

UNDERSTANDING VIRGINIA'S UNEMPLOYMENT BENEFITS



August 27, 2009

Presented by:
Central Virginia Legal Aid Society
Legal Aid Justice Center
Virginia Poverty Law Center

AGENDA

1. How to file a Claim for Unemployment Benefits
2. Eligibility for Unemployment Benefits
3. Qualification for Unemployment Benefits –Nuts & Bolts of Unemployment Benefits Law
4. Tips for preparing for a Deputy Interview or Appeals Examiner Hearing
5. Common Problems to Watch Out For
6. Questions and Answers

HOW TO FILE A CLAIM FOR UNEMPLOYMENT BENEFITS



- People who apply for unemployment compensation with the Virginia Employment Commission (VEC) may do so one of three ways:

Internet



- By Internet – www.VaEmploy.Com.
- If your claim is not accepted online, you may print a claim application form (VEC-B-10), fill it out and mail it to your nearest VEC office.
- By using the Internet you will be able to reach the VEC quicker than by telephone.

Telephone



- By Phone – To file a new claim, the toll-free number is 1-866-832-2363.
- To file a weekly claim, the toll-free number is 1-800-897-5630

In Person

- In Person – Only one VEC office remains open in the Richmond area:

8093 Elm Drive

Mechanicsville, VA 23111

804-559-3133

- Hours

- Monday, Tuesday, Thursday, & Friday: 8:30 a.m – 4:30 p.m.
- Wednesday: 9:30 a.m. – 4:30 p.m.

Unemployment Express Offices & Capital Region Workforce Centers

- You also may apply on-line and get limited help with unemployment compensation claims at an Unemployment Express office or a Capital Region Workforce Center:

Locations

U.I. Express Office

4150 Meadowdale Blvd.

Richmond, VA 23234

Mon, Tue, Thur & Fri:

8:30 a.m. – 4:30 p.m.

Wed: 9:30 a.m. – 4:30 p.m.

Workforce Center

2300 N. Lombardy St.

Richmond, VA 23220

804-321-5690

Mon. – Thurs. 9 a.m. – 4 p.m.

Friday: 9 a.m. – 1 p.m.

Workforce Center

6301 Midlothian Turnpike

Richmond, VA 23225

804-675-9910

Mon- Thurs. 9 a.m. – 4 p.m.

Friday: 9 a.m. – 1 p.m.

Workforce Center

4060 Innslake Drive

Glen Allen, VA 23060

804-273-6260

Monday – Friday 9 a.m. – 6:00 p.m.



Locations, cont.

Workforce Center

5410 Williamsburg Road

Sandston, VA 23150

804-226-6885

Monday – Friday

8:00 a.m – 4:30 p.m.

Workforce Center

7333 White Pine Rd.

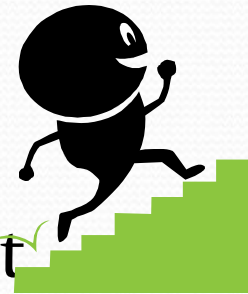
Richmond, VA 23237

804-271-8510

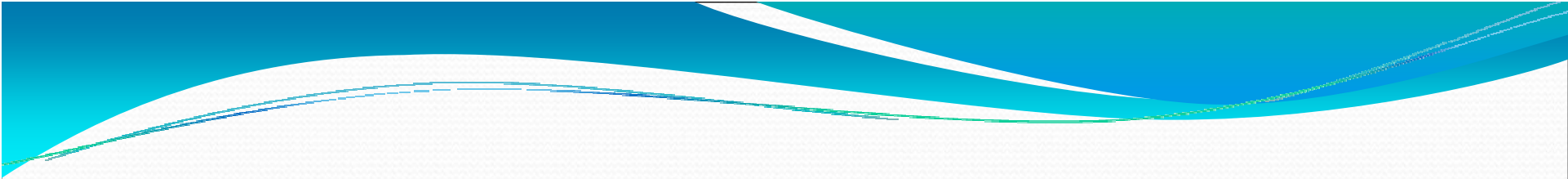
Monday – Friday:

8:00 a.m. – 4:30 p.m.

Steps in an Unemployment Compensation Case



- There are four steps in an unemployment compensation case.
 1. Deputy's fact-finding interview & determination,
 2. Appeals Examiner's hearing & decision,
 3. Special Examiner's review & decision, and
 4. Circuit Court appeal.

