N.J.S.A. 43:21-5(a) as the claimant did not leave the job voluntarily without good cause attributable to such work.

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

(b) For the week in which the individual has been suspended or discharged for misconduct connected with the work, and for the five weeks which immediately follow that week, as determined in each case.

"Misconduct" means conduct which is improper, intentional, connected with the individual's work, within the individual's control, not a good faith error of judgment or discretion, and is either a deliberate refusal, without good cause, to comply with the employer's lawful and reasonable rules made known to the employee or a deliberate disregard of standards of behavior the employer has a reasonable right to expect, including reasonable safety standards and reasonable standards for a workplace free of drug and substance abuse.

In the event the discharge should be rescinded by the employer voluntarily or as a result of mediation or arbitration, this subsection (b) shall not apply, provided, however, an individual who is restored to employment with back pay shall return any benefits received under this chapter for any week of unemployment for which the individual is

subsequently compensated by the employer.

If the discharge was for gross misconduct connected with the work because of the commission of an act punishable as a crime of the first, second, third or fourth degree under the "New Jersey Code of Criminal Justice," N.J.S.2C:1-1 et seq., the individual shall be disqualified in accordance with the disqualification prescribed in subsection (a) of this section and no benefit rights shall accrue to any individual based upon wages from that employer for services rendered prior to the day upon which the individual was discharged.

The director shall insure that any appeal of a determination holding the individual disqualified for gross misconduct in connection with the work shall be expeditiously processed by the appeal tribunal.

To sustain disqualification from benefits because of misconduct under this subsection (b), the burden of proof is upon the employer, who shall, prior to a determination by the department of misconduct, provide written documentation demonstrating that the employee's actions constitute misconduct or gross misconduct.

Nothing within this subsection (b) shall be construed to interfere with the exercise of rights protected under the "National Labor Relations Act," (29 U.S.C. s.151 et seq.) or the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.).

In this matter, the claimant was discharged from Employer #1 due to his cancellation rate. The claimant provided competent evidence, namely his sworn and uncontested testimony, establishing that he did not violate company policy nor did he willfully or deliberately disregard the standards of behavior expected of him. Thus, the claimant's actions are devoid of misconduct.

No disqualification arises under N.J.S.A. 43:21-5(b) as the claimant was not discharged for misconduct connected with the work.

The matter of the claimant's separation from Employer #2 is remanded to the Deputy for an initial determination.

The Deputy will initially determine the claimant's eligibility for reported weeks of unemployment in accordance with established procedures.

This decision will have an impact on the employer's liability for benefit charges against its experience rating account. The Deputy will make necessary adjustments and notify the employer thereof, including notice of the employer's right of appeal.

**N.J.S.A. 43:21-4 provides in part:**

Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits with respect to any week only if:

(c)(1) The individual is able to work, and is available for work, and has demonstrated to be actively seeking work...



## **12:17-12.7 Limiting availability to less than full-time work**

(a) No individual, who is otherwise eligible, shall be deemed unavailable for work or ineligible for benefits solely for the reason that the individual is available for, seeks, applies for, or accepts only part-time work, instead of full-time work, if the claim is based on part-time employment and the individual is actively seeking and is willing to accept work under essentially the same conditions as existed in connection with the employment from which the individual became eligible for benefits.

(b) An individual who limits his or her availability to part-time work shall be ineligible for benefits unless the following conditions are met:

1. The individual has worked in part-time work during a substantial portion of the individual's base year. A "substantial portion" of the individual's base year is defined as earning sufficient wage credits in part-time employment to establish a claim for benefits;
2. There is sufficient part-time work in the claimant's general labor market to justify his or her restriction to part-time work; and
3. The individual is available for enough weekly hours to be able to earn remuneration equal to at least the individual's weekly benefit amount.

Herein, the claimant restricted his availability for work to a maximum of 30 hours per week. However, the claimant worked a varied work schedule for Employer #1 and Employer #2, which fluctuated between full-time and part-time work. As the claimant was unable to demonstrate that the substantial portion of his base year consisted of part-time work, the claimant has not met the aforementioned requirements for part-time restriction. Therefore, the claimant is ineligible for benefits from 09/16/18 through 11/03/18, as the claimant was unavailable for work, in accordance with N.J.S.A. 43:21-4(c)(1).

### **DECISION:**

No disqualification applies under N.J.S.A. 43:21-5(a), as the claimant did not leave the job voluntarily without good cause attributable to such work.

No disqualification arises under N.J.S.A. 43:21-5(b) as the claimant was not discharged for misconduct connected with the work from Employer #1.

The matter of the claimant's separation from Employer #2 is remanded to the Deputy for an initial determination.

The Deputy will initially determine the claimant's eligibility for reported weeks of unemployment in accordance with established procedures.

This decision will have an impact on the employer's liability for benefit charges against its experience rating account. The Deputy will make necessary adjustments and notify the employer thereof, including notice of the employer's right of appeal.

The claimant is ineligible for benefits from 09/16/18 through 11/03/18, as the claimant was unavailable for work, in accordance with N.J.S.A. 43:21-4(c)(1).

The determination of the Deputy is modified.

The determination of the Deputy is affirmed.

/s/ Jason Lopez  
**APPEALS EXAMINER**

FA



**Appeal Tribunal**  
PO Box 936  
Trenton, NJ 08625-0936

SS #:  
Docket #: DKT00162993  
Date of Claim: 03/18/2018  
Date of Appeal: 10/05/2018  
PC : 10  
Appellant: Claimant  
Mailing Date: 11/02/2018

**Decision of the Appeal Tribunal**

**IN THE MATTER OF:**

**POSTPONEMENT DECISION**

**EMPLOYER: LYFT INC**

The claimant appealed on 10/05/18 from a determination of the Deputy, mailed on 10/05/18, imposing a disqualification for benefits from 01/28/18 on the ground that the claimant left work voluntarily without good cause attributable to such work.

The claimant appealed on 10/05/18 from a determination of the Deputy, mailed on 10/05/18, imposing a period of ineligibility for benefits from 09/16/18 on the ground that the claimant was unavailable for work.

The claimant participated in the telephone hearing on 11/01/18.

**FINDINGS OF FACT:**

The appeal is hereby postponed, without prejudice for the reason(s) noted below.

The claimant required additional time to provide time records necessary for the hearing.

**OPINION:**

As a result of the circumstance identified above, the appeal is postponed without prejudice. The case is rescheduled for 11/05/18 at 3:00 pm.

This decision applies only to the period covered by the determination from which the appeal was filed.

**DECISION:**

The appeal is postponed without prejudice.

UA

/s/ Jason Lopez  
**APPEALS EXAMINER**