Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00152895
Date of Claim: 10/18/2017
Date of Appeal: 12/05/2018
PC : 50
Appellant: Claimant
Mailing Date: 01/10/2019

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 5/04/18 from a determination of the Deputy, mailed on 4/16/18, holding that the claimant eligible from 10/18/17 for State Plan disability benefits.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that the claimant should not be eligible for benefits.

The employer with attorney, the claimant, a Deputy auditor, and a Deputy from State Plan Disability, participated in a duly scheduled telephone hearing on 8/17/18.

The employer with attorney, the claimant, a Deputy auditor, and a Deputy from State Plan Disability, participated in a duly scheduled telephone hearing on 1/09/19.

FINDING OF FACT:

The Deputy mailed a determination to the employer's address of record on 4/16/18.

The employer received the determination of the Deputy on 4/24/18.

It took eight days from 4/24/18 for the employer to forward the determination of the Deputy to the employer's attorney on 5/02/18 because the employer was short staffed.

On 5/04/18, the employer's attorney filed the appeal on behalf of the above named employer.

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

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notification of an initial determination or within ten calendar days after such notification was mailed to his or their last-known address and addresses, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith…

In this matter, the employer has the burden of proof to show that their appeal was filed within Division time limits. The employer had the determination of the Deputy for eight days before forwarding the determination of the Deputy to their attorney. The fact that it took the employer eight days to forward the determination of the Deputy to the employer's attorney because the employer was short staffed is not considered good cause for filing a late appeal.

The appeal was not filed within Division time limits and good cause has not been shown for the appeal being filed late. The Appeal Tribunal has no jurisdiction to rule on the merits of the appeal. Therefore, the appeal is dismissed as it was not filed within the period allowed under N.J.S.A.43:21-6(b) (1), and good cause has not been shown for filing late.

DECISION:

The appeal is dismissed as it was not filed within the period allowed under N.J.S.A.43:21-6(b) (1), and good cause has not been shown for filing late.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00152895
Date of Claim: 10/18/2017
Date of Appeal: 10/15/2018
PC : 50
Appellant: Employer
Mailing Date: 11/28/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 5/07/18 from a determination of the Deputy, mailed on 4/16/18, holding that the claimant eligible from 10/18/17 for State Plan disability benefits.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that the claimant should not be eligible for benefits.

The employer with attorney, the claimant, a Deputy auditor, and a Deputy from State Plan Disability, participated in a duly scheduled telephone hearing on 8/17/18.

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

FINDING OF FACT:

By fax letter dated November 06, 2018, the claimant requested that the hearing scheduled before the Appeal Tribunal on November 28, 2018, at 12:30PM be postponed because the claimant is out of the country on a preplanned trip. The claimant is not available to participate in the hearing.

OPINION:

In this matter, the claimant's request is reasonable and constitutes good cause for 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 immediately to register to participate in the hearing. Please call the

phone number printed on the **Notice of Phone Hearing** to register. Thank you.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00152895
Date of Claim: 10/18/2017
Date of Appeal: 08/23/2018
PC : 50
Appellant: Employer
Mailing Date: 09/19/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 5/07/18 from a determination of the Deputy, mailed on 4/16/18, holding the claimant eligible from 10/18/17 for State Plan disability benefits.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that the claimant should not be eligible for benefits.

The employer with attorney, the claimant, a Deputy auditor, and a Deputy from State Plan Disability, participated in a duly scheduled telephone hearing on 8/17/18.

The appellant registered as instructed to participate in a duly scheduled hearing on 9/19/18.

FINDING OF FACT:

The appellant's attorney was unable to move the hearing forward on 9/19/18 because the appellant's witness was unavailable to participate in the hearing due to a prior conflict.

OPINION:

As the appellant's attorney was unable to move the hearing forward on 9/19/18 because the appellant's witness was unavailable to participate in the hearing due to a prior conflict, the appeal is dismissed without prejudice.

The appellant may request another hearing by writing to the Appeal Tribunal. Any request to the Appeal Tribunal must be received within 180 days of the date of mailing of this decision.

