Annotated Outline of Decisions Interpreting Federal Unemployment Compensation Law

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The Social Security Act and the Federal Unemployment Tax Act establish certain minimum requirements related to coverage and administration of state unemployment compensation (UC) programs. This outline accesses the leading cases interpreting these and other federal law requirements.

I. SOURCES OF AUTHORITY

A. Statutes

26 U.S.C. §§ 3301 - 3311 (sets out the basic features of the unemployment program, including the financing scheme and selected requirements that govern state participation in the program).

26 U.S.C. § 3304 (imposes specific restrictions on states regarding claimant and employer coverage, the "worker profiling" mandate and other selected issues).

42 U.S.C. § 503(a)(3) (states must provide for "a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied....") (emphasis added).

42 U.S.C. § 503(a)(1) (state law must include "methods of administration...as are found by the Secretary of Labor to be reasonably calculated to insure full payment of benefits when due.") (emphasis added).

42 U.S.C. § 2000d (prohibiting discrimination related to race, color, or national origin in any program or activity receiving federal financial assistance).

B. Regulations

20 C.F.R. Part 640 (interpreting the "when due" clause by establishing promptness standards for interstate and intrastate claims processing).

20 C.F.R. Part 650 (interpreting the "when due" and "fair hearing" clauses by establishing appeal promptness standards).

20 C.F.R. Part 602 (interpreting the "when due" and "fair hearing" clauses, the regulations set for quality control standards for the program).

29 C.F.R. Part 42 and 29 C.F.R. Part 31 (regulations implementing the antidiscrimination provisions of Title VI of the Civil Rights Act of 1964).

C. Additional Resources

U.S. Department of Labor, Handbook for Measuring Unemployment Insurance Lower Authority Appeals Quality, ET Handbook No. 382, 2nd Edition (1996) (contains criteria for evaluating the performance of first level hearings and decisions as part of the federal quality appraisal process).

U.S. Department of Labor, Manpower Administration, A Guide to Unemployment Insurance Benefit Appeals (January 1970) (sets forth the procedures and principles for fair hearings at the first level of the appeal process).

U.S. Department of Labor, Employment & Training Administration, Unemployment Insurance Program Letter 37-99, "UI PERFORMS Tier I and Tier II Performance Measures, and Minimum Peformance Criteria for Tier I Measures" (July 1, 1999) (provides the revised measures for determining the timeliness of initial claims, hearings and appeals)
U.S Department of Labor, Employment Security Manual: Unemployment Insurance Program, Part V. § 6060-6015 (reproduced in Appendix A of 20 C.F.R. Part 602) (interpreting the "when due" and "fair hearing" provisions clauses as they apply to investigation of claims, determination notices, explanation of appeal rights and employer obligations to notify workers of their rights to benefits).

National Employment Law Project and Employment Task Force, Briefing Book: U.S. Department of Labor Oversight and Reform of the Unemployment Compensation Program (June 1994) (contains a series of detailed briefing papers on a broad range of "when due", "fair hearing" and other issues related to federal administration of the program, supplemented with descriptions of federal policy and recommendations for reform).

"Unemployment Compensation: Continuity and Change Symposium," University of Michigan Journal of Law Reform, Volume 29, Issues 1&2 (Fall 1995/Winter 1996) (this publication has a number of articles of special interest to UI advocates on enforcement of federal standards regulating access to benefits)

D. Internet Resource: The Information Technology Support Center (ITSC) manages a website (http://www.itsc.state.md.us/) that provides comprehensive information on the UC program, including all federal guidances, state specific program statistics, state legislative developments and other useful material.

II. "Fair Hearing" Rule & Due Process Rights

A. Pretermination Hearing

Crow v. California Dept. of Human Resources, 490 F.2d 580 (9th Cir. 1973), vacated and remanded with directions to consider question of mootness by, 420 U.S. 917 (1975): Held, on the narrow facts of the case, that due process did not require a pretermination evidentiary hearing. See also Wheeler v. State of Vermont, 335 F. Supp. 856 (D. Vt. 1971).

Taylor v. Bowland, 1C Unempl. Ins. Rptr. (CCH) ¶ 22,104 (D. Ohio 1993): Settlement approved which established a procedure for pretermination factfinding hearings in cases where the claimant's continuing eligibility for benefits is questioned.

Graves v. Meystrik, 425 F. Supp. 40, 50 (E.D. Mo. 1977) aff'd, 431 U.S. 910 (1977): Where claimant's eligibility under the state's statute was reexamined on a week-to-week basis, a post-termination hearing regarding the denial of benefits satisfied the requirements of due process. See also Gary v. Nichols, 447 F. Supp. 320 (D. Idaho 1978).

Fusari v. Steinberg, 364 F. Supp. 922 (D.Conn. 1973), vacated and remanded for reconsideration in light of statutory developments, 419 U.S. 379 (1975): "Seated-interview" procedure, where the claimant was questioned without hearing protections and disqualified for continued benefits, held to violate due process.

Pregent v. New Hampshire Dept. of Employment Security, 361 F. Supp. 782 (D.N.H. 1973), vacated and remanded to consider question of mootness, 417 U.S. 903 (1974): Due process requires a full evidentiary hearing prior to termination of benefits for disqualifying conduct. See also Hiatt v. Indiana Employment Security Div., 347 F. Supp. 218 (N.D. Ind. 1971), vacated and remanded on question of mootness, 409 U.S. 540 (1973); Royer v. State Department of Employment Security, 394 A.2d 828 (N.H. 1978).

Gray v. Department of Employment Security, 681 P.2d 807 (Utah 1984): Post-termination evidentiary hearing addressing discontinuance of benefits due to work-search requirements failed to satisfy due process. Accord Wilson v. Board of Indiana Employment Security, 270 Ind. 302, 385 N.E.2d 438 (1979), cert. denied, 444 U.S. 874 (1979); Royer v. State Department of Employment Security, 394 A.2d 828 (N.H. 1978); Klimko v. Virginia Employment Commission, 216 Va. 750, 222 S.E.2d 559 (Va. 1976), cert. denied, 429 U.S. 849 (1976); contra Osborn v. EAB and George A. Hormel & Co., 5 Unempl. Ins. Rptr. (CCH) ¶8768 (Iowa Dist. Ct. 1989).