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- The VEC must give you a written decision at each step.
 - You can appeal a denial at each step.
 - You must file an appeal within 30 days of the date of the decision.
 - You may be represented by anyone you choose at any step, except you must have a lawyer to go to court.

Deputy

- Once you file a claim for benefits, your former employer files a report of separation.
- This tells why you no longer work for them.
- After that, a Deputy conducts a telephonic fact finding interview.
- The fact finding interview includes you and your former employer.

Fact Finding Interview


- You can give your side of the story and respond to what your former employer said.
- Your former employer can give its side of the story and respond to what you said.
- The Deputy issues a written decision within a few days.

Appeals Examiner

- The party who loses the Deputy's Determination has 30 days to file a written appeal.
- This appeal is a hearing before an Appeals Examiner.
- Unless you make a written request for an in-person hearing, your hearing will be by telephone.


Appeals Examiner Hearing

- The Appeals Examiner will put into the record the documents that were before the Deputy.
- During the hearing the Appeals Examiner questions the employer and its witnesses first.
- You or your attorney will have a chance to question the employer and its witnesses.

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- The Appeals Examiner then questions you & your witnesses.
 - Both parties may put other documents into the record.
 - Both sides can make a brief closing statement.
 - The Appeals Examiner issues a written decision in a week or two.

Special Examiner

- The party who loses the Appeals Examiner's Decision has 30 days to file a written appeal for review by a Special Examiner.
- There is no new hearing, evidence or testimony before the Special Examiner, unless there is a very good reason.
- Instead, the Special Examiner reviews the testimony and the documents put into the record by the Appeals Examiner.

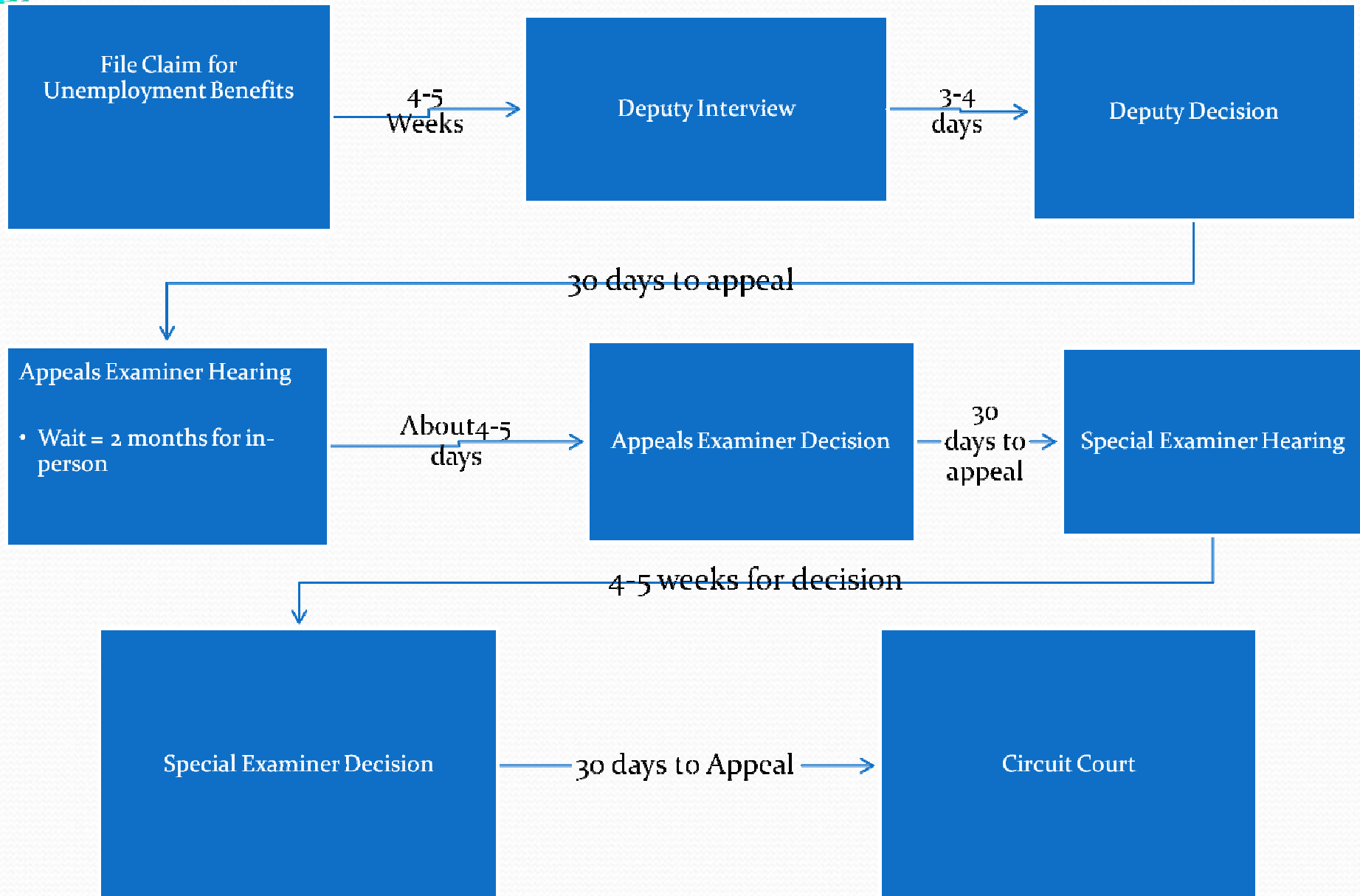
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- If you want a copy of the transcript and documents, and if you want to present oral or written argument, you must make a written request for this within 14 days of receiving the Notice of Appeal.
 - The VEC sends the Notice of Appeal after the appeal is filed.
 - If you do not ask to present argument, you will not be able to.
 - After argument & review, the Special Examiner issues a written decision.

