

THE APPEAL PROCESS WORKS

The appeal process allows for a genuine opportunity to present your case, even in cases of alleged overpayment liability or alleged unemployment fraud. Do not assume you have no chance.

If you have questions about your unemployment case, contact the New Hampshire Legal Assistance office nearest you.

**New Hampshire Legal Assistance
Branch Law Offices**
www.nhla.org

Manchester: 1361 Elm Street, Suite 307, Manchester, NH 03101
668-2900 • **1-800-562-3174**

Concord: 117 North State Street, Concord, NH 03301
223-9759 • **1-800-921-1115**

Claremont: 24 Opera House Sq., Suite 206, Claremont, NH 03743
542-8795 • **1-800-562-3994**

Portsmouth: 154 High Street Portsmouth NH 03802
431-7411 • **1-800-334-3135**

TTY - 7-1-1 or 1-800-735-2964

Email: officemanager@nhla.org

This pamphlet was published by New Hampshire Legal Assistance to give you some idea of your rights. Since the law is always changing through actions of the courts and legislature, you should consult a lawyer if you have a problem that requires legal attention.

It Helps to Know the Law pamphlet series includes:

The Senior Citizens Law Project
Your Rights as a Tenant in a Manufactured Housing Park
Domestic Violence
Medicaid Income and Asset Rules for Nursing Home Residents

April 2014

HAVE YOU BEEN DENIED UNEMPLOYMENT INSURANCE?



What to do - A Worker's Guide

**A pamphlet prepared by
New Hampshire Legal Assistance**



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What To Do: A Worker's Guide

If you lose your job, you may qualify for unemployment benefits. You must apply for benefits at your local office of New Hampshire Employment Security. Employment Security will give you a written decision about your eligibility. If you are denied, you have a right to appeal the decision.

This pamphlet explains the appeal process. It contains general information about how to pursue your claim. While it will not answer all questions or guarantee victory, the pamphlet provides background information which is intended to help you understand the unemployment system and your legal rights.



If you become unemployed, it is important to file your claim for unemployment benefits. Do not wait. You can lose benefits if you delay filing your claim. **Keep filing every week.** Do not assume you will be ineligible. You may be found eligible. Also, many cases may be won on appeal, so don't stop filing if you get a denial that you want to appeal.

INITIAL DECISION – THE CERTIFYING OFFICER

1. The Earnings Test

If you become unemployed, you must report to Employment Security and apply for benefits. Employment Security will review your past earnings to see if you qualify for benefits. Make sure they have correct information about all your earnings, since it can affect your eligibility and the amount of your benefits.

2. Reason for Job Loss

If you meet the earnings test, Employment Security will investigate the details of your job loss. They will interview you and explore the facts of your case. They will also talk with your employer.

rules against you, you will have to pay back the money unless you win at the next level of appeal.

THE AVAILABILITY REQUIREMENT

After you leave your job, Employment Security requires you to be available and seeking permanent full-time work. They can deny you if they conclude you have done an inadequate job search. While "total" availability for work is not required, it is important to do an adequate job search. You must be available for all shifts and hours where there is a "market" for your services, even if you are a seasonal worker receiving unemployment in the off-season.



You should make a list of employers you speak to and dates you look for work. Employment Security requires that workers have a record of their job search. You can be denied benefits for any week you fail to perform an adequate job search. Make sure you can document your efforts.

If you are unable to work full-time because of medical or psychological reasons, you may still be eligible for benefits. You must still be available for some work, but you will have an opportunity to explain to Employment Security the reasons for any limitation on work. You can present evidence from your treating physician. Also, if you are only available for part-time work of not less than 20 hours per week, you should be eligible for unemployment, assuming you worked at least one week less than full-time in the year prior to losing your job. It is important to explain these circumstances to Employment Security.

TRADE ADJUSTMENT ASSISTANCE PROGRAM

If you lose your job or have your hours cut back because of increased foreign imports, you may be eligible for additional assistance. The Federal Trade Adjustment Assistance law provides unemployment benefits for up to a year after unemployment benefits end. The program also provides significant training. Talk to the people at Employment Security about this program if you think you might be eligible or contact NHLA if you have a question about eligibility.

You should keep in mind you have a right to cross-examine any witnesses who testify against you. If the employer (Department) testifies about events they have no personal knowledge, make sure to object and say “irrelevant, no personal knowledge.” Overall, the process must be fair. At any time you feel the hearing is going unfairly, you should object, including citing your right to due process of law.

In the end, the Appeal Tribunal will issue a written decision after your hearing. Read it carefully. Either the employer or worker may appeal an unfavorable decision. If you believe there is a legal error or if the decision lacks support on the facts, pinpoint the errors as specifically as possible.

FURTHER APPEALS



If you lose at the Appeal Tribunal, you have the right to appeal further. You have 14 days to appeal in writing to the Commissioner of Employment Security to ask for a reopening within 14 days of the date the Appeal Tribunal decision was mailed to you. In your reopening request to the Commissioner, you should explain the mistakes you believe the Appeal Tribunal made.