DECISION:

The appeal is dismissed without prejudice.

NOTE: To request another hearing, please write to:

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

Please include your name, Social Security number, and the reason why you were unable to move the hearing forward on 9/19/18.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00152895
Date of Claim: 10/18/2017
Date of Appeal: 07/18/2018
PC : 50
Appellant: Claimant
Mailing Date: 08/17/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 5/07/18 from a determination of the Deputy, mailed on 4/16/18, holding that the claimant eligible from 10/18/17 for State Plan disability benefits.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that the claimant should not be eligible for benefits.

The employer with attorney, the claimant, a Deputy auditor, and a Deputy from State Plan Disability, participated in a duly scheduled telephone hearing on 8/17/18.

FINDINGS OF FACT:

The issue of "Timeliness of Appeal" came up at the start of the hearing.

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

The employer's attorney is exercising her right to the five-day written notice on the new issue of "Timeliness of Appeal" and requested a postponement.

The hearing was postponed in order to send written notice on the new issue of "Timeliness of Appeal" to the interested parties.

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 immediately to register to participate in the hearing. Please call the phone number printed on the **Notice of Phone Hearing** to register. Thank you.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00152895
Date of Claim: 10/18/2017
Date of Appeal: 06/06/2018
PC : 50
Appellant: Employer
Mailing Date: 07/06/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

POSTPONEMENT DECISION

EMPLOYER: LYFT INC

The employer appealed on 6/6/18 from a determination of the Deputy, mailed 4/16/18, holding the claimant eligible for benefits, without disqualification, from 10/18/17.

FINDINGS OF FACT:

The matter, as directed by the Supervising Appeal Examiner, will be heard and ruled upon by Appeals Examiner Paul Yohannan. The appeal is hereby postponed, without prejudice for the reason noted.

OPINION:

The matter is forwarded to Paul Yohannan for an initial hearing and decision, the appeal is postponed without prejudice. The case will be rescheduled as soon as possible with Paul Yohannan.

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

DECISION:

The appeal is postponed without prejudice.

/s/ Jerome Williams
APPEALS EXAMINER

UA

Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00151459
Date of Claim: 04/08/2018
Date of Appeal: 06/26/2018
PC : 10
Appellant: Employer
Mailing Date: 07/23/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 5/22/18 from a determination of the Deputy, mailed on 5/11/18, holding that the claimant's services for the above named employer were in employment.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that the claimant left work voluntarily for reasons not attributable to the work.

The employer with attorney, and a Deputy participated in a duly scheduled telephone hearing on 7/19/18.

FINDING OF FACT:

A claim for unemployment benefits was filed as of 4/08/18.

The claimant accepted work as a driver from the above named employer from 9/01/17 until 5/02/18. The claimant's account is still active with the above named employer, but that claimant has not worked for the employer since 5/02/18.

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.

The passengers rated the claimant as a driver, and the claimant rated the passengers. The employer uses a star rating system. If the claimant got a rating below a certain threshold, the employer could

have deactivated the claimant's account.

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 employer set the price of the fares charged to individuals seeking transportation. The employer collected the fares from the individuals seeking transportation through a third party payment processor. The employer paid the claimant through a third party payment processor by direct deposit into the claimant's bank account. The claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation, and the employer set the amount of compensation for the claimant. The employer kept 25 percent of the fares charged to individuals seeking transportation and compensated the claimant by remitting 75 percent of the fares to the claimant.

The claimant signed a written agreement with the above named employer which refers to the claimant as an independent contractor.

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

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

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

The claimant used her own vehicle to transport individuals for the above named employer. The claimant was responsible for the cost of maintenance, fuel, and maintaining insurance coverage for her vehicle.

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

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

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

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

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 Deputy mailed a determination to the employer's address of record on 5/11/18. The employer received the determination of the Deputy on 5/15/18 and filed an appeal on 5/22/18.

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 employer had the determination of the Deputy for just seven days before the appeal was filed, 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.

