

LYFT



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00191400
Date of Claim: 12/16/2018
Date of Appeal: 08/21/2019
PC : 10
Appellant: Claimant
Mailing Date: 09/30/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INC

The claimant appealed on 08/21/19 from a determination of the Deputy, mailed on 08/09/19, imposing a period of ineligibility for benefits from 07/21/19 on the ground that the claimant was unavailable for work.

The claimant and the employer with counsel participated in a duly scheduled telephone hearing on 09/30/19.

FINDINGS OF FACT:

The claimant worked for the above named employer part time as a driver from 07/01/19 through 07/16/19.

A claim for benefits was filed as of 12/16/18 with a weekly benefit rate of \$582.00.

The claimant went on a pre-planned vacation to Haiti to visit his grandparents from 07/26/19, leaving early in the morning and returning on 08/20/19 in the afternoon. The flight was five (5) hours long.

The claimant purports that while he was away on vacation that he was available for work and was not seeking work because he expected to return to work with his full time employer on 08/26/19.

The Deputy mailed a determination to the appellant's address of record on 08/09/19. The claimant did not receive the determination. The claimant went to the local unemployment office to inquire about his benefits upon his return from vacation on or about 08/21/19. The claimant filed an appeal on 08/21/19.

200

OPINION:

N.J.S.A. 43:21-6(b)(1) provides that an appeal must be filed within ten (10) days of the mailing of the determination, or within seven (7) days of the receipt of the determination.

In this matter, as the claimant did not receive the determination of the Deputy, the appeal was filed late with good cause in accordance with N.J.S.A. 43:21-6(b)(1).

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

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

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

“To be 'available for work' the unemployed person must have 'a genuine attachment to the labor market'. Valenti v. Board of Review, 4 N.J. 287, 290 (1950). He must be 'willing, able and ready to accept suitable work which he does not have good cause to refuse'. Krauss v. A. & M. Karagheusian, Inc., 13 N.J. 447, 457 (1953). He must go out within a reasonable distance from his home and seek employment. Boyer v. Board of Review, 4 N.J. Super. 143, 146 (App. Div. 1949). 'A good faith offering of the claimant's services is a prerequisite to availability. Exposure to the labor market must be sincere and unequivocal. A professed willingness to work accompanied by or following conduct wholly inconsistent therewith, will not serve to establish availability. Good faith cannot exist independently of honest intentions.' Walton v. Wilhelm, 91 N.E. 2d 373, 375 (Ind. Ct. App. 1950); Higgins v. Board of Review, 33 N.J. Super. 535, 537 (App. Div. 1955). A person who is genuinely attached to the labor market and desires employment will make every reasonable effort to find work. Dwyer v. Appeal Board, 321 Mich. 178, 32 N.W. 2d 434 (Sup. Ct. 1948); Stapleton v. Administrator, 142 Conn. 160, 112 A. 2d 211 (Sup. Ct. Err. 1955).

Further requirements that the claimant must demonstrate that he 'is actively seeking work' means that he must do more than being passively available for work. He must make a sincere effort to obtain employment either in his usual type of work or in such other suitable work as he may be able to do. As we said in Breskin v. Board of Review, 46 N.J. Super. 338 (App. Div. 1957):

“Merely registering with the State Employment Service for work is not sufficient, Krauss v. A. & M. Karagheusian, Inc., supra; nor is registering plus asking relatives and friends if they know of any opportunities for work, Boyer v. Board of Review, supra. Similarly, reading newspaper want ads and telephoning a few places will not suffice, De Rose V. Board of Review, 6 N.J. Super. 164 (App. Div. 1950); nor will reporting once a month at union headquarters, Guidice v. Board of Review, 14 N.J. Super. 335 (App. Div. 1951).” (at p. 343)

“One who seeks unemployment benefits must make more than these minimal efforts to find employment to satisfy the statutory requirements.”