Circuit Court



- The party who loses the Special Examiner's decision has 30 days to file an appeal in Circuit Court.
- There is no new hearing, evidence or testimony in Circuit Court.
- Instead, the court reviews the record to see if the decision is supported by evidence and is legally correct.

TIMELINE



Benefits



- Usually, you can get unemployment compensation for up to 26 weeks. You may get it for fewer weeks depending on your prior earnings.
- You also may get it for more weeks if you are eligible for extensions.
- Your benefits can be between \$54 and \$378 per week.
- The amount of your benefits also depend on your prior earnings.

ELIGIBILITY FOR UNEMPLOYMENT BENEFITS

Presented by: Carolyn Kalantari
Attorney
Legal Aid Justice Center

MAINTAINING AN UNEMPLOYMENT CLAIM IN VIRGINIA

- To receive unemployment benefits, you must be **ELIGIBLE** for benefits, and **QUALIFIED** for benefits.
- Qualification depends upon the circumstances that caused you to lose your job.

MONETARY DETERMINATION FORM



VIRGINIA EMPLOYMENT COMMISSION
 P.O. BOX 1358
 RICHMOND, VIRGINIA 23218-1358

MONETARY DETERMINATION



EFFECTIVE DATE
 BENEFIT YEAR ENDING DATE
 LOCAL OFFICE NUMBER
 SOCIAL SECURITY NUMBER

WEEKLY BENEFIT AMOUNT 166.00
 WEEKS DURATION 20
 MAXIMUM BENEFIT AMOUNT 3,320.00

DATE PROCESSED/MAILED 06/02/09
 REGULAR BASE PERIOD PROGRAM 01 DT

FAMILY'S PRIOR PLANING BASE PERIOD
 Base period: 01/01/08 through 12/31/08

2008 JAN-FEB	2008 APR-JUN	2008 JUL-SEP	2008 OCT-DEC
WAGES	WAGES	WAGES	WAGES
2,007.37	3,100.00	4,197.50	4,131.33

EMPLOYER EMPLOYER SERIAL NO.

TOTAL WAGES 13,436.17 2,007.37 3,100.00 4,197.50 4,131.33

IMPORTANT MESSAGE:

YOU WILL RECEIVE AN EXTRA \$25.00 EACH WEEK THAT YOU RECEIVE BENEFITS, UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT. (STIMULUS PACKAGE)

DETERMINATION BY DEPUTY
 IF YOU WISH TO PENDING THIS CLAIM, YOUR REQUEST MUST BE MADE BEFORE THE FINAL DATE OF APPEAL SHOWN BELOW.
 FINAL DATE FOR APPEAL FROM THIS DETERMINATION IS

SEE REVERSE SIDE FOR APPEAL RIGHTS



ELIGIBILITY HAS TWO PARTS

1. WAGES

- You must have earned enough wages during the last five quarters (approximately the last 15 months).
- The VEC considers your two highest quarters (E.g., Oct. – Dec. 2008, April – June 2009) during the last 15 months to decide if you are eligible.