B. Hearing Rights

Notice of Issues

Cosby v. Ward, 843 F.2d 967 (7th Cir. 1988): Failure to provide adequate written notice of issues to be raised at hearing (specifically, the "rules of thumb" regarding the claimant's duty to search for work) violated the fair hearing requirement. See also Whitney v. Dept. of Employment Sec., 105 Nev. 810, 783 P.2d 459 (1989).

Shaw v. Valdez, 819 F.2d 965, 970 (10th Cir. 1987): Claimant's right "to know in advance all of the factual and legal issues to be presented at hearing" was not satisfied by the state's notice and discovery procedures. See also Ross v. Horn, 598 F.2d 1312, 1318 n.4 (3d Cir. 1979), cert. denied, 448 U.S. 906 (1980); Ward v. Industrial Commission, 699 P.2d 960, 969 (Colo. 1985); Whitney v. Dept. of Employment Sec., 105 Nev. 810, 783 P.2d 459 (1989).

Holbrook v. Tennessee Department of Employment Security, 602 F. Supp. 507, 510 (M.D. Tenn. 1984): Ineffective attempts to inform the claimant of the opportunity to challenge an overpayment determination amounted to constitutionally-defective notice.

Robbins, et al. v. Gooding, No. 94-828-CIV-T-25E (U.S. Dist. Ct. Fla. 1994): Pending class action suit alleging that determination notices are deficient for failing to inform claimants of the factual and legal issues to be raised at the hearing.

Ward v. Industrial Commission, 699 P.2d 960, 969 (Colo. 1985). Where termination notice contained a statement of reasons for the denial of benefits and claimant had an opportunity for a hearing, the lack of notice and the denial of bill of particulars did not deprive the claimant of due process.

Division of Employment Security v. Smith, 615 S.W.2d 66 (Mo. 1981) (en banc): Due process requires that specific efforts be made to insure claimant's receipt of the termination notice, thus notice by personal service is required where the state has knowledge that a party has not received actual notice of the termination.

In the Matter of Savino, N.Y. Unempl. Ins. Rptr. (CCH) ¶ 11,767 (N.Y. App. Div. 1993): Claimant initially denied benefits based on a discharge for misconduct and who received notice of hearing identifying only the misconduct issue was denied adequate notice to present a defense and a fair hearing when the hearing officer upheld the denial of benefits on the basis that the claimant voluntarily quit his job without good cause.

City of Philadelphia v. Bd. of Rev., 9 Unempl. Ins. Rptr. (CCH) (Pa. Commw. Ct. 1994): Issues raised in a corrected notice of issue can cure defective notice and are properly raised on appeal.

Mizell v. Rutledge, 174 W. Va. 639, 328 S.E. 2d 514 (1985): Claimant's due process rights were violated where notice failed to indicate that the disqualification, if not successfully challenged, would later render the claimant ineligible for extended benefits.

Multilingual Services

Carmona v. Sheffield, 475 F. 2d 728 (9th Cir 1973): Due process and equal protection not denied when the state failed to provide interpreters and bilingual written notice of eligibility determinations to persons who spoke only Spanish.

Gutierrez v. Rath, CA No. H-96-2308, United States District Court, Southern District of Texas, Houston Division (settlement agreement entered January 16, 1998): In a case challenging the operation of the telephone appeals process in Texas, the parties entered into settlement agreement requiring the state to provide translation of all documents used in connection with hearings.

Barcia v. Sitkin, 1C Unempl. Ins. Rptr. (CCH) ¶ 21,712 (S.D.N.Y. 1983): Settlement provided translators and interpreters to claimants at appeal board hearings and required printed notices in both English and Spanish. See also, Barcia v. Sitkin, 79 Civ. 5831 (RLC), 79 Civ. 5899 (S.D.N.Y. 1994) (contempt motion granted in enforcement of consent decree).

Chinese Staff & Workers' Association v. New York State Department of Labor, 99 Civ. 3599 (RLC), United States District Court, Southern District of New York (complaint filed May 17, 1999): The class action complaint alleges violations of Title VI of the Civil Rights Act of 1964 for the state's failure to provide Chinese-speaking claimants with translation services to assist in the filing of claims and with the hearings process.

Pabon v. Levine, 70 F.R.D. 674 (S.D.N.Y. 1976): The court found that plaintiffs, non-English speaking persons who claimed that they were unlawfully deprived of unemployment compensation benefits in New York because of their lack of English proficiency, properly raised a claim under Title VI.

In re Giron (U.S. Department of Labor, Directorate of Civil Rights, filed Dec. 16, 1994): Pending administrative complaint alleging violation of Title VI for failure to provide multilingual notices and hearing interpreters.

Alonso, et al. v. Arabel, 622 So.2d 187 (Fla.App. 1993): Untimely appeal denied and no due process violation found despite the fact that all notices of appeal rights were in English, notwithstanding the fact that UAC officials knew claimants did not speak, read, or write English. See also, Marcellus v. Montgomery Realty Investors & Miami Airport Hotel Assoc., & UAC, 3 Unempl. Ins. Rptr. (CCH) ¶

8756 (Fla. App. 1993) (denying appeal as untimely despite claimant's claim that the notice was in English and she spoke and wrote only Creole).

Figueroa v. Director, No. 96L51079 (Ill. App., 2d Div., February 9, 1999): Held that when in an interpreter is needed, due process requires that an interpreter provide full, verbatim translation of the proceedings, not a summary or synopsis of the testimony.

Hernandez v. Dept. of Labor, 83 Ill.2d 512, 416 N.E.2d 263 (1981): The late filing of an appeal from denial of unemployment benefits is fatal regardless of whether claimant was able to read the English language notice. See also Quinones v. Board of Review, 104 Ill.App.3d 227, 432 N.E.2d 894 (1982)

Flores v. Board of Review, Ill. Dept. of Labor, 74 Ill. App. 3d 667, 393 N.E.2d 638 (1979): A claimant, who could neither read nor speak English and whose friend, in translating the referee's letter did not tell claimant that the letter meant she was ineligible for unemployment compensation, did not have actual notice of the determination and therefore was not precluded from appealing the referee's decision despite the fact that the statutory time limit for an appeal had elapsed. Gutierrez v. Board of Review, 35 Ill. App. 3d 186, 341 N.E.2d 115 (1975): Claimant, who did not understand English and relied on his daughter's translation of a notice which said that he had obtained unemployment compensation benefits fraudulently, was liable for repayment and a penalty. Claimant's appeal was held to be untimely though his daughter did not translate the portion of the notice dealing with appeal rights.

