



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179153
Date of Claim: 12/30/2018
Date of Appeal: 07/02/2019
PC : 10
Appellant: Claimant
Mailing Date: 07/29/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

POSTPONEMENT DECISION

EMPLOYER: LYFT INC

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

A telephone hearing was scheduled on 7/30/19.

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 appeal is hereby postponed, without prejudice, due to the employer's attorney and state auditor's conflict in schedule. Please make sure any and all exhibits are provided to all interested parties before the next scheduled hearing. You can contact the office for any mailing addresses.

OPINION:

As the appeal is postponed without prejudice, the case will be rescheduled as soon as possible. This decision applies only to the period covered by the determination from which the appeal was filed.

Important: All parties must register for the next and any other duly scheduled subsequent hearings as instructed on the Notice of Phone Hearing.

DECISION:

The appeal is postponed without prejudice.

Important: All parties must register for the next and any other duly scheduled subsequent hearings as instructed on the Notice of Phone Hearing.

/s/ Kimberly Newson Smith
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179153
Date of Claim: 12/30/2018
Date of Appeal: 04/09/2019
PC : 10
Appellant: Claimant
Mailing Date: 05/06/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INCA

The claimant appealed on 4/9/19, from a determination of the Deputy, mailed on 4/10/19, 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 appellant failed to register as instructed for a duly scheduled telephone hearing before the Appeal Tribunal on 5/6/19.

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 4/22/19. The appellant failed to register as instructed for the hearing scheduled for 5/6/19 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/ Kimberly Newson Smith
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179021
Date of Claim: 02/03/2019
Date of Appeal: 07/11/2019
PC : 10
Appellant: Claimant
Mailing Date: 08/08/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc. T/A Lyft

The employer appealed on 4/12/19 from a determination of the Deputy, mailed on 4/05/19, holding that the services that the claimant performed for the employer were in employment.

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

The employer with attorney, and a Deputy participated in a duly scheduled telephone hearing on 8/07/19.

FINDING OF FACT:

A claim for unemployment benefits was filed as of 2/03/19.

The claimant has been accepting work sporadically as a driver from the above named employer since 2/03/18. From 2/03/18 until 12/28/18, the claimant provided 46 rides for the employer. From January of 2019 through February of 2019, the claimant did not work for the employer. In March of 2019, the claimant provided 16 rides for the employer and was paid a total of \$175.67. From April of 2019 through May of 2019, the claimant did not work for the employer. In June of 2019, the claimant provided 4 rides for the employer and was paid a total of \$50.36. The employer never de-activated the claimant's account. As of the date of this hearing, 8/07/19, the claimant's account is still active with the employer. A review of the Division records indicate that the Deputy has not made a written determination regarding the claimant's separation from the above named employer.

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

The passengers rated the claimant. The above-named employer uses a five-star rating system. If the claimant would have received a star rating that was below 4.5, the employer could have deactivated the claimant's account.

While working for the above named employer, the employer could have deactivated the claimant's account if the claimant canceled a certain number of rides after accepting those rides.

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

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

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 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 her compensation from the employer.

The claimant used her own car to transport individuals seeking transportation 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 of the employer'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.

The claimant signed a terms of service agreement with the above-named employer 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.

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 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, 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. While, the 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, 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 4.5, or if the claimant cancelled a certain number of rides after accepting the rides. Also, the claimant was not permitted to have her own passengers in her car while the claimant was transporting passengers for the employer. Furthermore, the employer unilaterally set the price of the fares that were charged to individuals seeking transportation and the employer set the amount of compensation for the claimant. And finally, the employer controlled the software application that paired individuals seeking transportation with available drivers. In essence, the software application that the employer provided to the claimant was a tool that allowed the claimant to work for the employer. Without that tool, the claimant could not have worked for the employer. The Appeal Tribunal finds that the claimant was not free from control. Therefore, test A has not been satisfied.