BASE PERIOD

- Usually, your base period is the first four of the last **five** completed calendar quarters.

If you apply in:

Your base period is:

Jan. – Mar., this year.

Jan. – Sept., last year, & Oct- Dec previous year.

Apr. – June, this year.

Jan. – Dec., last year.

July – Sept., this year.

Jan. – Mar., this year, & Apr. – Dec., last year.

Oct. – Dec., this year.

Jan – June this year, & July – Dec., last year.

ALTERNATIVE BASE PERIOD

- If you don't have enough earnings in the first four of the last five completed calendar quarters, your base period is the last four completed calendar quarters.

If you apply in:

Your base period is:

Jan. – Mar., this year.

Jan. – Dec., last year.

Apr. – June, this year.

Jan. – Mar., this year, & Apr. – Dec., last year.

July – Sept., this year.

Jan. – June, this year, & July – Dec., last year.

Oct. – Dec., this year.

Jan – Sept., this year, & Oct., – Dec., last year.

2. WORK SEARCH

- After you apply for unemployment, EACH WEEK you MUST:
 - Apply for and REPORT to the VEC a minimum of two job searches per week, AND
 - Answer questions about whether you were able and available to work, refused any job offers, and performed any work.
 - You may file these weekly reports:
 - On the internet at: <http://www.vaemploy.com>
 - By phone, at 1(800) 897-5630
 - By paper form (VEC prefers the internet or phone filing)

WEEKLY REPORTS

- You are required to file weekly reports with the VEC for EVERY WEEK IN WHICH YOU WANT TO BE PAID UNEMPLOYMENT BENEFITS.
- If you receive a decision from the VEC that disqualifies you from receiving unemployment benefits and you decide to appeal this decision, YOU MUST CONTINUE TO FILE YOUR WEEKLY JOB SEARCHES WITH THE VEC.

FRAUD CLAIMS

- If you return to work while you are claiming unemployment, be very careful to report any money that you earn in the week that you earn it.
- Do not wait until the week that you are paid.
- If you are unsure of the amount that you earned, contact your new employer and ask them what amount you will earn in gross wages, before any taxes are taken out.
- This is the amount you must report to the VEC.

QUALIFICATIONS FOR UNEMPLOYMENT-- NUTS & BOLTS OF UNEMPLOYMENT COMPENSATION LAW

Presented By: Martin Wegbreit
Attorney
Central Virginia Legal Aid Society

DISQUALIFICATIONS

- You can't get unemployment compensation if:
 - You quit your job without good cause,
 - You're discharged for work-related misconduct, or
 - If you don't apply for or accept suitable work.
- Any of these reasons will keep you from getting unemployment compensation.
- If you're disqualified, you can't get unemployment compensation until you get another job, work at it for at least 30 days for one employer & lose the job through no fault of your own.

VOLUNTARY QUIT WITHOUT GOOD CAUSE

- If you left your last job without being fired or laid off, and you did this without a good reason, you can't get unemployment compensation.
- You must prove you had a good reason for quitting.

Forced Resignation


- If you're asked to resign from your job instead of being fired, that is not a voluntary quit.
- The VEC should treat that as a discharge, and decide if you committed work-related misconduct.

QUIT OR DISCHARGE

- Voluntary means not constrained by interference, not impelled by another's influence, spontaneous, acting of oneself, and resulting from free choice.
- An employee's intention to quit may be found in words or from conduct not consistent with keeping an employer/employee relationship.

WORK-RELATED MISCONDUCT

- If you're fired because of your misconduct in connection with your work, you can't get unemployment compensation.
- Your former employer must prove you were discharged for misconduct.

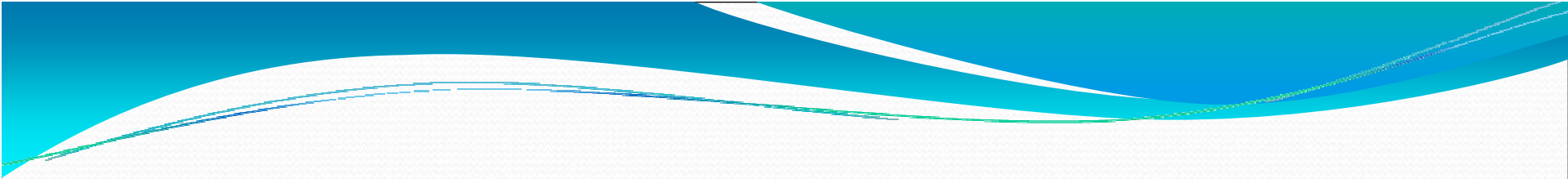
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- Misconduct means you intentionally violated an employer's rule designed to protect your employer's interests, or you willfully disregarded the interests and duties you owed your employer.
 - Your employer usually must show:
 - you knew the employer's policies,
 - you had been warned,
 - you knew you risked losing your job, and
 - you kept violating the policies.