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.***

Although the claimant signed an 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.

In this matter, the above named employer did not prevent the claimant from accepting work with other employers, the claimant was free to set her own days and hours of work. However, there is substantial evidence on the record to show that the employer exercised considerable control over the claimant. For example, 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 sequenced and dispatched the work that was sent to the claimant through the employer's software application. Another example of control is that the employer controlled the software application that paired individuals seeking transportation with available drivers. In essence, the software application that the employer provided to the claimant was a tool that allowed the claimant to work for the employer. Without that tool, the claimant could not have worked for the employer. 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 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 claimant is clearly 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, the claimant did not have any responsibility for soliciting new customers. The claimant was dependent on the employer for individuals seeking rides. All of the individuals seeking rides that the claimant transported for the above named employer came 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. The software that the employer provided to the claimant was a tool that allowed the claimant to work for the employer. Without that tool, the claimant could not have worked for the employer. It defies logic to believe that the claimant was engaged in an independent business when the claimant was dependent on the employer for a tool that the claimant needed to work for the employer. Third, the claimant had no real opportunity to make a profit because the claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation or negotiate her compensation from the employer. It is not reasonable to believe that the claimant was engaged in an independent business seeking to make a profit when the claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation or negotiate her compensation from the employer. After all, it is reasonable to expect that an independent contractor would run her business by negotiating compensation for her services that would maximize her profits. 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 is an independently established trade, occupation, profession or business that would survive the termination of the relationship with the above named employer. Therefore, test C has not been satisfied.

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

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

An individual shall be disqualified for benefits:

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

In this matter, the claimant is considered to have voluntarily left her job on 5/02/18 because the claimant stopped working for the employer while work was available for the claimant. Since there is no evidence to indicate that the claimant had a compelling reason for leaving the job attributable to the work, the claimant is disqualified for benefits as of 4/29/18 under N. J. S. A 43:21-5(a), as the claimant left work voluntarily without good cause attributable to such work.

N. J. S. A. 43:21-7 (c) (1) provides as follows:

Benefits paid with respect to benefit years commencing on and after January 1, 1953, to any individual on or before December 31 of any calendar year with respect to unemployment in such calendar year and in preceding calendar years shall be charged against the account or accounts of the employer or employers in whose employment such individual established base weeks constituting the basis of such benefits, except that, with respect to benefit years commencing after January 4, 1998, an employer's account shall not be charged for benefits paid to a claimant if the claimant's employment by the employer was ended in any way which, pursuant to subsection (a), (b), (c), (f), (g) or (h) of N.J.S.A. 43:21-5, would have disqualified the claimant for benefits if the claimant had applied for benefits at the time when that employment ended.

In this matter, the claimant left the job for a disqualifying reason. Therefore, the employer is not liable for charges to its experience rating account for unemployment benefits received on the claim dated 4/08/18, in accordance with N.J.S.A. 43:21-7(c)(1).

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 were in employment, and all monies paid were covered earnings in accordance with N. J. S. A. 43:21-19 (i)(6).

The determination of the Deputy is affirmed.

The claimant is disqualified for benefits as of 4/29/18 under N. J. S. A 43:21-5(a), as the claimant left work voluntarily without good cause attributable to such work.

The employer is not liable for charges to its experience rating account for unemployment benefits received on the claim dated 4/08/18, in accordance with N.J.S.A. 43:21-7(c)(1).

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00151459
Date of Claim: 04/08/2018
Date of Appeal: 05/22/2018
PC : 10
Appellant: Employer
Mailing Date: 06/21/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 5/22/18 from a determination of the Deputy, mailed on 5/11/18, holding that the claimant's services for the above named employer were in employment.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that the claimant left work voluntarily for reasons not attributable to the work.

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

FINDING OF FACT:

By fax letter dated June 20, 2018, the employer's attorney requested that the hearing scheduled before the Appeal Tribunal on June 21, 2018, at 12:30PM be adjourned because the employer is unable to participate in the hearing due to a prior conflict.