In this matter, the claimant was out of the area on vacation from 07/26/19 through 08/20/19. The claimant contends that he was not seeking work while on vacation because he was going to go back to work with employer #2 as of 08/26/19. The claimant's contention is rejected as irrelevant as the issue is not about him going to return to work but has the claimant demonstrated to be

genuinely attached to the labor market during the period he was out of the area on vacation. Here, the claimant is not considered genuinely attached to the labor market during the period he was out of the area because it is not plausible that he would have been so readily available to return back to the area when the reason for leaving was the sole purpose of being on vacation. Hence, the claimant is not considered available for work. Accordingly, the claimant is ineligible for benefits from 07/21/19 through 07/25/19, as there were less than seven (7) eligible days during that calendar week and also ineligible for benefits from 07/26/19 through 08/20/19 because he was out of the area on vacation and not available for work, the claimant is also ineligible for benefits from 08/21/19 through 08/24/19, as there were less than seven (7) eligible days during that calendar week, in accordance with N.J.S.A. 43:21-19(q) and N.J.S.A. 43:21-4(c)(1).

DECISION:

The appeal was filed late with good cause in accordance with N.J.S.A. 43:21-6(b)(1).

The claimant is ineligible for benefits from 07/21/19 through 07/25/19, as there were less than seven (7) eligible days during that calendar week and also ineligible for benefits from 07/26/19 through 08/20/19 because he was out of the area on vacation and not available for work, the claimant is also ineligible for benefits from 08/21/19 through 08/24/19, as there were less than seven (7) eligible days during that calendar week, in accordance with N.J.S.A. 43:21-19(q) and N.J.S.A. 43:21-4(c)(1).

The determination of the Deputy is modified.

/s/ Darcel France
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00191320
Date of Claim: 03/02/2019
Date of Appeal: 06/12/2019
PC : 50
Appellant: Employer
Mailing Date: 09/24/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INC

The employer appealed on 06/12/19 from a determination of the Deputy, mailed on 05/29/19, holding the claimant eligible for disability benefits, without disqualification, from 03/02/19.

The employer contends that the claimant worked as an independent contractor and, thus, lacked sufficient base weeks or sufficient base year wages to establish a valid claim. There were no other issues disputed by the appellant employer.

FINDINGS OF FACT:

The appeal is hereby postponed, without prejudice for the reason noted below:

The claimant's legal counsel requested additional time to review the exhibits provided by the employer and a Deputy was unable to participate due to a schedule conflict.

OPINION:

As the claimant's legal counsel requested additional time to review the exhibits provided by the employer and as a Deputy was unable to participate due to a schedule conflict, 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:

203

The appeal is postponed without prejudice.

/s/ Angeliki Morfogen
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00190814
Date of Claim: 07/07/2019
Date of Appeal: 08/23/2019
PC : 10
Appellant: Claimant
Mailing Date: 10/02/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INC

The claimant appealed on 08/23/19 from a determination of the Deputy, mailed on 08/17/19, imposing a period of ineligibility for benefits from 07/28/19 through 08/03/19 on the ground that the claimant was employed full-time.

The claimant and the employer with legal counsel participated in a telephone hearing on 10/01/19.

FINDINGS OF FACT:

The claimant filed an unemployment claim dated 07/07/19, which established a weekly benefit rate of \$696.00, a partial benefit rate of \$835.00, and a maximum benefit amount of \$18,096.00. No benefits were paid for the week ending 08/03/19.

For the week ending 08/03/19, the claimant worked part-time for the above-named employer as a driver. The claimant utilized the employer's smartphone application to provide rides to requested customers. The claimant did not recall how many hours he worked for that week, however, he did not work 32 or more hours. During that week the claimant provided 15 rides to customers and had gross earnings of \$272.67. The aforementioned employer's third-party payment processing company, called Stripe, transferred the money into the claimant's bank account on 08/06/19.

OPINION:

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

"An individual shall be deemed 'unemployed' for any week during which he is not engaged in full-time work and with respect to which his remuneration is less than his

205

weekly benefit rate..."

(2) "...the term 'remuneration' with respect to any individual for benefit years commencing on or after July 1, 1961, and as used in this subsection, shall include only that part of the same which in any week exceeds 20% of his weekly benefit rate (fractional parts of a dollar omitted) or \$5, whichever is the larger."