DaLomba v. Director of Div. of Emp. Sec., 369 Mass. 92, 337 N.E.2d 687 (1975): Claimant's right of procedural due process was not violated despite the fact that she was not literate in English and the notice concerning her right to a hearing was only sent in English.

Digest of Plajer v. Tisza Industries, Inc., 6 Unempl. Ins. Rptr. (CCH) ¶ 10,079.17 (Mich. Cir. Ct. 1993): Claimant, who spoke Hungarian and some English and who had his daughter present at the hearing to interpret, was not denied a fair hearing.

Rivera v. Board of Review, 127 N.J. 578, 606 A.2d 1087 (N.J. 1992): Claimant, a migrant farm worker, was denied due process where the state failed to take into consideration the nature of migrant farm work in designing its notice system. The state specifically failed to keep track of address changes, and sent notices in English to migrant farm workers in Puerto Rico.

Alfonso v. Board of Review, 89 N.J. 41, 444 A.2d 107 (1982), appeal dismissed and cert. denied, 459 U.S. 806 (1982): Notice of determination to claimant who neither spoke nor read English denying unemployment benefits was calculated to convey the required information, and thus claimant was given the proper notice under the due process clause of the fourteenth amendment.

Ramsey v. Ross, 63 A.D.2d 1061, 405 N.Y.S.2d 808 (1978): Claimant lacking English-speaking skills was not denied due process at the hearing given his failure to request an interpreter and in light of the absence of evidence that he could not comprehend the substance of the proceedings.

Gonzalez v. Pennsylvania Unempl. Comp. Bd. of Rev., 39 Pa. Commw. 70, 395 A.2d 292 (1978): While it is desirable to advise unrepresented claimants who are not fluent in English of their legal rights, neither due process nor the state rules of procedure governing hearings mandate bilingual assistance at the hearing.

Nava v. Stoner, No. 93-2-00654-1 (Super. Ct. Wash. 1994): Suit challenging state's failure to provide appeal notices in the primary languages of limited English proficient (LEP) claimants resulted in a settlement agreement providing that selected notices must be translated into twelve primary languages, those most common to LEP claimants applying for unemployment benefits in Washington State.

See also, Gillespie, Schneider, "Are Non-English-Speaking Claimants Served by Unemployment Compensation Programs? The Need for Bilingual Services", 29 U.Mich.J.L.Ref.. 333 (1996).

Representation

Hines v. EDD, 2 Unempl. Ins. Rptr. (CCH) ¶ 8727 (Fla. App. 1993): Indigent claimant has no right to appointed counsel and Board has no duty to provide notice of right to obtain counsel.

White v. Illinois Dep't of Employment Security, 637 N.E.2d 647 (Ill. App. 1994): Once a party designates a representative to receive notices from the state, the agency must send notices and decisions to both the party and the representative.

Paddock v. DES, 4 Unempl. Ins Rptr (CCH) ¶ 8384 (Ill.App. 1989): Although state law allows duly authorized agents to represent parties at unemployment proceedings, the court held that this does not include non-attorneys.

Digest of Hannah v. GMC BOC Orion Plant and MESC, 6 Unempl. Ins. Rptr. (CCH) ¶ 10,093.14 (Mich. Cir. Ct. 1994): Claimant's not denied a fair hearing based on right to counsel grounds due to his alleged failure to request legal counsel at a rehearing.

Henize v. Giles, 22 Ohio St.3d 213, 490 N.E.2d 585 (Ohio 1986): Non-lawyers may represent employers at an unemployment compensation hearing without thereby participating in the unauthorized practice of law or otherwise depriving the claimant of a fair hearing. See also Unauthorized Practice of Law Committee

v. Employers Unity, Inc., 716 P.2d 460 (Colo. 1986); State Bar of Michigan v. Galloway, 422 Mich. 188, 369 N.W.2d 839 (1985); but see Reed v. Labor & Indus. Rels. Commn., 789 S.W.2d 19 (Mo. 1990) (holding that the filing of an application for review by a non-attorney employee on behalf of a corporate employer constitutes the unauthorized practice of law).

Holsinger v. Board of Review, 9 Unempl. Ins. Rptr. (CCH) ¶ 12,209 (Pa. Commw. Ct. 1994): Referee satisfies statutory requirement to aid and assist pro se claimant despite attempts to discontinue certain lines of claimant's questioning and interfering with claimant's attempts to make her case-in-chief.
Reed v. Board of Review, 104 Pa. Commw. 373, 522 A.2d 121 (1987): Due process requires that the appeals board inform a pro se claimant of her rights to be represented by counsel, to cross-examine witnesses, and to offer witnesses to testify on her behalf. See also Hudson v. Board of Review, 522 A.2d 189 (1987); Katz v. Board of Review, 59 Pa. Commw. 427, 430 A.2d 354 (1981).

Simmons v. Commr. and Occidental Chemical Corp., 791 S.W.2d 21 (Tenn. 1990): Claimant was not adequately informed of the manner to obtain free or low cost counsel, thus, violating due process and requiring a rehearing in the case.

Perry v. Department of Employment and Training, 523 A. 2d 1242 (Vt. 1987): Once a party designates a representative, due process requires that all notices affecting the substantial rights of the parties be provided to the representative as well as the party.

See also Emsellem, Halas, "Representation at Unemployment Compensation Proceedings: Identifying Models and Proposed Solutions," 29 U.Mich.J.L.Ref. 289 (1996); McHugh, Lay Representation in Unemployment Insurance Hearings: Some Strategies for Change, 16 Clearinghouse Rev. 865 (February 1983).

Conduct of Hearing

Cuellar v. Texas Employment Commission, 825 F.2d 930 (5th Cir. 1987): Admission into evidence of an affidavit without adequate opportunity for cross-examination violated the requirements of a fair hearing.

