Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00181307
Date of Claim: 04/14/2019
Date of Appeal: 05/11/2019
PC : 10
Appellant: Claimant
Mailing Date: 05/31/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INC

The claimant appealed on 05/11/19 from a determination of the Deputy, mailed on 05/09/19, imposing a disqualification for benefits from 03/10/19 through 04/20/19 on the ground that the claimant was discharged for misconduct connected with the work.

The appellant failed to register as instructed for a duly scheduled telephone hearing before the Appeal Tribunal on 05/31/19.

FINDINGS OF FACT:

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 05/21/19. The appellant failed to register as instructed for the hearing scheduled for 05/31/19and did not request an adjournment. As a result of appellant's failure to register as instructed for the hearing or to request an adjournment, no hearing 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 as instructed 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/ Ellen Lang
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179850
Date of Claim: 02/17/2019
Date of Appeal: 04/21/2019
PC : 10
Appellant: Claimant
Mailing Date: 05/13/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INC

The claimant appealed on 04/21/19 from a determination of the Deputy, mailed on 04/15/19, imposing a disqualification for benefits from 02/17/19 on the ground that the claimant left work voluntarily without good cause attributable to such work.

The appellant failed to register as instructed for a duly scheduled telephone hearing before the Appeal Tribunal on 05/13/19.

FINDINGS OF FACT:

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 05/07/19. The appellant failed to register as instructed for the hearing scheduled for 05/13/19 and did not request an adjournment. As a result of appellant's failure to register as instructed for the hearing or to request an adjournment, no hearing 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 as instructed 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/ Ellen Lang
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179651
Date of Claim: 03/10/2019
Date of Appeal: 05/29/2019
PC : 10
Appellant: Claimant
Mailing Date: 06/20/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER #1: Uber Technologies
EMPLOYER #2: Lyft

The claimant appealed on 4/11/19 from a determination of the Deputy, mailed on 3/29/19, holding the claimant disqualified for benefits from 2/24/19 on the ground that the claimant left work voluntarily without good cause attributable to such work.

The claimant, the employer #2 with attorney, and a Deputy participated in a duly scheduled telephone hearing on 6/19/19.

FINDING OF FACT:

This matter was heard in conjunction with docket # DKT00179647.

The claimant worked concurrently for the above named employer #1 and employer #2.

The claimant worked as a driver for the above named employer #2 from 4/05/17 until 2/27/19. The claimant worked Monday to Saturday and occasionally on Sundays.

The above named employer #2 deactivated the claimant's account on 3/06/19 because the claimant failed an annual DMV check. The DMV check revealed that the claimant had four moving violations on his driving record as follows: On 3/05/18 for improper passing, on 5/03/18 for using a cell phone while driving, on 5/09/18 for unsafe operation of a motor vehicle, and on 9/11/18 for careless driving.

A claimant for unemployment benefits was filed as of 3/10/19.

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

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.

The passengers rated the claimant. The above-named employer #2 uses a five-star rating system. If the claimant would have received a star rating that was below a certain threshold, the employer could have deactivated the claimant's account.

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

The above-named employer #2 paid the claimant by direct deposit into the claimant's bank account through a third party payment processor.

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 through a third-party payment processor. 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 as required by law.

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 the claimant's vehicle.

The claimant did not have any responsibility for soliciting new customers for the above-named employer #2.

The claimant signed a terms of service agreement with the above-named employer #2 which refers to the claimant as an independent contractor.

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 advertise himself to the general public as a business, the claimant does not have a business telephone listing or a business website, and the claimant has no customers of his own.

The Deputy mailed a determination to the claimant's address of record on 3/29/19. The claimant received the determination of the Deputy, but does not remember the date that he received it. The claimant had the determination of the Deputy for less than seven days before filing an appeal.

OPINION:

N. J. S. A. 43:21-6 provides in part:

(b) (1) Unless the claimant or any interested party, within seven calendar days after delivery of notification of an initial determination or within 10 calendar days after such notification was mailed to his or their last-known address and addresses, file an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith...

Since the claimant had the determination of the Deputy for less than seven days before filing an appeal, the claimant's appeal is timely in accordance with N. J. S. A. 43:21-6(b)(1).