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

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

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

Also in Hargrove v. Sleepy's LLC, 220 N.J. 289(2015), the Supreme Court noted that "Part C of the 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 in an independent business that would survive the termination of her relationship with the above named employer as evidenced by the following reasons: First, there is no evidence on the record that the claimant has her own customers. The claimant was dependent on the above named employer for individuals seeking rides. Those individuals seeking rides are considered to be the customers of the above named 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 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 was 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 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. 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 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 #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...

In this matter the employer contends that the claimant ceased working without good cause attributable to the work. Since the Deputy did not make an initial written determination regarding the claimant's separation, the matter of the claimant's separation from the above named employer is remanded to the Deputy for an initial written determination in accordance with established procedures.

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).

The claimant is disqualified for benefits as of 8/19/18, under N. J. S. A 43:21-5(a), as the claimant left work with the above named employer #2 voluntarily without good cause attributable to such work.

The determination of the Deputy is affirmed.

The matter of the claimant's separation from the above named employer is remanded to the Deputy for an initial written determination in accordance with established procedures.

/s/ Paul Yohannan
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179021
Date of Claim: 02/03/2019
Date of Appeal: 06/04/2019
PC : 10
Appellant: Employer
Mailing Date: 06/25/2019

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 4/9/19, holding the claimant eligible for benefits, without disqualification, from 2/3/19.

The appellant was unable to participate in a duly scheduled hearing on 6/25/19.

FINDINGS OF FACT:

The appellant was unable to participate in a scheduled hearing and pursue the appeal because the employer's witness had a schedule conflict with the hearing schedule.

OPINION:

As the appellant was unable to participate in the hearing because of a schedule conflict, the appeal is dismissed without prejudice. The 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.

Note: The parties must register for the rescheduled hearing in accordance with the instructions provided in the *Notice of Phone Hearing*.

DECISION:

The appeal is dismissed without prejudice.

NOTE: TO REQUEST ANOTHER HEARING, WRITE TO:

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

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

Note: The parties must register for the rescheduled hearing in accordance with the instructions provided in the *Notice of Phone Hearing*.

/s/ Jerome Williams
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00179021
Date of Claim: 02/03/2019
Date of Appeal: 04/12/2019
PC : 10
Appellant: Employer
Mailing Date: 05/10/2019

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 4/9/19, holding the claimant eligible for benefits, without disqualification, from 2/3/19.

The appellant was unable to participate in a duly scheduled hearing on 5/7/19.

FINDINGS OF FACT:

The appellant was unable to participate in a scheduled hearing and pursue the appeal because the employer's witness had a schedule conflict with the hearing schedule.

OPINION:

As the appellant was unable to participate in the hearing because of a schedule conflict, the appeal is dismissed without prejudice. The 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.

Note: The parties must register for the rescheduled hearing in accordance with the instructions provided in the *Notice of Phone Hearing*.

DECISION:

The appeal is dismissed without prejudice.

NOTE: TO REQUEST ANOTHER HEARING, WRITE TO:

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

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

Note: The parties must register for the rescheduled hearing in accordance with the instructions provided in the *Notice of Phone Hearing*.

/s/ Jerome Williams
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00177143
Date of Claim: 01/27/2019
Date of Appeal: 03/23/2019
PC : 10
Appellant: Claimant
Mailing Date: 04/10/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The claimant appealed on 03/23/19 from a determination of the Deputy, mailed on 03/20/19, imposing an indefinite disqualification for benefits from 01/20/19, on the ground that the claimant voluntarily quit work without good cause attributable to such work.

The appellant failed to register for and participate in a duly scheduled telephone appeal hearing on 04/10/19.

FINDINGS OF FACT:

The appellant failed to participate in a telephone appeal hearing and pursue the appeal. No request for an adjournment was received by the Tribunal.

All interested parties to the appeal were sent a "Notice of Phone Hearing" in advance of the telephone hearing. The notice stated, 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 03/27/19. The appellant failed to register for the scheduled 04/10/19 hearing 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 adjournment.