OPINION:

In this matter, the appeals examiner assigned to hear the case was absent from work on June 20, 2018, when the request for the adjournment was received. The supervising examiner approved the request for the adjournment on June 20, 2018. Therefore, the hearing is postponed without prejudice and the hearing will be rescheduled.

DECISION:

The hearing is postponed without prejudice.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00150910
Date of Claim: 12/03/2017
Date of Appeal: 05/09/2018
PC : 10
Appellant: Claimant
Mailing Date: 06/08/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The claimant appealed on 5/09/18 from a determination of the Deputy, mailed on 4/30/18, holding the claimant ineligible for unemployment benefits from 4/22/18 through 4/28/18 on the ground that the claimant worked more than 80 percent of the normal hours for the claimant's occupation and is considered to have worked full time.

The appellant failed to register to participate, as instructed, for a duly scheduled telephone hearing on 6/08/18.

FINDINGS OF FACT:

The appellant failed to register to participate in a duly scheduled hearing and pursue the appeal.

OPINION:

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

DECISION:

The appeal is dismissed.

NOTE: To request another hearing, 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 failed to register, as instructed, to participate in the hearing.

/s/ Paul Yohannan
APPEALS EXAMINER

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Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

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SS #: \
Docket #: DKT00150319
Date of Claim: 04/08/2018
Date of Appeal: 06/26/2018
PC : 10
Appellant: Employer
Mailing Date: 07/25/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 5/09/18 from a determination of the Deputy, mailed on 4/25/18, 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 further contends that if it can be shown that the claimant was an employee, the claimant either voluntarily left his job or was discharged for having a poor driving record and violating the employer's Terms of Service.

The employer with attorney, and a Deputy participated in a duly scheduled telephone hearing on 6/22/18.

The employer with attorney, and a Deputy participated in a duly scheduled telephone hearing on 7/23/18.

FINDING OF FACT:

A claim for unemployment benefits was filed as of 4/08/18.

The claimant worked as a driver for the above named employer from 12/13/17 until 3/27/18 when the employer deactivated the claimant's account because the claimant failed a department of motor vehicle record check. The department of motor vehicle check revealed the claimant had more than three moving violations on his driving record in the prior three-year period.

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.

Both the passengers and the claimant had the choice of rating each other. The employer uses a five-star rating system. If the claimant had received a rating from a passenger that was below a certain threshold, the employer could have deactivated the claimant's account.

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

The above named employer set the price of the fares charged to individuals seeking transportation. The employer collected the fares from the individuals seeking transportation through a third party payment processor. The employer paid the claimant through a third party payment processor by direct deposit into the claimant's bank account. The claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation, and the employer set the amount of compensation for the claimant. The employer kept 25 percent of the fares charged to individuals seeking transportation and compensated the claimant by remitting 75 percent of the fares to the claimant.

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

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

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

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

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 Deputy mailed a determination to the employer's address of record on 4/25/18. The employer

received the determination of the Deputy on 4/30/18. On 5/03/18, the employer forwarded the determination of the Deputy to their lawyer for appeal. The employer's lawyer appealed the determination of the Deputy on 5/09/18.

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...

N. J. A. C. 12:20-3.1 Presentation of appealed claims

(h) An appeal shall be considered on its merits if it is filed within seven calendar days after delivery of the initial determination or within 10 calendar days after such notification was mailed to the appellant's last known address, with the exception of an appeal filed pursuant to *N.J.S.A. 43:21-55.1*, which shall be considered on its merits if it is filed within 20 calendar days after delivery of the initial determination or within 24 calendar days after such notification was mailed to the appellant's last known address. Delivery of notification of an initial determination means actual receipt of the determination by the claimant or any interested party to the appeal.

(i) 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 matter, the employer had the determination of the Deputy for just four days before forwarding the determination of the Deputy to the employer's attorney on 5/03/18 for appeal. The employer relied on the attorney to file the appeal. The fact that the attorney did not file the appeal until 5/09/18 was beyond the control of the employer. Therefore, the appeal is late with good cause in accordance with N. J. A. C. 12:20-3.1(i) 1.