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, although the claimant signed a terms of service agreement with the above-named employer #2 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. While, the above-named employer 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, there is substantial evidence on the record to show that the employer exercised considerable control over the claimant. For example, the employer could have penalized the claimant by deactivating the claimant's account if the claimant got a five-star rating below a certain threshold, or if the claimant cancelled a certain number of rides after accepting the rides. Also, the claimant was not 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 #2. 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 Emplov. 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 by the following reasons: First, the claimant opened the unemployment claim dated 3/10/19 after employer #2 deactivated the claimant's account on 3/06/19 which suggests to the Appeal Tribunal that the claimant was dependent on the employer for his livelihood. Second, the claimant has no customers of his own. The claimant was dependent on the above named employer #2 for individuals seeking rides. Those individuals seeking rides are considered to be the customers of the above named employer #2 because all of the individuals seeking rides that the claimant transported for the above named employer #2 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 his customers. Third, 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 was engaged in an independent business when the claimant is dependent on the employer to provide a tool needed to do the job. Fourth, 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. Fifth, the claimant does not advertise himself to the general public as a business. It is not reasonable to believe that the claimant is engaged in a business when the claimant is not promoting himself as a business to the general public. 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 #2. 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 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....

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

20. 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:

(1) driving under the influence pursuant to R.S.39:4-50;

(2) resisting arrest; eluding an officer pursuant to N.J.S.2C:29-2;

(3) reckless driving pursuant to R.S.39:4-96;

(4) driving with a suspended or revoked license pursuant to R.S.39:3-40; or

(5) a violation committed in any other state, territory, commonwealth, or other jurisdiction of the United States that is comparable to one of the violations enumerated in paragraph (1), (2), (3), or (4) of this subsection;

c. The applicant or driver is a match in the United States Department of Justice's Dru Sjodin National Sex Offender Public Website;

d. The applicant or driver is not a holder of a valid basic driver's license;

e. The applicant or driver does not possess proof of valid vehicle registration for the driver's personal vehicle to be used to provide prearranged rides;

f. The applicant or driver does not possess proof of valid automobile liability insurance for the personal vehicle; or

g. The applicant or driver is under 21 years of age.

In this matter, the claimant is considered to have been separated from employment by the above named employer # 2 on 3/06/19 when the employer de-activated the claimant's account because the claimant failed a DMV check. Since the claimant had more than three moving violations on his

driving record in the prior three-year period, the claimant was statutorily barred from working with the above named employer in accordance with N. J. S. 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 3/03/19, 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 appeal is timely in accordance with N. J. S. A. 43:21-6(b)(1).

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 3/03/19, 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, but modified as to the period of disqualification.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179651
Date of Claim: 03/10/2019
Date of Appeal: 04/11/2019
PC : 10
Appellant: Claimant
Mailing Date: 05/10/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The claimant appealed on 4/11/19 from a determination of the Deputy, mailed on 3/29/19, holding the claimant disqualified for benefits from 2/24/19 on the ground that the claimant left work voluntarily without good cause attributable to such work.

The claimant and employer with attorney registered, as instructed, to participate in a duly scheduled telephone hearing on 5/09/19.

FINDING OF FACT:

The hearing scheduled for 5/09/19 at 1:15 PM was adjourned because the Deputy was not sent the Notice of Phone Hearing.

OPINION:

In this matter, the hearing was adjourned for good cause because the Notice of Phone Hearing was not sent to the Deputy. Consequently, the Deputy did not have the opportunity to register to participate in the phone hearing scheduled before the Appeal Tribunal at 1:15 PM on 5/09/19. Therefore, the hearing is postponed without prejudice and the hearing 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.

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/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179515
Date of Claim: 11/04/2018
Date of Appeal: 04/11/2019
PC : 60
Appellant: Claimant
Mailing Date: 05/09/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

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

The claimant appealed on 4/11/19 from a determination of the Deputy, mailed on 4/5/19, holding the claim for benefits dated 11/4/18 invalid on the ground that the claimant lacked sufficient requalifying weeks and wages to establish a valid claim.

This matter is decided from information contained in the Division's files.

FINDINGS OF FACT:

After learning that only wages earned prior to 11/4/18 could be used for the purposes of requalifying, and knowing she did not possess such wages, the appellant, by statement, requested that the appeal be withdrawn.