Cottrell v. Lopeman, 1C Unempl. Ins. Rptr. (CCH) ¶ 22,105 (D. Ohio): Resulting consent decree from class challenge to state appeals procedure requires: 1) that state agency adopt rules, procedure, and notices to insure claimants meaningful access to Board and agency files, including procedures for obtaining copies of the content of those files; and 2) that claimants who prevail at referee hearing have the right to respond to their employer's applications to institute further appeal before an agency ruling on the application.

QFD Accessories, Inc., v. ICAO, 2 Unempl. Ins. Rptr (CCH) ¶ 8591 (Co. App. 1993): At an in-person hearing, an employer is not denied a fair hearing when hearing officer admitted evidence not previously disclosed where the employer failed to request an adjournment or continuance.

White v. Evans, 324 Md. 321, 597 A.2d 419 (1991): Reversing finding of summary judgment in favor of the state in a class action challenging policies and practices relating to the denial, reduction, delay and termination of unemployment insurance benefits.

Wheeler v. State of New Hampshire, 115 N.H. 347, 341 A.2d 777 (1975), cert. denied, 423 U.S. 1075 (1976): Denial of the due process right to cross-examine a witness before the appeal tribunal did not prejudice the claimant because he appealed the decision to the superior court where the case was heard de novo, thereby affording the client an opportunity to confront and cross-examine the witness.

Beamer v. Board of Review, 123 Pa. Commw. 56, 552 A.2d 774 (1989): The hearing officer's failure to advise the claimant of his right to subpoena witnesses did not violate the claimant's due process or fair hearing rights.

Thomas v. Board of Review, 117 Pa. Commw. 216, 543 A.2d 600 (1988): Where the interests of the parties were not compromised by continuing the hearing until the claimant was released from jail, denial of a brief continuance violated claimant's due process rights.

Cruz v. Board of Review, 110 Pa. Commw. 117, 531 A.2d 1178 (1987): Due process does not require the state to investigate the facts leading to claimant's termination.

Person v. Board of Review, 73 Pa. Commw. 11, 457 A.2d 200 (1983): Due process is not violated by refusing to grant a hearing after the claimant failed to appear at two prior hearings at which he had been offered reasonable opportunities to present evidence.

Baker v. Babcock & Wilcox Co., 11 Va. App. 419, 399 S.E.2d 630 (1990): Admission of an unsworn statement at the hearing did not violate claimant's right to cross-examination where the claimant did not subpoena the individual who provided the statement.

Issue Switching

Camacho v. Bowling, 562 F. Supp. 1012 (N.D. Ill. 1983): Practice of raising issues for the first time at a hearing without notice to claimant (and unannounced policy of permitting continuances upon request) violated claimant's procedural due process rights. Accord Linscott v. Director of Labor, 9 Ark.App. 103, 653

S.W.2d 150 (1983); Wilson v. Industrial Commission, 693 S.W.2d 328 (Mo.App. 1985); Sweezy v. Employment Division, 47 Or.App. 1, 615 P.2d 1103 (1979); Kuraspediani v. Employment Division, 38 Or.App. 409, 590 P.2d 294 (1979); Libonate v. Commonwealth, 57 Pa. Commw. 422, 426 A.2d 247 (1981); Gonzales v. Texas Employment Commission, 653 S.W.2d 308 (Tex.App. 1983).

Penton v. Royal Crown Bottling Co. and UAC, 3 Unempl. Ins. Rptr. (CCH) ¶ 8784 (Fla. App. 1994): Denial of benefits was reversed and a new evidentiary hearing was ordered where the claimant was not notified of the issues for determination at the hearing before the appeals referee.

Wilson v. Labor & Industrial Relations Commission, 693 S.W.2d 328 (Mo.App. 1985): Claimant was denied a fair hearing when she was never informed of the issue ultimately raised by the examiner in denying her benefits.

Fournier v. New Hampshire, 121 N.H. 283, 428 A.2d 1238 (1981): Without a request by the claimant to respond to new issues of eligibility raised for the first time before the appeals tribunal, the absence of notice did not deprive claimant of a fair hearing.

Torgler v. Bag-N-Save Food, 630 N.E.2d 376 (Ohio 1994): Court refused to review appellate court's denial of benefits based on claimant's argument that when an employer switches issues in a hearing and the decision denying benefits is based on the new issue, the claimant is denied a fair hearing and due process.

See also Rick McHugh, Issue Switching in Unemployment Insurance Cases, 18 Clearinghouse Rev. 1181 (Feb. 1985); Rick McHugh, Issue Switching Update, 19 Clearinghouse Rev. 157 (June 1985).

Impartial Adjudicator

Pregent v. DES, 361 F. Supp. 782 (D. Conn. 1973), vacated and remanded to consider question of mootness, 417 U.S. 903 (1974): The fact that the chairperson of the appeals tribunal was both an employee of the state unemployment agency and the party in charge of conducting the claimant's hearing did not violate due process.

Bell Taxi & Transp. v. Taylor, 766 P.2d 1297 (Kan. App. 1989): Bell Taxi's assertion that the hearing officer "adverse" to their witnesses was not enough to show bias. There must be evidence of actual bias to overcome the presumption of fairness and impartiality on the part of the decision-making body.

Dicerbo et al. v. Nordberg, No. 93-5947B (Mass. Super. Ct., Suffolk County, decided January 16, 1998): Class action successfully challenged the systematic

failure of the state agency to follow legal precedent of the state courts and the Board of Review in issuing determinations denying or suspending benefits.

Berry v. APCOA and MESC, 6 Unempl. Ins. Rptr. (CCH) ¶10,010, (Mich. App. 1989): A hearing before an unbiased and impartial decision maker is a basic tenant of due process. However, a referee will not be disqualified merely because he had previously worked with one of the party's attorneys absent a showing of actual bias.

Claim of McKinnon, 463 N.Y.S.2d 931, 95 A.D.2d 941 (1983): A finding of judicial bias of the hearing examiner requires that the alleged bias derived from an extra-judicial source resulting in a decision which was based on information other than what was presented at the hearing.

See also, Meierhenry, Due Process Right to an Unbiased Adjudicator, 36 S.D. L. Rev. 551 (1991).

C. The Appeal Process

Moore v. Ross, 687 F.2d 604 (2d Cir. 1982), cert. denied, 459 U.S. 1115 (1983): Due process does not require a de novo hearing upon the reversal of a benefit award by the appeal board based on a credibility finding.