When an individual such as the claimant performs services for remuneration, those services are deemed to be in employment unless all three requirements of N. J. S. A. 43:21-19 (i) (6) are met. That is:

(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 an 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 statue, sometimes referred to as the ABC test, are met. When the service relationship fails to meet any of the test, statutory "employment" obtains. ***Gilchrist v. Div. of Employ. Sec., supra, 48 N.J. Super. at 158.***

In this matter, the above named employer did not prevent the claimant from accepting work with other employers, 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 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 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 did not have any responsibility for soliciting new customers. The claimant was dependent on the employer for individuals seeking rides. All of the individuals seeking rides that the claimant transported for the above named employer came 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. 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 is an independently established trade, occupation, profession or business that would survive the termination of the relationship with the above named employer. Therefore, test C has not been satisfied.

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

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

An individual shall be disqualified for benefits:

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

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

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

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

In this matter, the claimant is considered to have been separated from employment by the above named employer on 3/27/18 when the employer deactivated the claimant's account because the claimant failed a department of motor vehicle record check. The department of motor vehicle check revealed the claimant had more than three moving violations on his driving record in the prior three-year period. As a result of his driving record, the claimant was statutorily barred from working for the above named employer in accordance with N. J. S. A. 39:5H-20(b). In essence, the above named employer could not allow the claimant to continue working for the employer because the claimant was statutorily barred from employment. The Appeal Tribunal finds that this case should be decided in accordance with **Self v. Board of Review, 91 N.J 453 (1982)**, in which the Court held that an individual will be disqualified for voluntarily leaving work if the individual makes a "departure not attributable to the work." The claimant is considered to have left the job voluntarily because he was statutorily barred from employment as a result of his driving record. The claimant's driving record is not attributable to the job. Therefore, the claimant is disqualified for benefits as of 3/25/18, under N. J. S. A 43:21-5(a), as the claimant left work voluntarily without good cause

attributable to such work.

DECISION:

The appeal is late with good cause in accordance with N. J. A. C. 12:20-3.1(i) 1.

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 3/25/18, under N. J. S. A 43:21-5(a), as the claimant left work voluntarily without good cause attributable to such 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 #: DKT00150319
Date of Claim: 04/08/2018
Date of Appeal: 05/09/2018
PC : 10
Appellant: Employer
Mailing Date: 06/22/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 5/09/18 from a determination of the Deputy, mailed on 4/25/18, holding that the services 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 further contends that if it can be shown that the claimant was an employee, the claimant either voluntarily left his job or was discharged for having a poor driving record and violating the employer's Terms of Service.

The employer with attorney, and a Deputy auditor participated in a duly scheduled telephone hearing on 6/22/18.

FINDING OF FACT:

The hearing on 6/22/18 was adjourned in order to give the employer time to send a complete copy of the employer's Terms of Service agreement to the Appeal Tribunal for review in advance of the next hearing.

In the employer's online appeal dated 5/09/18, the employer alleged that the claimant had a poor driving record. The hearing on 6/22/18 was also adjourned in order to give the employer time to send a copy of the employer's documentation substantiating the employer's allegation that the claimant had a poor driving record to the Appeal Tribunal for review in advance of the next hearing.

The hearing on 6/22/18 was also adjourned in order to give the employer time to send a copy of the claimant's Ride History to the Appeal Tribunal 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 for good cause and a continuation hearing will be scheduled.

DECISION:

The hearing is postponed without prejudice.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00148303
Date of Claim: 03/18/2018
Date of Appeal: 05/31/2018
PC : 10
Appellant: Claimant
Mailing Date: 06/25/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: LYFT INC

For good cause shown, this matter is reopened as of 05/31/18.

The appellant failed to register for a duly scheduled telephone appeal hearing on 06/25/18.