OPINION:

After review of the matter, the Appeal Tribunal approves the appellant's request for withdrawal of the appeal.

DECISION:

The appeal is withdrawn.

/s/ Ian Spurlock
APPEALS EXAMINER

UA

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Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179381
Date of Claim: 03/10/2019
Date of Appeal: 04/17/2019
PC : 10
Appellant: Claimant
Mailing Date: 05/08/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft Inc.

The claimant appealed on 4/17/19 from a determination of the Deputy, mailed on 4/8/19, imposing a disqualification for benefits from 2/3/19 on the ground that the claimant left work voluntarily without good cause attributable to such work.

The appellant failed to register as instructed for a duly scheduled telephone hearing before the Appeal Tribunal on 5/8/19.

FINDINGS OF FACT:

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 4/24/19. The appellant failed to register as instructed for the hearing scheduled for 5/8/19 and did not request an adjournment. As a result of appellant's failure to register as instructed for the hearing or to request an adjournment, no hearing 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 as instructed for the telephone hearing or 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, Social Security number and/or docket number, and the **reason why you failed to register for the telephone hearing.**

/s/ Ian Spurlock
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179220
Date of Claim: 03/17/2019
Date of Appeal: 05/20/2019
PC : 10
Appellant: Claimant
Mailing Date: 06/06/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The claimant appealed on 4/15/19 from a determination of the Deputy, mailed on 4/09/19, holding the claimant disqualified for benefits from 2/17/19 on the ground that the claimant left work voluntarily without good cause attributable to such work.

The appellant failed to register to participate, as instructed, for a duly scheduled telephone hearing on 6/06/19.

FINDINGS OF FACT:

All interested parties to the appeal were sent a "Notice of Phone Hearing" in advance of the telephone hearing. The notice provides in part:

"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." And, "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 5/22/19. The appellant failed to register for the hearing scheduled for 12:3PM on 6/06/19 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 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 an 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 hearing or 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, Social Security number and/or docket number, and the reason why you failed to register for the telephone hearing.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179220
Date of Claim: 03/17/2019
Date of Appeal: 04/15/2019
PC : 10
Appellant: Claimant
Mailing Date: 05/09/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

POSTPONEMENT DECISION

EMPLOYER: Lyft, Inc.

The claimant appealed on 4/15/19 from a determination of the Deputy, mailed on 4/09/19, holding the claimant disqualified for benefits from 2/17/19 on the ground that the claimant left work voluntarily without good cause attributable to such work.

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

FINDING OF FACT:

By fax letter dated May 3, 2019, the employer's attorney requested that the hearing scheduled before the Appeal Tribunal on May 9, 2019, at 11:30AM be adjourned to a later date because the employer's representative is unable to participate in the hearing due to a prior conflict.

OPINION:

In this matter, the employer 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.

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/ Nereida Gomez
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179160
Date of Claim: 01/20/2019
Date of Appeal: 05/16/2019
PC : 10
Appellant: Employer
Mailing Date: 06/07/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER #1:
EMPLOYER #2: Lyft, Inc.

The employer #2 appealed on 4/12/19 from a determination of the Deputy, mailed on 4/04/19, holding that the claimant partially disqualified and eligible for benefits from 1/20/19.

The employer # 2 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 for reasons not attributable to the work.

The employer #2 with attorney and claimant participated in a duly scheduled telephone hearing on 5/09/19.

The employer #2 with attorney, the claimant, and a Deputy participated in a duly scheduled telephone hearing on 6/05/19.

FINDINGS OF FACT:

The claimant worked as a line service technician for the above-named employer #1 from 7/14/14 until 1/21/19 when the claimant was discharged by the employer for a reason the Division found to be not disqualifying. The claimant worked full time from 8:00 PM to 6:00 AM, Friday to Monday. The claimant earned $25.75 per hour.

A claimant for unemployment benefits was filed as of 1/20/19 establishing a weekly benefit rate of $696.00 and a partial weekly benefit rate of $835.00.

The claimant worked as a driver for the above-named employer #2 intermittently from 3/24/17 until 3/06/19 in order to supplement his income. The claimant stopped working for the employer because the claimant felt that he was putting too much wear and tear on his car. The employer never de-

activated the claimant's account.

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

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.