(3) "An individual's week of unemployment shall be deemed to commence only after the individual has filed a claim at an unemployment insurance claims office, except as the division may by regulation otherwise prescribe."

During the week in question, the claimant worked part-time and had gross earnings of \$272.67. The claimant's testimony is accepted in this matter, as there was no evidence to the contrary. Therefore, the claimant was considered unemployed and is not ineligible for benefits from 07/28/19 through 08/03/19, under N.J.S.A. 43:21-19(m)(l).

The matter of the claimant's eligibility for benefits during reported weeks of unemployment is remanded to the Deputy for an initial determination.

DECISION:

The claimant is not ineligible for benefits from 07/28/19 through 08/03/19, in accordance with N.J.S.A. 43:21-19(m)(1).

The matter of the claimant's eligibility for benefits during reported weeks of unemployment is remanded to the Deputy for an initial determination.

The determination of the Deputy is reversed.

/s/ Carla Stephen
APPEALS EXAMINER

FA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00190461
Date of Claim: 07/14/2019
Date of Appeal: 08/21/2019
PC : 10
Appellant: Claimant
Mailing Date: 10/02/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

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

The claimant appealed on 8/21/19 from a determination of the Deputy, mailed on 8/19/19, holding the claimant disqualified for benefits from 6/30/19 through 8/10/19 on the ground that the claimant was discharged by the above-named employer #2 for misconduct connected with the work.

The claimant and employer #2 with attorney participated in a duly scheduled telephone hearing on 9/30/19.

FINDINGS OF FACT:

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

The claimant worked for the above-named employer #1 from March of 2018 until 7/03/19.

The claimant worked as a driver for the above-named employer #2 from 4/06/18 until 7/04/19. The claimant worked about 30 hours per week between employer #1 and employer #2 from Monday to Sunday. The claimant estimated his earnings from the above-named employer #2 were between \$200 and \$400 per week.

The claimant received work from employer #2 via the employer's software application. When the claimant wanted work from the employer, the claimant used his personal cell phone to turn on the employer's software application and the employer sent the claimant work.

Sometime prior to 7/04/19, the air conditioner in the car that the claimant was using to drive for the above-named employer #2 broke down. The car was approved for use on the employer's platform. The claimant put the car into the shop for repair. The claimant notified his insurance company and received a rental car. While his car was in the shop for repair, the claimant used the rental car to work

207

as a driver for the above-named employer #2. The rental car was not approved for use on the employer's platform. The employer got a complaint from a passenger indicating that the claimant may be driving a vehicle that may not be registered on the employer's platform. On 7/03/19, the employer warned the claimant by e-mail dated 7/03/19, that driving an unapproved car was grounds for removal from the employer's platform. The employer did not de-activate the claimant's account.

The above-named employer #2 does not have a rental car program in New Jersey. The claimant consulted with the employer and the employer advised that the claimant might try to add the rental vehicle to the platform. The claimant tried to add the rental vehicle information to the above-named employer #2's platform, but the platform denied the rental vehicle. The claimant also tried to add the rental vehicle information to the above-named employer #1's platform, but was also denied.

The car that the claimant was using to drive for the above-named employer #2 was subsequently repossessed sometime after the air conditioner broke down. The claimant stopped working for the above-named employer #2 as of 7/04/19 because the claimant did not have a vehicle. If the claimant would have had a vehicle, the claimant could have continued to drive for the employer.

A claim for unemployment benefits was filed as of 7/14/19.

OPINION:

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

An individual shall be disqualified for benefits:

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

In this matter, the claimant is considered to have voluntarily left the job with the above-named employer #2. Therefore, no disqualification arises under N.J.S.A. 43:21-5(b) as the claimant was not discharged by the above-named employer #2 for misconduct connected with the work. The matter is better reviewed under N.J.S.A. 43:21-5(b).

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

An individual shall be disqualified for benefits:

(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 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 above-named employer #2 did not de-activate the claimant's account. The claimant stopped working for the employer as of 7/04/19 because the claimant did not have a vehicle after the air conditioner in the car that the claimant was using to drive for the employer broke down and the car was subsequently repossessed. The claimant's departure from the job was not attributable to the job. Therefore, the claimant is disqualified for benefits as of 6/30/19, 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:

No disqualification arises under N.J.S.A. 43:21-5(b) as the claimant was not discharged by the above-named employer #2 for misconduct connected with the work.