FINDINGS OF FACT:

The claimant appealed on 04/17/18 from a determination of the Deputy, mailed on 04/13/18, imposing a period of ineligibility for benefits from 03/25/18 on the ground that the claimant was not unemployed.

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

OPINION:

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

DECISION:

The appeal is dismissed.

NOTE: TO REQUEST ANOTHER HEARING, WRITE TO:

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

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

/s/ Jason Lopez
APPEALS EXAMINER

UA

Appeal Tribunal
PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00148303
Date of Claim: 03/18/2018
Date of Appeal: 04/17/2018
PC : 10
Appellant: Claimant
Mailing Date: 05/16/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

POSTPONEMENT DECISION

EMPLOYER:

The claimant appealed on 04/17/18 from a determination of the Deputy, mailed on 04/13/18, imposing a period of ineligibility for benefits from 03/25/18 on the ground that the claimant was not unemployed.

The claimant registered to participate in the telephone hearing on 05/16/18.

FINDINGS OF FACT:

The incorrect employer was notified of the hearing. The hearing is postponed, without prejudice, in order for the correct employer to receive proper notification.

OPINION:

As a result of the circumstance identified above, 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.

DECISION:

The appeal is postponed without prejudice.

/s/ Jason Lopez

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Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00145893
Date of Claim: 01/21/2018
Date of Appeal: 03/20/2018
PC : 10
Appellant: Employer
Mailing Date: 05/02/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 3/20/18 from a determination of the Deputy, mailed on 3/06/18, holding that the claimant's services for the above named employer were in employment.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that if it can be shown that the claimant was an employee, the claimant voluntarily chose to discontinue ride sharing opportunities through the Lyft platform without good cause.

The employer with attorney, and a Deputy participated in a duly scheduled telephone hearing on 5/01/18.

FINDING OF FACT:

The claimant has been working as a driver for the above named employer since 12/06/16. The claimant's account has never been deactivated, the claimant never resigned, and the claimant last worked for the employer on 4/16/18.

A claim for unemployment benefits was filed as of 1/21/18.

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 pairs the claimant with individuals seeking transportation. The claimant did not receive any training from the employer.

The passengers rated the claimant as a driver, and the claimant rated the passengers. The employer uses a star rating system. If the claimant got a rating below a certain threshold, the employer could have deactivated the claimant's account.

The employer also uses a cancellation ratio. If the claimant cancels a certain number of rides after accepting those rides, the employer could deactivate the claimant's account once a certain threshold is reached.

The employer set the price of the fares charged to individuals seeking transportation. The employer collected the fares from the individuals seeking transportation through a third party. The employer paid the claimant through a third party by direct deposit into the claimant's bank account. The claimant was not allowed to negotiate the price of the fares charged to individuals seeking transportation, and the employer set the amount of compensation for the claimant. The employer kept 25 percent of the fares charged to individuals seeking transportation and compensated the claimant by remitting 75 percent of the fares to the claimant.

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

The claimant uses his own vehicle to transport individuals for the above named employer. The claimant is responsible for the cost of maintenance, fuel, and maintaining insurance coverage for his vehicle. The employer provides supplemental insurance coverage as required by law.

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

The claimant never worked out 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.

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

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 Deputy mailed a determination to the employer's address of record on 3/06/18. The employer received the determination of the Deputy on 3/13/18 and an appeal was filed on 3/20/18.

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, files 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 seven days before the appeal was filed, 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 an agreement with the above named employer which refers to claimant as an independent contractor, it is unemployment law that determines whether or not 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 statue, sometimes referred to as the ABC test, are met. When the service relationship fails to meet any of the test, statutory "employment" obtains. ***Gilchrist v. Div. of Employ. Sec.*, supra, 48 *N.J. Super.* at 158.**