The passengers rated the claimant. The above-named employer #2 uses a five-star rating system. If the claimant would have received a star rating that was below a certain threshold, the employer could have deactivated the claimant's account.

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

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 through a third-party payment processor. 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 as required by law.

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 the claimant's vehicle.

The claimant did not have any responsibility for soliciting new customers for the above-named employer #2.

The claimant signed a terms of service agreement with the above-named employer #2 which refers to the claimant as an independent contractor.

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 a business. The claimant does not advertise himself to the general public as a business, the claimant does not have a business telephone listing or

a business website, and the claimant has no customers of his own.

For the week of 2/24/19 through 3/02/19, the claimant had wages of $61.21 on 2/24/19 with above named employer #2.

For the week of 2/17/19 through 2/23/19, the claimant had wages of $43.39 on 2/18/19, $10.07 on 2/19/19, and $5.21 on 2/21/19 with above named employer #2.

For the week of 2/10/19 through 2/16/19, the claimant had wages of $14.56 on 2/11/19, $5.82 on 2/12/19, $42.03 on 2/14/19, and $8.14 on 2/16/19 with above named employer #2.

For the week of 2/03/19 through 2/09/19, the claimant had wages of $124.12 on 2/03/19 with above named employer #2.

For the week of 1/27/19 through 2/02/19, the claimant had wages of $268.78 on 1/28/19 with above named employer #2.

For the week of 1/20/19 through 1/26/19, the claimant had no wages from the above-named employer #2.

For the week of 1/13/19 through 1/19/19, the claimant had wages of $5.44 on 1/15/19 with the above-named employer #2.

For the week of 1/06/19 through 1/12/19, the claimant had wages of $350.00 on 1/08/19 with the above-named employer #2.

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 Emplov. Sec., supra, 48 N.J. Super. at 158.***

In this matter, although the claimant signed a terms of service agreement with the above-named employer #2 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. While, the above-named employer 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, there is substantial evidence on the record to show that the employer exercised

considerable control over the claimant. For example, the employer could have penalized the claimant by deactivating the claimant's account if the claimant got a five-star rating below a certain threshold, or if the claimant cancelled a certain number of rides after accepting the rides. Also, the claimant was not 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 #2. 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 was dependent on the employer for individuals seeking rides. Those individuals seeking rides are considered to be customers of the above named employer #2 because all of the individuals seeking rides that the claimant transported for the 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 his 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 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. It is not reasonable to believe that the claimant is engaged in a business when the claimant is not promoting himself as a business to the general public. 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 #2. 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 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....

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 work 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. .....

In this matter, the claimant was concurrently employed by employer #1 and employer #2. The claimant worked full time for the above-named employer #1 until the claimant was separated from employment on 1/21/19. The claimant was eligible for benefits when he was separated from employment with employer #1. The claimant continued to work on an intermittent basis for the above-named employer #2 until 3/06/19 when the claimant voluntarily left the job because the claimant felt that he was putting too much wear and tear on his car. Although this is a valid reason for leaving the job, it is a person reason for leaving that is not attributable to the job. Therefore, the claimant voluntarily left the job without good cause attributable to the work. Since the claimant worked intermittently for employer #2, the Appeal Tribunal considers this employment to have been part time employment. Therefore, a partial disqualification for benefits will be imposed as of 3/03/19.

For the weeks ended 1/12/19 through 3/02/19, the claimant earned a total of $938.77 with the above-named employer #2. The claimant's partial weekly benefit rate is reduced by $117.00 per week ($938.77 divided by 8 equals $117.00 rounded down) which is an amount equal to the average weekly earnings of the claimant's part-time job with the above-named employer #2 during the eight-week period prior to the claimant's last day of work. The claimant is partially disqualified for benefits under N.J.S.A. 43:21-5(a) as of 3/03/19 and the partial weekly benefit rate is reduced by $117.00 as the claimant left work with the above-named employer #2 voluntarily without good cause attributable to the 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 partially disqualified for benefits under N.J.S.A. 43:21-5(a) as of 3/03/19 and the partial weekly benefit rate is reduced by $117.00 as the claimant left work with the above-named employer #2 voluntarily without good cause attributable to the work.