Bennett v. Lopeman, 598 F. Supp. 774 (N.D. Ohio 1984): Invalidating the appeal statute which failed to provide a "good cause" exception to claimants who demonstrated that they did not receive timely notice of their right to appeal.

International Union v. Giles, 5 Ohio Bar Reports 300 (N.D. Ohio 1982): Due process requires actual notice of the claimant's right to appeal and an opportunity to establish "good cause" for the failure to file a timely notice of appeal. See also Smith v. Iowa Employment Security Comm., 212 N.W.2d 471, 474 (1973); Miami Dolphins Ltd v. Florida Dept. of Commerce, 252 So.2d 396 (Fla.App. 1971); Roman v. Arizona Dept. of Econ. Sec., 130 Ariz. 581, 637 P.2d 1084 (1981); Eves v. Employment Security Commission, 211 N.W. 2d 324 (Iowa 1973).

Ex Parte Varner, 571 So.2d 1108 (Ala. 1990): The Alabama Administrative Procedure Act's (AAPA) 30-day appeal deadline, rather than the Unemployment Compensation Act's 10-day appeal deadline, applied because the AAPA states that it should take precedence over any other statute which diminishes the rights created by the AAPA (overruling Mays v. Steel Services, Inc., 500 So.2d 467 (Ala.1986)).

Fink v. Unemployment Ins. Appeal Bd., 591 A.2d 222 (Del. Supr. 1991): The Appeal Board had the authority to act sua sponte beyond the 10 day appeal period

to consider claimant's case, although its failure to do so in this case did not amount to abuse of discretion.

Finney v. Unemployment Appeals Comm'n, 587 So.2d 637 (Fla. App. 1991): Due process was denied when claimant's appeal was dismissed for lack of jurisdiction because his appeal had been filed more than 20 days after the alleged date of mailing of the referee's decision. Despite the statutory provision which mandates that the commission automatically dismiss late-filed appeals, an evidentiary hearing was required because questions of fact existed as to the dates of the mailing and the receipt of notice.

Fouste v. Department of Employment, 97 Idaho 162, 540 P.2d 1341 (1975): Upheld appellate procedure requiring the filing of a notice of appeal within 14 days of mailing or delivery (rather than receipt) and denied appellate review absent strict compliance with the rule. See also Gary v. Nichols, 447 F. Supp. 320 (D. Idaho 1978).

In the Matter of Delisa, N.Y. Unempl. Ins. Rptr. (CCH) ¶ 11,603 (N.Y. App. Div. 1992): Claimant was denied due process when the Board failed to notify her attorney of receipt of the employer's appeal as required by Board rules. But see Booth v. MESC, 588 So.2d 422 (Miss. 1991): The Board's failure to notify claimant's attorney of claimant's appeal did not violate minimum requirements of procedural due process under the present law, so long as such notice is "reasonably calculated" to apprise claimant of necessary information. (The court strongly recommended amending the procedural rules to require notice to both a claimant and the attorney of record).

D. Telephone Hearings

Jennifer Eliot v. Johan King (Mass. Superior Ct., Civil No. 97-5748-G) (filed November 14, 1997): This pending class action lawsuit challenges the state's failure to enact regulations or guidelines governing the operation of telephone hearings, including the right of claimants to present evidence in support of their case or rebut testimony and documentary evidence presented over the phone by the employer.

Gutierrez v. Rath, CA No. H-96-2308, United States District Court, South District of Texas, Houston Division (settlement agreement entered January 16, 1998): In a case challenging the operation of telephone hearings, the parties entered into a settlement agreement requiring that the state accommodate those who do not have ready access to a private phone or a speaker phone to present witness testimony by providing such equipment at a designated location.

Cottrell et al. v. Lopeman et al., 1C Unempl. Ins. Rptr. (CCH) ¶ 22,105 (D. Ohio 1993): Settlement dictates a revision of the Ohio statute and new regulations establishing that claimants have the right to opt out of a telephone hearing if they are willing to travel to the employer's location for the hearing.

Slattery v. Unemployment Insurance Appeals Board, 60 Cal. App. 3d 245, 131 Cal. Rptr. 422 (1976): Upholding the validity of the telephone hearing procedure despite the hearing examiner's failure to advise claimant of right to cross-examine and to object to admission of specific testimony.

Asche v. Industrial Commission of State of Colorado, 654 P.2d 813 (Colo. 1982): Agency bears the burden of proof to demonstrate the validity of the telephone hearing procedure.

Gerardi v. Adm'r., 2 Unempl. Ins. Rptr. (CCH) ¶9135.06 (Conn. Super. Ct. 1984): Due process rights of out-of-state claimant were not violated where the telephone hearing afforded the core elements of a fair adversary hearing and there was no evidence that the claimant would have otherwise appeared for a face-to-face hearing.

Halpin v. Florida Unemployment Appeals Com'n, 516 So. 2d 1027 (Fla. App. 1987): Where employer's representative testified by telephone hook-up and referenced documents which it refused to make available to the claimant, the claimant was denied a fair hearing.

Greenberg v. Florida Unemployment Appeals Commission, 410 So. 2d 566 (Fla. App. 1982): Telephone hearing did not violate due process where claimant did not object to the procedure before appealing the decision and no prejudice was shown.

Dey v. Edward G. Smith and Associates, Inc., 110 Idaho 946, 719 P.2d 1206 (1986): Claimant denied due process where the telephone hearing was plagued with numerous shortcomings including repeated disconnections and other problems reflecting a loss of control over the proceedings. See also Eddy v. Board of Review, 111 Pa. Commw. 46, 533 A.2d 191 (1987).
Schexnider v. Blache, 504 So. 2d 864 (La. 1987): Failure to afford the claimant an opportunity to present evidence by means of a compulsory process for attendance of witnesses at a telephone hearing resulted in denial of due process.

Nestel v. Employment Security Division, 7 Unempl. Ins. Rptr. (CCH) ¶ 8249.12 (Nev. Dist. Ct. 1984): Due process denied where hearing officer received evidence over telephone without allowing claimant an opportunity to properly participate in the proceedings.

Mahan v. Board of Review, 9 Unempl. Ins. Rptr. (CCH) ¶9851 (Ohio Ct. Comm. Pl. 1989): Claimant denied due process of law as a result of the brevity of the telephone conference.