The claimant is disqualified for benefits as of 6/30/19, 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 modified.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

209



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00189832
Date of Claim: 06/09/2019
Date of Appeal: 08/18/2019
PC : 10
Appellant: Claimant
Mailing Date: 09/16/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INC

The claimant appealed on 08/18/19 from a determination of the Deputy, mailed on 08/13/19, imposing a period of ineligibility for benefits from 07/14/19 through 08/03/19 on the ground that the claimant was unavailable for work because the claimant did not work all the hours made available for him during the weeks for which he was claiming partial unemployment benefits.

The claimant appealed on 08/18/19 from a determination of the Deputy, mailed on 08/13/19, imposing a period of ineligibility for benefits from 07/21/19 through 07/27/19 on the ground that the claimant was unavailable for work

The claimant appealed on 08/18/19 from a Request for Refund from the Director, mailed on 08/13/19, imposing a liability to refund the sum of \$696.00 received as benefits for week ending 07/20/19, as provided by N.J.S.A. 43:21-16(d).

The claimant pre-registered for the duly scheduled telephone hearing on 09/16/19.

FINDINGS OF FACT:

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

The employer's attorney expressed to the appeals examiner that employer's representative was unable to proceed with the hearing at this time due to another scheduled hearing.

The claimant pre-registered for the hearing and was notified of the reason for the postponement.

OPINION:

As the employer was unable to proceed with the hearing due to having another scheduled

hearing, the appeal is postponed without prejudice.

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

All parties must register for subsequent hearings in accordance with the instructions provided on the Notice of Phone Hearing.

DECISION:

The appeal is postponed without prejudice.

All parties must register for subsequent hearings in accordance with the instructions provided on the Notice of Phone Hearing.

UA

/s/ Olufemi Shonibare
APPEALS EXAMINER

211



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00189270
Date of Claim: 04/14/2019
Date of Appeal: 08/09/2019
PC : 10
Appellant: Employer
Mailing Date: 09/10/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

POSTPONEMENT DECISION

Employer: LYFT, Inc.

The employer appealed on 08/09/19 from a determination of the Deputy, mailed 08/01/19, holding the claimant eligible for benefits, without disqualification, from 04/14/19.

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, which fact alone disqualifies the claimant from receiving unemployment insurance benefits.

The claimant and the employer's attorney registered to participate in a duly scheduled telephone hearing on 09/10/19.

FINDINGS OF FACT:

The appeal is hereby postponed, without prejudice for the reason noted below:

The claimant requested a copy of the employer's documents to review and the Appeal Tribunal needed to notify the state auditor from employer accounts to participate in the next appeal hearing.

OPINION:

The claimant requested a copy of the employer's documents to review and the Appeal Tribunal needed to notify the state auditor from employer accounts to participate in the next appeal hearing, the appeal is postponed to the new date and time established by the Tribunal.

212

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 hearing and any other duly scheduled subsequent hearings as instructed on the Notice of Phone Hearing.

DECISION:

The appeal is postponed without prejudice.

/s/ Catherine Sabo
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00186554
Date of Claim: 06/02/2019
Date of Appeal: 07/12/2019
PC : 10
Appellant: Claimant
Mailing Date: 08/05/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT, INC.

The claimant appealed on 07/12/2019 from a determination of the Deputy, mailed on 07/10/2019, imposing a disqualification for benefits from 06/16/2019 through 07/13/2019, on the ground that the claimant refused suitable work, without good cause.

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

FINDINGS OF FACT:

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/ Clayton Barker
APPEALS EXAMINER

UA

214



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00186172
Date of Claim: 06/09/2019
Date of Appeal: 07/05/2019
PC : 10
Appellant: Claimant
Mailing Date: 08/06/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc. T/A Lyft

The claimant appealed on 7/05/19 from a determination of the Deputy, mailed on 6/28/19, holding the unemployment claim dated 6/09/19 to be invalid on the ground that the claimant had insufficient base weeks or earnings to establish a valid claim.