In this matter, the above named employer did not prevent the claimant from accepting work with other employers, the claimant was free to set his own days and hours of work, and the claimant did not receive training from the employer. However, there is substantial evidence on the record to show that the employer exercised considerable control over the claimant. For example, 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, the claimant was not permitted to have his own passengers in his car while the claimant was transporting passengers for the above named employer, the claimant had to perform the work himself, and the employer sequenced and dispatched the work that was sent to the claimant through the employer's software application. Another example of control is that the employer controlled the software application that paired individuals seeking transportation with available drivers. In essence, the software application that the employer provided to the claimant was a tool that allowed the claimant to work for the employer. Without that tool, the claimant could not have worked for the employer. 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 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 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 did not have any responsibility for soliciting new customers. The claimant was dependent on the employer for individuals seeking rides. All of the individuals seeking rides that the claimant transported for the above named employer came through the employer's software application. The employer controlled the software application and the claimant would not have had access to those individuals seeking transportation if the employer had not granted the claimant access to the individuals through its software application. It defies logic to believe that the claimant is engaged in an independent business when the claimant was dependent on the employer for customers. Second, 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 is an independently established trade, occupation, profession or business that would survive the termination of the relationship with the above named employer. Therefore, test C has not been satisfied.

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

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

An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes re-employed and works eight weeks in employment which may include employment for the federal government and has earned in

employment at least ten times the individual's weekly benefit rate, as determined in each case.

In this matter, substantial evidence indicates that the claimant never resigned his job with the above named employer and that his account remains active as of the date of this hearing. Therefore, no disqualification applies accordingly under N.J.S.A 43:21-5 (a) as the claimant did not leave the job voluntarily with the above named employer without good cause attributable to the 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 were in employment, and all monies paid were covered earnings in accordance with N. J. S. A. 43:21-19 (i)(6).

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

The determination of the Deputy is affirmed.

/s/ Paul Yohannan
APPEALS EXAMINER

UA

Appeal Tribunal

PO Box 936
Trenton, NJ 08625-0936

SS #:
Docket #: DKT00145507
Date of Claim: 02/04/2018
Date of Appeal: 07/13/2018
PC : 10
Appellant: Employer
Mailing Date: 08/13/2018

Decision of the Appeal Tribunal

IN THE MATTER OF:

EMPLOYER: Lyft, Inc.

The employer appealed on 3/16/18 from a determination of the Deputy, mailed on 2/28/18, holding that the claimant eligible for benefits without disqualification from 2/04/18.

The employer contends that the claimant was an independent contractor and not an employee. The employer further contends that the claimant is not entitled to unemployment benefits because the claimant left work voluntarily for reasons not attributable to the work.

The employer with attorney, and Deputy participated in a duly scheduled telephone hearing on 5/29/18.

The employer with attorney, and Deputy participated in a duly scheduled telephone hearing on 8/13/18.

FINDING OF FACT:

The Deputy mailed a determination to the employer's address of record on 2/28/18.

The employer received the determination of the Deputy on 3/06/18.

The employer's paralegal sent the determination of the Deputy to the employer's attorney on 3/14/18. The employer's paralegal was not able to forward the determination of the Deputy to the employer's attorney prior to 3/14/18 because the employer's paralegal was working alone and had too many responsibilities.

On 3/16/18, the employer's attorney filed the appeal on behalf of the above named employer.

OPINION:

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

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

In this matter, the employer has the burden of proof to show that their appeal was filed within Division time limits. The employer had the determination of the Deputy for eight days before forwarding the determination of the Deputy to their attorney who filed the appeal on 3/16/18. The fact that the employer's paralegal was not able to forward the determination of the Deputy to the employer's attorney prior to 3/14/18 because the employer's paralegal was working alone and had too many responsibilities, is not considered good cause for filing a late appeal.

The appeal was not filed within Division time limits and good cause has not been shown for the appeal being filed late. The Appeal Tribunal has no jurisdiction to rule on the merits of the appeal. Therefore, the appeal is dismissed as it was not filed within the period allowed under N.J.S.A.43:21-6(b) (1), and good cause has not been shown for filing late.

DECISION:

The appeal is dismissed as it was not filed within the period allowed under N.J.S.A.43:21-6(b) (1), and good cause has not been shown for filing late.

/s/ Paul Yohannan
APPEALS EXAMINER

UA