As there was no evidence presented to upset the findings of the Deputy, that determination will not be disturbed, and the appeal is dismissed, in accordance with N.J.A.C. 1:12-14.4.

DECISION:

The appeal is dismissed, in accordance with N.J.A.C. 1:12-14.4.

/s/ Amit Mamroud
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00176248
Date of Claim: 12/30/2018
Date of Appeal: 03/13/2019
PC : 10
Appellant: Employer
Mailing Date: 04/11/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER:LYFT INC

The employer appealed on 03/13/19 from a determination of the Deputy, mailed 03/04/19, holding the claimant eligible for benefits, without disqualification, from 12/30/18 .

The employer contends that the claimant an independent contractor and request relief of benefit charges. There were no other issues disputed by the appellant employer.

The appeal hearing was scheduled for 04/10/19.

FINDINGS OF FACT:

The appellant was unable to participate in a scheduled hearing and pursue the appeal the employer's counsel had a prior conflict.

OPINION:

As the appellant was unable to participate in a scheduled hearing and pursue the appeal because the employer's counsel had a prior conflict, the appeal is dismissed without prejudice. The appeal may be reopened upon the appellant's application to the Appeal Tribunal.

Any request to the Appeal Tribunal must be received within 180 days of the date of mailing of this decision.

DECISION:

The appeal is dismissed without prejudice.

NOTE: TO REQUEST ANOTHER HEARING, WRITE TO:

APPEAL TRIBUNAL

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

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

/s/ Terrence Moran
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00172122
Date of Claim: 10/21/2018
Date of Appeal: 01/22/2019
PC : 10
Appellant: Claimant
Mailing Date: 02/13/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft Incorporated

The claimant appealed on 01/22/19 from a determination of the Deputy, mailed 01/11/19, imposing a disqualification for benefits from 12/09/18 through 01/05/19 on the ground that the claimant failed, without good cause, to accept or apply for suitable work.

The appellant failed to register as instructed for a duly scheduled telephone hearing before the Appeal Tribunal on 02/13/19.

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 01/30/19. The appellant failed to register as instructed for the hearing scheduled for 02/13/19 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

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(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/ Amy Mascelli
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00171923
Date of Claim: 04/09/2018
Date of Appeal: 03/27/2019
PC : 50
Appellant: Claimant
Mailing Date: 04/18/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 11/08/18 from a determination of the Deputy, mailed on 10/26/18, holding the claimant eligible for State Plan disability benefits as of 4/09/18.

The employer contends that the claimant was an independent contractor; not an employee, and therefore, not entitled to benefits.

The employer with attorney, and a Deputy auditor participated in a duly scheduled telephone hearing on 3/18/19.

The employer with attorney, a Deputy from State Plan disability benefits, and a Deputy auditor participated in a duly scheduled telephone hearing on 4/17/19.

FINDING OF FACT:

The claimant accepted work as a driver from the above named employer from 1/18/18 until 4/08/18. The claimant became disabled and was unable to perform his work duties as of 4/09/18.

A claim for State Plan disability benefits was filed as of 4/09/18.

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.

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.

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The passengers rated the claimant. The above named 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 above named 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 above named employer collected the fares from the individuals seeking transportation through a third party payment processor.

The above named 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 above named employer set the amount of compensation for the claimant.

The claimant was not allowed to negotiate the amount of his compensation from the above named employer.

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 his own days and hours of work. When the claimant wanted to work for the above named employer, the claimant used his 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 his 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 his 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 above named employer was done out of the claimant's 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 has returned to work for the above named employer and last accepted work on 4/07/19.

The Deputy mailed a determination to the employer's address of record on 10/26/18. The employer received the determination of the Deputy on 11/02/18 and filed an appeal on 11/08/18.

OPINION:

N. J. S. A. 43:21-6 reads 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 employer had the determination of the Deputy for just six days before filing an appeal, the 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.