Wright v. Board of Review, 51 Ohio App.3d 45, 554 N.E.2d 137 (1988): Absent express statutory or procedural prohibitions to the contrary, unemployment hearings were properly conducted by telephone.

Hoshor v. Ohio Historical Society, 9 Unempl. Ins. Rptr. (CCH) ¶9814.23 (Ohio Ct. Comm. Pl. 1988): Claimant was properly afforded due process of law where specific instructions were provided regarding the conduct of telephone hearings. See also Wilkins v. Adm'r, 9 Unempl. Ins. Rptr. (CCH) ¶9814.24 (Ohio Ct. Comm. Pl. 1988).

Day v. Board of Review, Case No. 87 M.549 (Ohio Ct. Comm. Pl. 1987): Claimant denied a fair hearing where transcript of telephone hearing failed to record fully and fairly the substance of the proceeding.

Babcock v. Employment Division, 74 Or. App. 486, 696 P.2d 19 (1985): Due process was not violated where telephone hearing afforded adequate procedural rights and the audible indicia of a witness's demeanor was deemed sufficient for a referee to render a credibility determination.

Sievers v. Board of Review, 520 Pa. 83, 551 A.2d 1057 (1989): Due process did not require the hearing examiner to inform a pro se claimant of her right to a telephone hearing.

Hasely v. Board of Review, 123 Pa. Commw. 45, 553 A.2d 482 (1989): Claimant denied fair hearing when records were not made available to the claimant prior to the telephone hearing.

Hoover v. Board of Review, 97 Pa. Commw. 414, 509 A.2d 962 (1986): Claimant was deprived of a fair hearing where it was telephonically infeasible to present and examine required evidence.

Knisley v. Board of Review, 93 Pa. Commw. 519, 501 A.2d 1180 (1985): Court held that Board could not continue the practice of conducting telephone hearings over the objections of the parties until formal regulations were adopted for conduct of such hearings.

Chobert v. Board of Review, 86 Pa. Commw. 151, 484 A.2d 223 (1984): Claimant's due process and fair hearing rights were violated when he was deprived of the right to cross-examination during a telephone hearing and the witnesses testified to documents not made available prior to the hearing.

Batey v. Neel, Case No. 85-329 (Tenn. Ch. Ct. 1987) (unpublished decision): Claimant denied due process where the hearing examiner did not advise him of his right to counsel or the procedures for conducting the telephone hearing.

See also Donaldson, Propriety of Telephone Testimony or Hearings in Unemployment Compensation Proceedings, 90 A.L.R. 4th 532 (1991).

E. Miscellaneous Issues

Rivers v. Cavazos, et al., Civ. Action No. A-93-CA0163-JN (U.S. Dist. Ct. W.D. Tex. 1993): Successful challenge to state policy of re-adjudicating claimant's eligibility, including the facts of a claimant's separation from employment, when he or she reapplies for benefits in a second benefit year. See also, Morrison v. Steinbacher, 1C Unempl. Ins. Rptr. (CCH) ¶ 21,893 (D. Ohio 1988), remanded without published disposition, 880 F.2d 415 (6th Cir. 1989).

III. "WHEN DUE" RULE (42 U.S.C. § 503(A)(1))

A. Processing and Decision Delays

California Dept. of Human Resources v. Java, 402 U.S. 121 (1971): When-due requirement violated where the state suspended payment of benefits pending employer appeals from eligibility determinations favoring the claimant.

Jenkins v. Bowling, 691 F.2d 1225 (7th Cir. 1982): Timeliness requirements of the federal regulations are not limited to prompt payment after actual determination of eligibility but also apply to delays involved in the determination process itself (invalidating a state statute that delayed receipt of benefits in cases where the claimant was in legal custody or on bail).

Wilkinson v. Abrams, 627 F.2d 650 (3d Cir. 1980): Holding that Java is applicable to the entire appeals process irrespective of whether there had been an initial determination that a claimant is eligible for benefits. Court rejected claimant's challenge to 20 C.F.R. §650.1, which required that second-level appeals be decided with the "greatest promptness administratively feasible" while failing to set forth specific time limits or percentage criteria that are required of first-level appeals.

Burtton v. Johnson, 538 F.2d 765 (7th Cir. 1976): Enforcing standards regarding the initial payment of benefits and holding that significant evidence of initial processing delays provided sufficient basis for shifting burden to the state of justifying and detailing the cause of the payment delay.

Ross v. Giles, 1C Unempl. Ins. Rptr. (CCH) ¶21,899 (S.D. Ohio 1988): Successful challenge under the when-due clause by class of claimants who waited for two to three years for decisions on second-level appeals. See also Burke v.

Nordberg, CA 92-7030-C (Mass. Super. Ct. 1992) (favorable settlement on the issue).

Dunn v. New York State Department of Labor, 474 F. Supp. 269 (S.D.N.Y. 1979): Failure to timely render decisions upon first-level hearings delays the right to a timely appeal and therefore violates the due process right to prompt payment of benefits. See also Dunn v. N.Y. State Dep't of Labor, No. 73 Civ. 1656 (KTD) (S.D.N.Y. Feb. 14, 1994) (denying plaintiff's contempt motion).

Torres v. New York State Department of Labor, 333 F. Supp. 341 (S.D.N.Y. 1971), aff'd, 405 U.S. 949 (1972): Where first-level appeal delays averaging 45 days were upheld.

Ortega v. Usery, 441 F. Supp. 100 (D. Conn. 1977): Upholding federal regulation that allowed for "substantial compliance" with stated deadlines for processing initial claims.

Phillips v. Dawson, 393 F. Supp. 360 (W.D. Ky. 1975), subsequent proceedings, 527 F. Supp. 532 (1981): Interpreting the "when due" clause to require initial-eligibility interview within 8 to 10 days of application filing and mandated payment within 24 days of the date of the application in the absence of a challenge by the employer.

Nevills v. Illinois, 388 F. Supp. 622 (E.D. Ill. 1974): State's mandatory one-week "waiting period", during which the claimant failed to receive credit toward benefits, was characterized by the court as a "condition precedent to eligibility" and was thus upheld on when-due grounds.