The determination of the Deputy is modified.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179160
Date of Claim: 01/20/2019
Date of Appeal: 04/12/2019
PC : 10
Appellant: Employer
Mailing Date: 05/09/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 4/12/19 from a determination of the Deputy, mailed on 4/04/19, holding that the claimant partially disqualified and eligible for benefits from 1/20/19.

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 for reasons not attributable to the work.

The employer with attorney and the claimant participated in a duly scheduled telephone hearing on 5/09/19.

FINDINGS OF FACT:

The issue of "Voluntary Leaving" came up at the start of the hearing.

The issue of "Voluntary Leaving" was not listed on the Notice of Phone Hearing that was sent to the interested parties.

The claimant is exercising his right to the five-day written notice and requested an adjournment in order to receive written notice on the issue of "Voluntary Leaving".

The hearing was adjourned in order to send written notice on the issue of "Voluntary Leaving" to the interested parties.

OPINION:

In this matter, the hearing was adjourned for good cause. Therefore, the hearing is postponed without prejudice and a continuation hearing will be scheduled.

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 #: DKT00179153
Date of Claim: 12/30/2018
Date of Appeal: 07/30/2019
PC : 10
Appellant: Claimant
Mailing Date: 08/20/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INC

For good cause shown, this matter has been reopened as of 7/2/19.

The claimant, employer's attorney, employer's witness, and the division auditor, participated in a telephone hearing that was scheduled on 8/16/19. This case is related to Docket #179154.

FINDINGS OF FACT:

The claimant appealed on 4/9/19, from a determination of the Deputy, mailed on 3/27/19, imposing a disqualification for benefits from 1/13/19, on the ground that the claimant left work voluntarily without good cause attributable to such work.

The claimant last worked for the above employer, as a driver, from 7/16/18 through 1/14/19, when she refused the work because the pay was too low and she no longer had transportation.

The claimant was separated from her prior employer for reasons the division did not find disqualifying. Therefore, the claimant tried working for the above named employer. The claimant was required to provide her own vehicle and the maintenance of the vehicle. In most cases, the claimant was required to pay for her own gas and tolls.

The claimant tried working for this employer but realized that after she calculated and paid for all her work related expenses, her pay was $5, hourly. This was below the state's minimum wage and she was unable to afford her vehicle. As a result, she no longer has a vehicle for this job. The claimant refused the work for these reasons.

An initial claim for benefits was filed as of 12/30/18, establishing a weekly benefit rate of $269 and a maximum benefit amount of $6,994. No benefits were paid.

The claimant was directed how to perform the services by the employer by using their online application. The services were performed by providing service to the employer's customers by using her own personal vehicle. The claimant did not own a business. The division's auditor confirmed that this is "covered" employment. This specific issue of "covered employment" has not been appealed by the employer.

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 such service is performed; and

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

This specific issue was not appealed by any party. No decision relating to this issue, will be rendered by the Appeal Tribunal for this case.

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. This subsection shall not apply to an individual who voluntarily leaves work with one employer to accept from another employer employment which commences not more than seven days after the individual leaves employment with the first employer, if the employment with the second employer has weekly hours or pay not less than the hours or pay of the employment of the first employer, except that if the individual gives notice to the first employer that the individual will leave employment on a specified date and the first employer terminates the individual before that date, the seven-day period will commence from the specified date.

N.J.A.C. 12:17-11.2 provides:

Suitability of work defined

(a) In determining whether or not the work is suitable, consideration shall be given to the degree

of risk involved to the health, safety and morals, the individual's physical fitness and prior training, experience and prior earnings and employee benefits, the individual's length of unemployment, prospects for securing work in the individual's customary occupation and commuting distance.

Here, the claimant refused work because she was not earning enough to sustain her livelihood and to maintain the vehicle needed to work for this employer. The Appeal Tribunal views the claimant's testimony as credible due to the lack of challenging evidence and her more detailed experience with the new work and her prior work experience.

The evidence demonstrates that the claimant's pay was significantly lower than her average pay and it was a hardship. The work was not suitable and the claimant had good cause for leaving the work. No disqualification applies under N.J.S.A. 43:21-5(a), as the claimant did not leave work voluntarily without good cause attributable to such work.

DECISION:

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

The determination of the Deputy is reversed.

/s/ Kimberly Newson Smith
APPEALS EXAMINER

FA