The appellant claimant and a Deputy Auditor registered, as instructed, to participate in a duly scheduled telephone hearing on 8/06/19. The employer with attorney registered late.

FINDINGS OF FACT:

The appellant claimant registered, as instructed, to participate in a duly scheduled telephone hearing at 12:30PM on 8/06/19. However, the appellant was unreachable when the Appeal Tribunal called the appellant to begin the hearing. The Appeal Tribunal called the appellant at 12:31 PM and again at 12:42 PM. Both of the calls were unanswered and went into the appellant's voicemail. The appellant did not request an adjournment.

The appellant failed to participate in the hearing and pursue the appeal.

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.

As the appellant registered to participate in the hearing but was unreachable for an unknown reason when the Appeal Tribunal called the appellant to begin the hearing, the appeal is dismissed in accordance with N. J. A. C. 1:12-14.4(a).

215

DECISION:

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

NOTE: To request another hearing, please write to:

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

Please include your name, Social Security number, and the reason why you were unreachable when the Appeal Tribunal called to begin the hearing.

UA

/s/ Paul Yohannan
APPEALS EXAMINER



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00184556
Date of Claim: 01/13/2019
Date of Appeal: 06/06/2019
PC : 10
Appellant: Claimant
Mailing Date: 07/10/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The claimant appealed on 6/06/19 from a determination of the Deputy, mailed on 5/29/19, holding the claimant ineligible for benefits from 4/28/19 on the ground that the claimant was unavailable for work.

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

FINDINGS OF FACT:

The appellant, by fax letter dated 7/02/19 from the appellant's attorney, advised the Appeal Tribunal that the appellant will not proceed with the appeal.

OPINION:

As the appellant is no longer pursuing the appeal, the appeal is withdrawn.

DECISION:

The Appeal is withdrawn.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

217



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00184015
Date of Claim: 03/31/2019
Date of Appeal: 06/10/2019
PC : 10
Appellant: Employer
Mailing Date: 07/01/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LFT INC.

The employer appealed on 06/10/19 from a determination of the Deputy, mailed 05/30/19, holding the claimant eligible for benefits, without disqualification, from 03/31/19.

The employer contends that the claimant, left work voluntarily, is 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 07/01/19.

FINDINGS OF FACT:

The appellant was unable to participate in a scheduled hearing and pursue the appeal because the employer and counsel were not available for the hearing.

OPINION:

As the appellant was unable to participate in a scheduled hearing and pursue the appeal because the employer and counsel were not available for the hearing, 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

218

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 #: DKT00183739
Date of Claim: 04/07/2019
Date of Appeal: 06/07/2019
PC : 10
Appellant: Claimant
Mailing Date: 06/27/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INC

The claimant appealed on 06/07/19 from a determination of the Deputy, mailed 05/03/19, imposing a disqualification for benefits from 04/07/19 on the ground that the claimant left work voluntarily without good cause attributable to such work.

The claimant participated in a telephone hearing on 06/27/19.

FINDINGS OF FACT:

The claimant worked for the above-named employer, as a part-time driver from 11/13/18 through 04/13/19, when he voluntarily left the job because he lost his transportation. The claimant left the job for that reason only. The claimant worked as a full-time web developer from 12/17/18 through 03/26/19, with a different employer, when he was discharged from the job.

In the last eight weeks of employment with the above-named employer, the claimant earned \$23.76 in wages and worked two weeks.

The Deputy mailed a determination to the appellant's address of record on 05/03/19. The claimant received the determination on 05/25/19. The claimant first filed an appeal on 05/31/19 via facsimile. When he did not receive information regarding his appeal, he contacted the Appeal Tribunal and was informed that his appeal had not been received, so the claimant then filed an appeal online on 06/07/19.

OPINION:

N.J.S.A. 43:21-6(b)(1) provides that an appeal must be filed within ten (10) days of the mailing of the determination, or within seven (7) days of the receipt of the determination.