Steinberg v. Fusari, 364 F. Supp. 922 (D. Conn. 1973), vacated on other grounds, 419 U.S. 379 (1975): Delay in disposing of first-level appeals (89 percent of appeals were decided in more than 100 days), violated due process.

Krupp v. Administrator, Unemployment Compensation Act, 175 Conn. 269, 397 A.2d 1360 (1978): Delay of 1,000 days, from the date of the initial denial of benefits through the full appeal process, violated the when-due requirements of the statute.

See also, Dietrich, Rice, "Timeliness in the Unemployment Compensation Appeals Process: The Need for Increased Federal Oversight" 29 U.Mich.J.L.Ref. 235 (1996).

B. Overpayment and Recoupment

General

Cassidy v. Adams, 872 F.2d 729 (6th Cir. 1989): Holding that the state's recoupment scheme did not violate the when due provisions of the federal statute while also finding that claimant did not have a vested due process right in overpaid benefits.

Losey v. Roberts, 677 F. Supp. 101 (N.D.N.Y. 1986): State's policy of withholding entire amount of currently-due benefits to offset prior overpayment did not violate either the when-due requirement or the federal provision that prohibits encumbrances on unemployment benefits.

Brewer v. Cantrell, 622 F. Supp. 1320 (W.D. Va. 1985), aff'd, 796 F.2d 472 (4th Cir. 1986) (per curiam): Denying claim that state's attempt to recover prior overpayment of benefits by withholding currently-due benefits violated when due, fair hearing, and due process requirements.

Kostelic v. Bernardi, 538 F. Supp. 620 (N.D. Ill. 1982): State could not properly withhold claimant's current benefits by requiring immediate repayment in cash of a prior overpayment (as opposed to recoupment from future benefits or recovery based upon a civil action against claimant).

UAW v. Michigan Employment Security Commission, 517 F. Supp. 12 (E.D. Mich. 1981): Statute allowing for penalty in excess of actual overpayment deemed a prohibited attachment and garnishment upon unemployment benefits.

Blount v. Smith, 440 F. Supp. 528 (M.D. Pa. 1977): Provision of federal law which allowed for the denial of benefits to those claimants who received overpayment through the fault of the claimant did not violate the when due clause.

Paul v. Industrial Commission, 632 P.2d 638 (Colo. App. 1981): Rejected when due challenge to offset procedure in overpayment cases involving the absence of fault on the part of the claimant.

Meadows v. Grabiac, 20 Ill. App. 3d 407, 314 N.E.2d 283 (1974): The court's interpretation of a statutory recoupment provision and penalties for fraud in obtaining unemployment compensation denied claimant equal protection under the law. By requiring fraudulently obtained benefits to be repaid as opposed to recouped from accrued benefits, indigents were treated differently than nonindigents who received benefits by the same means.

Dorozinski v. Review Board of Indiana Employment Security Division, 121 Ind.App. 367, 98 N.E.2d 911 (1951): Interpreting the state's recoupment statute, the court held that the right to recoup is not limited to the same benefit period in which the overpayment occurred.

Cardenas v. Board of Review, 36 Pa. Commw. 543, 388 A.2d 765 (1978): Statute does not deny equal protection by requiring recoupment in cases where the initial grant of benefits was reversed while not requiring recoupment when there is a reversal after repeated determinations of eligibility (the initial decision and the decision on appeal). Contra Board of Review v. Selby, 25 Pa. Commw. 273, 360 A.2d 254 (1976).

See also Recoupment of Overpayments of Unemployment Compensation, 14 Clearinghouse Rev. 432 (August/September 1980).

Hearings

Tucker v. Caldwell, 608 F.2d 140 (5th Cir. 1979): Where state statute does not require a showing of fault on the part of the claimant to recover overpaid benefits, claimant is not entitled to a hearing to determine the appropriate method of recoupment.

Ross v. Horn, 598 F.2d 1312 (3d Cir. 1979), cert. denied, 448 U.S. 906 (1980): Due process does not require an evidentiary hearing prior to the determination of an overpayment.

Hanlon v. Hodgman, 1C Unempl. Ins. Rptr. (CCH) ¶ 21,730 (D. Mass. 1984): Interpreted the federal statute to require proper notification of an overpayment, written standards for waiver of recoupment (where waiver was allowed), and an evidentiary hearing on the issue of overpayment, although the state is not required to initiate hearing proceedings absent a request from the claimant.

Holbrook v. Tennessee Department of Employment Security, 602 F. Supp. 507, 510 (M.D. Tenn. 1984): Claimant entitled to notice and an opportunity to be heard upon request for an evidentiary hearing prior to a determination that he fraudulently received benefits.

Farmer v. Everett, 8 Ark. App. 23, 648 S.W.2d 513 (1983): Due process requires that, prior to recoupment, claimant be afforded a hearing and notice of the issues to be determined at the hearing.

Daniels v. Board of Review, 10 Pa. Commw. 241, 309 A.2d 738 (1973): Where state law distinguishes between overpayment attributed to the fault of the claimant and those overpayment which are not, due process required an evidentiary hearing on the issue of fault.

Notice

Berg v. Shearer, 755 F.2d 1343 (8th Cir. 1985): Due process did not require issue-specific prehearing notice of overpayment proceedings or guidelines for determining the length of the administrative penalty resulting from an overpayment finding.

Schneider v. Industrial Commission of Colorado, 624 P.2d 371 (Colo. App. 1981): Because the parties are presumed to understand the consequences of the hearing examiner's decision, failure to notify claimant that an overpayment would, in fact, be recouped was not sufficient cause to allow claimant to file a late notice of appeal on the merits of the overpayment determination.

Hensley v. Iowa Dept. of Job Service, 336 N.W.2d 448 (Iowa 1983): Upheld notice of determination informing the claimant that failure to appeal "may" result in an overpayment determination.

Schulte v. Transportation Unlimited, Inc., 354 N.W.2d 830 (Minn. 1984): The notice informing the claimant that his employer had appealed the decision awarding him benefits violated the requirements of due process as it failed to state that reversal of the decision would result in recoupment of overpaid benefits.

Hopkins v. Board of Review, 249 N.J. Super. 84, 591 A.2d 1371 (1991): Notwithstanding claimant's non-compliance with the 10 day appeal rule, the state is precluded from recovering benefits to which the agency itself had earlier found claimant to be entitled.