MITIGATION

- Once the employer has proved misconduct, the burden shifts to the employee to prove the circumstances to mitigate (minimize) his or her conduct.
- Absent evidence to explain or justify the conduct and show mitigation, benefits are barred.

TURNING DOWN SUITABLE WORK

- If the VEC orders you to apply for or accept work, and you fail to do this without a good reason, you can't get unemployment compensation.
- You must prove you had a good reason for not applying for or accepting work.

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- The VEC looks at many things in deciding if your work is suitable. These include:
 - your prior work history,
 - your physical and mental fitness for the work,
 - any risk to your health, safety or morals, and
 - the distance from your home.

FALSE STATEMENT

- You will be disqualified for one year from the date of decision if the VEC finds that within the preceding 36 months, you knowingly made a false statement or knowingly failed to disclose a material fact, to obtain or increase unemployment compensation.

INCARCERATION

- You will be disqualified if your separation from employment arose as a result of an unlawful act which resulted in a conviction and after your release from prison or jail until you have worked for 30 days or 240 hours and subsequently becomes totally or partially separated from employment

TIPS FOR PREPARING FOR A DEPUTY INTERVIEW OR APPEALS EXAMINER HEARING

Presented By: Ty Jones
Attorney
Virginia Poverty Law Center

Misconduct Case


- In a misconduct case, you don't have to prove anything.
- The former employer has to prove, by the greater weight of the evidence that you deliberately, intentionally and willfully committed work-related misconduct.
- This means you did something wrong, knew it was wrong, and did it anyway.
- If the evidence is evenly balanced, it means the former employer didn't prove their case and you should win.

VOLUNTARY QUIT CASE

- At first, you don't have to prove anything.
- The former employer has to prove, by the greater weight of the evidence, that you voluntarily quit your job.
- This means you left entirely of your own free will.
- If this is the case, the burden shifts to you, and you have to prove, by the greater weight of the evidence, that you had good cause to leave and left only after you made all reasonable efforts to keep your job.


WHAT ARE THE DEPUTY AND APPEALS EXAMINER LOOKING FOR?

- The Deputy and the Appeals Examiner are most interested in what happened your last day, or last several days or weeks of employment.
- The farther back you go from your final day of employment, the less interested the Deputy and Appeals Examiner will be.
- They are not there to hear about your entire work history.
- The Deputy and Appeals Examiner only want to know whether you lost your job through no fault, or minimal fault, of your own.

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- The Deputy & Appeals Examiner are only interested in why you were fired to determine if it was due to work-related misconduct.
 - VA is an employment at will state.
 - This means an employer may hire, refuse to hire, promote, demote, fire, or lay off employees, for any reason at all – good reason, bad reason, or no reason – as long as it is not a prohibited reason.
 - The issue is not whether you deserved to lose your job.
 - The issue is whether you committed deliberate, intentional and willful work-related misconduct.

WHAT IS IMPORTANT?

- The Deputy and Appeals Examiner have very little interest in what happened to other employees, or how they were treated, except possibly to show that a rule which was enforced against you was not enforced equally.
- The Deputy and Appeals Examiner have very little interest in what happened after you lost your job, except possibly to show that the former employer tried to influence the testimony of witnesses against you.


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- Your reputation and character are not an issue and are not affected by the unemployment compensation proceedings.
 - Everything before the VEC is confidential and can't be used by anyone for any other purpose.
 - It's like Las Vegas – what happens before the VEC, stays before the VEC.

Evidence During the Hearings

- The Deputy and Appeals Examiner may consider hearsay – which can be written statements or live testimony by witnesses without personal knowledge who simply are repeating what they heard other people say.
- But the Appeals Examiner is required to give greater weight to live testimony by witnesses with personal knowledge, because they can be questioned and cross examined.