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 his own days and hours of work. However, there is substantial evidence on the record to show that the employer exercised considerable control over the claimant. For example, the employer 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 below a certain threshold, or if the claimant cancelled a certain number of 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

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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 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 claimant is clearly not in an independent business that would survive the termination of his relationship with the above named employer as evidenced by the following reasons: First, the claimant was dependent on the above named employer for individuals seeking rides. Those individuals seeking rides are considered to be customers of the above named 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 his 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 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. And finally, 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. 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), and can be used to establish a claim for State Plan disability benefits.

As the claimant's disability occurred within 14 days of the last day of work (or last paid and compensable employment) the disability claim was properly determined under state plan.

DECISION:

The appeal is timely in accordance with N. J. S. A. 43:21-6(b)(1).

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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), and can be used to establish a claim for State Plan disability benefits.

The determination of the Deputy is affirmed.

/s/ Paul Yohannan
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00171923
Date of Claim: 04/09/2018
Date of Appeal: 02/07/2019
PC : 50
Appellant: Claimant
Mailing Date: 03/19/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 11/23/18 from a determination of the Deputy, mailed on 10/26/18, holding the claimant eligible for State Plan disability benefits as of 4/09/18.

The employer contends that the claimant was an independent contractor; not an employee, and therefore, not entitled to benefits.

The employer with attorney, and a Deputy auditor participated in a duly scheduled telephone hearing on 3/18/19.

FINDING OF FACT:

The Deputy from the Division of Temporary Disability Insurance submitted documentary evidence to the Appeal Tribunal. The employer's attorney has not seen the documentary evidence and requested an adjournment. The hearing was adjourned in order to send copies of the Deputy's documentary evidence to the employer's attorney for review in advance of the next hearing.

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.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

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Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00171923
Date of Claim: 04/09/2018
Date of Appeal: 11/23/2018
PC : 50
Appellant: Employer
Mailing Date: 02/05/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 11/23/18 from a determination of the Deputy, mailed on 10/26/18, holding the claimant eligible for State Plan disability benefits as of 4/09/18.

The employer contends that the claimant was an independent contractor; not an employee, and therefore, not entitled to benefits.

The matter is decided on information contained in the Division files.

FINDING OF FACT:

By e-mail dated February 4, 2019, the Deputy State Auditor requested that the hearing scheduled before the Appeal Tribunal on February 5, 2019, at 12:30PM be postponed because the Deputy State Auditor has been assigned a special duty and is not available to participate in the hearing.

OPINION:

In this matter, the Deputy State Auditor'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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/s/ Paul Yohannan
APPEALS EXAMINER

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Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00170121
Date of Claim: 10/28/2018
Date of Appeal: 02/04/2019
PC : 10
Appellant: Employer
Mailing Date: 03/11/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft

The employer appealed on 12/20/18 from a determination of the Deputy, mailed on 12/06/18, holding that the services that the claimant performed for the employer were in employment.

The employer contends that the claimant was an independent contractor and not an employee.

The appellant failed to register to participate, as instructed, for a duly scheduled telephone hearing on 3/11/19.

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 2/26/19. The appellant failed to register for the hearing scheduled for 12:30PM on 3/11/19 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:

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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 #: DKT00170121
Date of Claim: 10/28/2018
Date of Appeal: 12/20/2018
PC : 10
Appellant: Employer
Mailing Date: 01/30/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft

The employer appealed on 12/20/18 from a determination of the Deputy, mailed on 12/06/18, holding that the services that the claimant performed for the employer were in employment.

The employer contends that the claimant was an independent contractor and not an employee.

The employer with attorney, and a Deputy registered to participate in a duly scheduled telephone hearing on 1/25/19.

FINDING OF FACT:

The telephone hearing that was scheduled for 12:30PM on 1/25/19 was postponed because the Appeals Examiner assigned to conduct the hearing was ill and not available to conduct the hearing.

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