N.J.A.C. 12:20-3.1(1) provides

A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant;
- or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

In this case, the claimant provided the fax number he sent his initial appeal to on 05/31/19. The fax number was the fax number of the Central Appeal Tribunal. The claimant cannot be held accountable for the Tribunal not receiving his fax. Therefore, good cause has been shown for the appeal being filed late, in accordance with N.J.S.A. 43:21-6(b)(1) and N.J.A.C. 12:20-3.1(i).

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. 12:17-9.1 Disqualification for voluntarily leaving-general principles

(a) An individual shall be disqualified for benefits for the week in which he or she 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. See N.J.S.A. 43:21-5(a).

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

1. Lack of transportation;

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

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

1. An individual, who leaves part-time employment and, without prior knowledge, is subsequently separated from full-time employment, shall not be disqualified for leaving the part-time employment.
2. Personal reasons for leaving part-time employment which arise from the loss of the full-time employment may constitute good cause attributable to such work.

The claimant voluntarily left the job when he lost his transportation. This is a personal reason that is not related to the work itself. In Kirk vs. Board of Review, (App. Div. 1990) the Court held that, when the claimant quit his part-time employment without good cause attributable to such work, the application of a voluntary quit disqualification under N.J.S.A. 43:21-5(a) was too harsh. The Court deducted an amount equal to the claimant's average weekly earnings in part-time employment from the partial benefit rate. That same reasoning applies in this instance. Therefore, a partial disqualification is imposed as of 04/07/19. The partial weekly benefit rate is reduced by \$11.00 which is an amount equal to the average weekly earnings of the claimant's part-time job in accordance with N.J.S.A. 43:21-5(a).

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

DECISION:

The appeal is late with good cause, in accordance with N.J.S.A. 43:21-6(b)(1) and N.J.A.C. 12:20-3.1(i).

The claimant is partially disqualified for benefits under N.J.S.A. 43:21-5(a) as of 04/07/19 and the weekly benefit rate is reduced by \$11.00 as the claimant left work voluntarily without good cause attributable to the work.

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

The determination of the Deputy is modified.

/s/ Jeffrey Cooper
APPEALS EXAMINER

222



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00183507
Date of Claim: 09/09/2018
Date of Appeal: 05/29/2019
PC : 10
Appellant: Claimant
Mailing Date: 06/26/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The claimant appealed on 5/29/2019 from a determination of the Deputy, mailed on 5/24/2019, holding her ineligible for benefits from 10/21/2018 through 11/3/2018 on the ground that she was not available for work.

The matter is decided upon the information contained in the Division files on 6/25/2019.

FINDINGS OF FACT:

The Division records reflect the claimant had exhausted all benefits on the unemployment insurance claim dated 9/9/2018. The Division records further reflect any liability to refund benefits received under this claim was satisfied as of 5/23/2019.

OPINION:

Since the claimant has exhausted all benefits and cannot receive any benefits for the period under review; there is no justiciable issue at this time. Therefore, the appeal before the Appeal Tribunal will be dismissed.

DECISION:

The appeal is dismissed.

/s/ Michael Napier
APPEALS EXAMINER

UA

223



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00183133
Date of Claim: 04/07/2019
Date of Appeal: 05/30/2019
PC : 10
Appellant: Claimant
Mailing Date: 06/20/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER #1:

EMPLOYER #2:

EMPLOYER #3: LYFT INC.

The claimant appealed on 05/30/19 from a determination of the Deputy, mailed on 05/24/19, imposing a disqualification for benefits from 02/10/19 on the grounds that the claimant left work voluntarily without good cause attributable to the work and that subsequent weeks and wages are insufficient to remove the disqualification.

The claimant participated in a telephone hearing on 06/20/19.

FINDINGS OF FACT:

The claimant worked for the above-named employer #1 as a personal trainer, working Sunday through Tuesday and from Thursday through Friday, approximately 02:30 pm. to 08:00 pm., full time (32 hours per week), earning from \$10.00 to \$28.00 an hour from 02/01/18 through 03/08/19, at which time the claimant left the work voluntarily because he verbally resigned on 03/01/19. The reason cited was other work. The reason for accepting work elsewhere was an improved hourly rate and a better schedule.