Appeals Examiner Hearing

- What happened at the Deputy Determination does not matter.
- The hearing before the Appeals Examiner is like starting brand new.

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- It is not completely brand new because the Appeals Examiner will have the documents that were in front of the Deputy, including your claim for benefits, the employer's report of separation, and the Deputy's versions of what each of you said during the fact-finding interview.
 - But because these all are hearsay, the Appeals Examiner gives them much less weight than what happens at the hearing.

ABC's

- At the hearing, remember your ABC's – your:
 - Attitude,
 - Behavior, and
 - Conduct.
- You want to come across as the calm, friendly, and sensible person.
- Let the other side be angry, hostile, and unreasonable.

WHILE WAITING FOR YOUR DECISION

- There are three things you need to do.
 1. Keep doing your job searches.
 2. Keep turning in your weekly claims.
 - Even if you win the appeal, you won't get benefits for any week for which you don't turn in a claim.
 3. If you are offered suitable work, take it.
 - Suitable work means anything that—based on your education, experience, training, knowledge, skills and ability – you are able to do.
 - Even if you win the appeal, you won't get benefits if you turn down suitable work.

COMMON PROBLEMS TO WATCH OUT FOR


Presented By: Pat Levy-Lavelle
&
Erin Trodden
Attorneys
Legal Aid Justice Center

FAILING TO KEEP FILING WEEKLY CLAIMS/JOB SEARCHES

- Even if they are otherwise eligible, claimants often lose eligibility for unemployment benefits for particular weeks because they did not keep filing weekly claims/job searches.
- This loss of money can be prevented.

Scenario A

- The VEC may send you a notice saying that you did not have enough earnings in the standard base period, and so you do not qualify for unemployment.

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- BUT...
 - Remember that monetary qualification is only one piece of eligibility. You must still continue to file weekly claims/job searches.



SCENARIO B: Adverse Deputy Determination

- The VEC may send you a Monetary Determination stating that you do not have enough earnings in the standard base period, and so you do not qualify for unemployment.

BUT...

- You may appeal this notice, **within 30 days** of the date of the notice, if the Monetary Determination does not include all of your earnings.
 - or, even if the amounts they list are correct, and you don't appeal.
- The VEC may later send you a notice stating that you qualify for unemployment using the alternative base period (so the denial notice using the standard base period may not end your unemployment claim.)

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- **If you receive a monetary determination that states you are not eligible for unemployment, keep filing your weekly claims/job searches!**



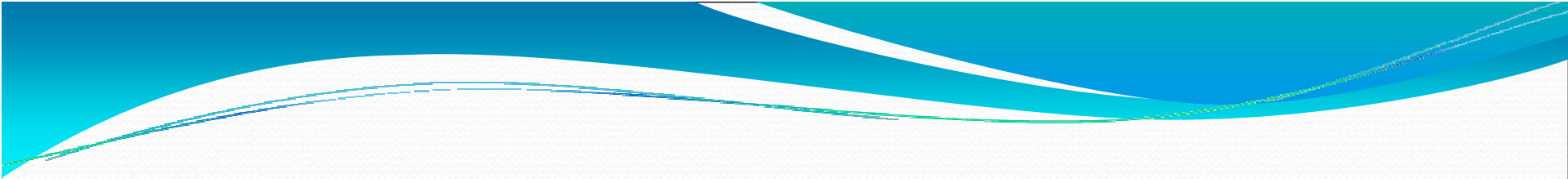
SCENARIO C: ADVERSE DEPUTY DETERMINATION

- The Notice of Deputy's Determination may say that you have been denied unemployment benefits.




BUT...

- You have a right to appeal this determination, **within 30 days** of the date of the notice.
- Even if you win your appeal, you will lose weeks of benefits if you did not file weekly claims/job searches for particular weeks or stopped reporting altogether.
- Filing your appeal does not suspend your obligation to continue filing weekly claims/job searches.

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- After getting an adverse deputy determination (one that denies you benefits), keep filing your weekly claims/job searches!*

* Unless you are sure you are not going to appeal.



SCENARIO D: ADVERSE APPEALS EXAMINER DECISION OR ADVERSE COMMISSION DECISION

- The Decision of Appeals Examiner, or the Decision of Commission, may say that you have been denied unemployment benefits.