If the Commissioner denies reopening, you have 14 days to appeal in writing to the Appellate Board. At the Appellate Board, you will have a chance to explain why the decisions on your case have been incorrect. You may make an oral argument before the three-person Appellate Board as well as present a written argument. If the Appellate Board denies your appeal, you must ask the Board in writing to reconsider if you want to appeal further. If you lose at all these stages, you still have a right to appeal to the New Hampshire Supreme Court.

Don't be discouraged if you are denied benefits at first. The appeal system can work. You can sometimes get the decision overturned. **While your case is being appealed, you must continue to file your claim with Employment Security regularly and do a job search.** You must do so to collect back benefits if you win the appeal.

If the employer appeals Employment Security's decision to grant you benefits, you have the right to continue receiving benefits until the Appeal Tribunal decides your case. If the Appeal Tribunal

This fact-finding will form the basis for an initial decision on your claim made by an Employment Security Certifying Officer.

The reason why you left your job is very important. Your eligibility may well depend on how Employment Security sees this event. The most common reasons for Employment Security to deny benefits involve cases in which the worker is accused of voluntarily quitting his/her job or committing misconduct at work.

VOLUNTARY QUIT

Employment Security will generally find you ineligible for benefits if you voluntarily quit your job unless you left your job for good cause "attributable to the employer". To demonstrate why a quit was "attributable to the employer", you must explain the specific reasons you were forced to leave employment. Examples include the employer making your work situation unreasonably difficult, work conditions harmful to your health or safety, or negative changes in terms and conditions of your work, such as substantial reduction in pay or number of hours.

If you have to leave your job due to domestic violence, Employment Security should not deny your claim. It is important to let Employment Security know about the abuse. If you have other "good cause" for leaving your job, it is important to explain your reasons. For example, if you lost your job because of non-work related physical or mental health reason, and you have a doctor's note to verify, you may be eligible. Additionally, if you believe you were racially or sexually harassed or discriminated against by your employer, Employment Security could find you had good cause to quit.

It is common for employers and workers to disagree about the circumstances leading to the end of employment. Your ability to present the facts of what happened can make a critical difference in whether you win or lose your claim.

MISCONDUCT

Employment Security may deny your claim for benefits if you were fired for misconduct on the job.

In New Hampshire, it usually takes more than isolated or unintentional instances of poor conduct for a finding of misconduct. Recurring careless or negligent acts do add up to misconduct. A single act of misconduct may be enough for a finding of misconduct if it is a deliberate violation of a company rule reasonably designed to protect the legitimate business interests of the employer.

Again, each case is different and is based on the facts presented to Employment Security. You have the right to disagree with the certifying officer's decision. You may appeal the decision and request a hearing. Do not assume the initial decision made by the certifying officer is always correct. The certifying officer may deny benefits if there is any reason to do so. That is why it is important to appeal and to use your right to have a hearing.

DISCHARGE BY THE EMPLOYER

Employment Security will usually allow claims for workers who were laid off or discharged for reasons other than misconduct. This includes the following situations:

- ◆ The employer provided no reason for the termination at the time you were terminated, or
- ◆ The employer fired you for reasons:
 - (a) not related to your job, or
 - (b) because you were unable to do the job the way your employer wanted it done, or
- ◆ The employer denies you the chance to return to your job after an absence due to illness or approved leave of absence.

THE APPEAL TRIBUNAL

If you appeal the certifying officer's decision, you can request a hearing on the merits of your case. Employment Security will then schedule and hold an informal, administrative hearing on your case. The hearing is before Employment Security's Appeal Tribunal.

Preparing for the hearing. Under RSA 275:56 you have a right to a copy of your entire personnel file. You must request it from your employer. If the employer refuses to provide you with a copy of your file you can write to: Inspector Division, Dept. of Labor, PO Box 2076, Concord, NH 03302. Include the name of your ex-employer and describe any attempts to get your file. Also, Emp 207.24 allows you to ask in writing, from the Dept. of Employment Security and your ex-employer, for a list of witnesses that might testify for your employer and exhibits your ex-employer might use.

The Appeal Tribunal offers an important opportunity for "claimants." (the unemployed person seeking benefits). You have the opportunity to tell your side of the story. It is important to do a good job here because any further appeal is based on the record made at the Appeal Tribunal hearing. The hearing officer, called the Appeal Tribunal Chairperson, is not bound by the certifying officer's decision and will take a fresh look at your case. She/he will make a new decision based on testimony and evidence presented at the hearing. The hearing is tape-recorded. All the information you present at the Appeal Tribunal is the basis for any further appeal, so make sure to bring any favorable witnesses or documents.

You have the right to bring an attorney to the hearing. You may want to retain a lawyer or paralegal to represent your interests if you are unsure about how well you can present your case or if the case is complex or difficult. New Hampshire Legal Assistance (NHLA) may be able to help with legal representation at no charge or give you legal advice about your case. You can call NHLA if you are denied benefits.

Right to appeal on all issues where Department has the burden of proof. You have a right to request a hearing on all issues for every week denied specifically by the Department, including any accusation of an overpayment, overpayment liability, accusations of fraud, availability for work and work searches. You would go through the same hearing process above. The Department has the burden of proof to prove these accusations. The Department must send a representative to the hearing to meet its burden of proof, and, if it does not, you should object to the hearing officer building a case for the Department. You should also explain in detail all the facts and circumstances supporting your side of the story.