The claimant worked for the above named employer #2, as a fitness coach, working Sunday through Monday and Friday, from 09:00 am to 03:00 pm., part time (10 hours per week), earning from \$25.00 to \$55.00 an hour, from 03/18/19 through 04/01/19, when separated for reasons the division found to be non-disqualifying. The claimant had gross earnings of approximately \$1,250.00.

The claimant worked for the above named employer #3 from 04/02/19 through 06/20/19 where he is still employed on an on call basis. The claimant had gross earnings of \$284.00.

A claim for benefits was filed as of 04/07/19, establishing a weekly benefit rate of \$390.00 and a maximum benefit amount of \$10,140.00.

OPINION:

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

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

The claimant left work voluntarily with employer #1 because he accepted other work. Those reasons do not constitute good cause attributable to the work for leaving and the claimant is accordingly disqualified for benefits as of 03/03/19 under N.J.S.A. 43:21-5 (a).

The claimant worked 5 weeks in subsequent employment and had earnings of \$1534.00 which are insufficient to remove the disqualification.

DECISION:

The claimant left work voluntarily without good cause attributable to the work and is disqualified for benefits under N.J.S.A. 43:21-5(a) as of 03/03/19.

The disqualification has not been tolled.

The determination of the Deputy is affirmed, but modified as to the effective date of the disqualification.

UA

/s/ Ronald Holtz
APPEALS EXAMINER

225



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00181307
Date of Claim: 04/14/2019
Date of Appeal: 09/16/2019
PC : 10
Appellant: Claimant
Mailing Date: 10/11/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The claimant appealed on 5/11/19 from a determination of the Deputy, mailed on 5/09/19, holding the claimant disqualified for benefits from 3/10/19 through 4/20/19 on the ground that the claimant was discharged for misconduct connected with the work.

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

FINDING OF FACT:

By fax letter dated September 28, 2019, the employer's attorney requested that the hearing scheduled before the Appeal Tribunal on October 10, 2019, at 1:15 PM be adjourned to a later date because the employer's representative is unable to appear for the duration of the hearing.

OPINION:

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

DECISION:

The hearing is postponed without prejudice.

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

226



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00181307
Date of Claim: 04/14/2019
Date of Appeal: 08/05/2019
PC : 10
Appellant: Claimant
Mailing Date: 09/03/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The claimant appealed on 5/11/19 from a determination of the Deputy, mailed on 5/09/19, holding the claimant disqualified for benefits from 3/10/19 through 4/20/19 on the ground that the claimant was discharged for misconduct connected with the work.

The claimant and employer with attorney participated in a duly scheduled telephone hearing on 9/03/19.

FINDINGS OF FACT:

The Appeal Tribunal has not seen the Terms of Service that the claimant signed with the above named employer. The hearing was adjourned in order to give the employer time to send a copy of the Terms of Service that the claimant signed with the employer and to send a copy of the claimant's driver's history with the employer to both the claimant and to the Appeal Tribunal for review in advance of the next hearing.

The employer will please send the documentation for the Appeal Tribunal to the following address:

Newark Appeal Tribunal
Attn: Paul Yohannan
124 Halsey Street, 2nd Floor
Newark, NJ 07102

OPINION:

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

DECISION:

The hearing is postponed without prejudice.

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

/s/ Paul Yohannan
APPEALS EXAMINER

UA



Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00181307
Date of Claim: 04/14/2019
Date of Appeal: 07/02/2019
PC : 10
Appellant: Claimant
Mailing Date: 07/31/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

POSTPONEMENT DECISION

EMPLOYER: LYFT INC

For good cause shown, this matter is reopened as of 07/02/19.

FINDINGS OF FACT:

The claimant appealed on 07/02/19 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 appeal is hereby postponed, without prejudice for the reason noted below:

The employer's representative is located in California and is unavailable to participate in the hearing due to the time zone difference.

OPINION:

As the employer's representative is not available at 7:00 AM Pacific Standard Time, the appeal is postponed to a new date and time established by the Tribunal.

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

DECISION:

The appeal is postponed without prejudice.

229

UA

/s/ Ellen Lang
APPEALS EXAMINER