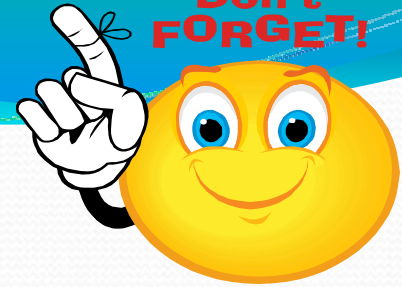
BUT...

- The same principles as in adverse deputy determinations apply here.
- In other words,
 - You have a right to appeal such decisions, within **30 days** of the date of the decision.
 - Even if you win your appeal, you will still lose weeks of benefits if you did not file weekly claims/job searches for particular weeks or stopped reporting altogether.
 - Filing your appeal does not suspend your obligation to continue filing weekly claims/job searches.

- 
- After getting an adverse Deputy Determination (one that denies you benefits), keep filing your weekly claims/job searches!*

* Unless you are sure you are not going to appeal.

Don't
FORGET!



REMEMBER

- You must file your weekly claims/job searches within 28 days of the end of each benefit week to be considered timely by the VEC.
- It is best to file weekly claims/job searches as soon as possible, so that you don't forget, and because you may receive unemployment payments more quickly.
- Keep a detailed record of your weekly claims/job searches.

What if I Already Missed Weeks?

- File your weekly claims as soon as possible. If it is within 28 days of your last filing, you may still have a timely claim for the missed week(s).
- If more than 28 days have passed, the VEC may have closed your claim. This means that the VEC has frozen your account from receiving further weekly claims.
- Currently, the VEC does not send you a notice to let you know that this has happened.
- If your claim is closed, you can file a reopening request.

TWO TYPES OF REOPENING REQUESTS

1. (Standard) Reopening Request:

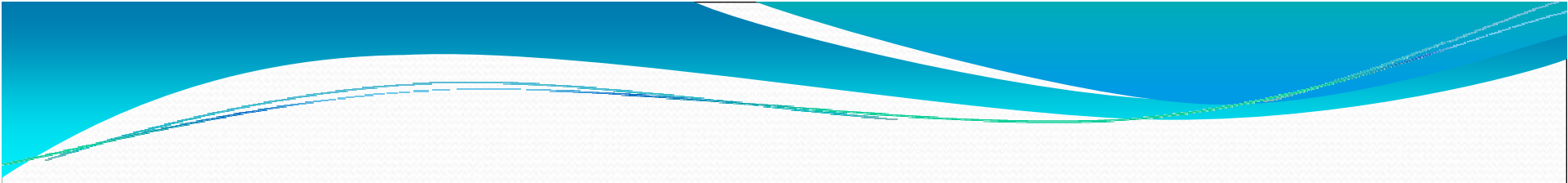
- This will allow you to file weekly claims/job searches for future weeks, but you will not be allowed to file for previous missed weeks.

2. Retroactive Reopening Request:

- Under very limited circumstances, the VEC may allow you to file for missed weeks prior to the date of the reopening request.
- These include situations where the VEC is at fault or has given bad information relied upon by the claimant, or where the claimant is otherwise not at fault for the failure to file weekly claims.



“ISSUE ON THE CLAIM”

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- You may learn from the VEC—by written notice, based on talking with VEC personnel, or based on trying to call the automated number—that there is an “issue” on your claim.


WHAT DOES THIS MEAN, AND WHAT SHOULD I DO

The VEC may or may not tell you what this means, unless you ask specifically for more information at a local office or through the Customer Call Center.

- You should ask for more information from the VEC as soon as possible.
- You need to be very persistent, even if it is hard to reach the VEC. If you delay, you risk your claim being closed by the VEC.
- Be sure to ask if there are any appeal deadlines, so that you can file a timely appeal if the “issue” is a denial that you disagree with.



EXTENDED UNEMPLOYMENT COMPENSATION

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- Claimants for unemployment benefits may be entitled to extended/emergency unemployment compensation (sometimes known as “EUC”), a federal extension of unemployment due to the current economy. It is available to workers who have applied for regular unemployment, been qualified to receive those benefits, and exhausted their regular unemployment claim.

HOW DO I KNOW IF I AM ELIGIBLE FOR EUC?

- The VEC typically sends applications for EUC to claimants who are eligible, but this doesn't always happen.

WHAT SHOULD I DO?

- If you have questions about your eligibility, contact VEC as soon as possible.
- Request and fill out a EUC application if you believe that you are eligible.
- If you are denied, and disagree with the denial, file an appeal as soon as possible.

QUESTIONS