Wojciechowski v. Board of Review, 47 Pa. Commw. 116, 407 A.2d 142 (1979): Due process does not require an agency to notify the claimant of all the consequences of a decision not to appeal an overpayment determination.

Mizell v. Rutledge, 174 W. Va. 639, 328 S.E.2d 514 (1985): Claimant's due process rights were violated where notice of disqualification failed to inform him that the disqualification, if not later appealed, could render him ineligible for extended benefits.

Sexton v. Candy, Civ. 88-AA-5 (Cir. Ct. W.Va. 1990) (unpublished decision): Due process violated by notice that failed to inform claimant of the possibility of overpayment and recoupment after an adverse decision from the employer's appeal.

Waiver

Serrant v. Virgin Islands Empl. Sec. Agency, No. 94-7639, 1995 U.S. App. LEXIS 14528, (3d Cir. June 13, 1995): Repayment of benefits not required pursuant to State's waiver provision. Court noted that "no fault" waiver provision

pertains to the benefit claims process, not conduct leading to the claimant's unemployment.

UAW v. Dole, 919 F.2d 753 (D.C. Cir. 1990) (per curiam). Denying the UAW's challenge to federal regulations that interpreted TAA statute to allow waiver of recoupment or overpayment rather than mandating waiver where appropriate.

Hicks v. Cantrell, 803 F.2d 789 (4th Cir. 1986): Finding that the U.S. Secretary of Labor had discretion to interpret regulations regarding the Federal Supplemental Compensation Act, thus upholding a regulation that authorized states participating in the program to establish waiver procedures at their option rather than mandating the procedure.
Togol v. Usery, 601 F.2d 1091 (9th Cir. 1979): Federal regulation prohibiting states from waiving recoupment under the federal extended benefit program was held to be inconsistent with the wording of the federal statute and thereby unenforceable. See also Martinez v. Marshall, 573 F.2d 555 (9th Cir. 1977).

Janusz v. Arizona Department of Economic Security, 157 Ariz. 504, 759 P.2d 650 (1988): Interpreting the state statute, the court applied principles of equity and good conscience to hold that the unemployment board had discretion to defer recoupment until claimant was financially solvent.

Gilles v. Department of Human Resources Development, 11 Cal. 3d 313, 521 P.2d 110 (1974): The state's statute allowing waiver where recovery would be "against equity and good conscience" was held to require inquiry into the nature and cause of the overpayment and the hardship of recoupment on the claimant.

Snead v. Unemployment Insurance Appeal Board, 486 A.2d 676 (Del. 1984): Incorporated a "fairness" component into the state's ambiguous recoupment statute thereby requiring an inquiry into equitable considerations where overpayment was not due to fraud on the part of the claimant.

C. Miscellaneous Issues

OBES v. Hodory, 431 U.S. 471 (1977): Upholding state statute that disqualified claimants who were unemployed by virtue of a labor dispute.

Pennington v. Didrickson 22 F.3d 1376 (7th Cir.), cert. denied, 115 S. Ct. 613 (1994), legislative overruled by Pub.L. 105-33, Section 5401: Standard method of calculating base period earnings, which only takes into account the claimant's earnings for four of the last five calendar quarters, must be "reasonably calculated to insure full payment of unemployment insurance when due" and requiring a remand to determine feasibility of adopting a "movable base period."

Edwards v. Valdez, 789 F.2d 1477 (10th Cir. 1986): Federal regulation requiring that social security benefits be offset by unemployment benefits upheld by the court. See also Watkins v. Cantrell, 736 F.2d 933, 936 n.3 (4th Cir. 1984); Bowman v. Stumbo, 735 F.2d 1942 (6th Cir. 1984).

Giorgi v. Doody, 537 F. Supp. 1251 (D. Mass. 1982): Preliminary injunction issued in case alleging due process violation based on the absence of sufficient standards for determining eligibility.

Ertman v. Fusari, 442 F. Supp. 1147 (D. Conn. 1977): "Forty Rule" for determining base-period earnings, which arguably discriminated against low-income claimants, was upheld on equal protection grounds.

Blount v. Smith, 440 F. Supp. 528 (M.D. Pa. 1977): Pennsylvania statute did not deny due process or equal protection, and did not impose an excessive fine on claimants convicted of fraud by declaring them ineligible to receive unemployment benefits for a period of one year.

IV. CONSTITUTIONAL ISSUES

A. First Amendment

Employment Division v. Smith et al., 494 U.S. 872 (1990): States may deny benefits to claimants discharged from their jobs for the use of illegal drugs (i.e. peyote) even though the use is for religious purposes, without violating the first amendment's free exercise clause. Congress specifically overruled this holding by passing the Religious Freedom Restoration Act of 1993. 42 U.S.C. § 2000bb (1993).

Hobbie v. UAC, 480 U.S. 136 (1987): Florida's refusal to award benefits to claimant, a Seventh Day Adventist who was discharged because of her refusal to work on the Sabbath, violated the Free Exercise Clause of the First Amendment. Heller v. EBB Auto Co., 1C Unempl. Ins. Rptr. (CCH) ¶21,904 (D. Or. 1987): The court upheld a finding of misconduct where the claimant was discharged for missing work for a few hours in order to attend a religious ceremony (in which his wife and children were being converted to Judaism).

Vander Laan v. Mulder, 178 Mich. App. 172, 443 N.W.2d 491 (1989): The state's denial of benefits to a dental hygienist who preached her religious beliefs to a dentist's patients was not an infringement by the state of her constitutional right to free exercise of religion.

MESC v. McGothlin, 556 So. 2d 324 (Miss.), cert. denied, 498 U.S. 879 (1990): A claimant was erroneously disqualified for benefits because she refused to stop

wearing a head-wrap that violated a school policy. Her act is protected by the First Amendment as an expression of her religious and cultural beliefs in the faith of the African Hebrew Israelites of Ethiopia.

In re Klein, 78 N.Y.2d 662 (1991), cert. denied, 504 U.S. 912 (1992): Labor Law §563, which excludes persons performing duties of a religious nature at a place of worship from receiving unemployment insurance, does not violate the establishment clause of the First Amendment or the equal protection clause because it does not have the purpose and effect of favoring religious schools over nonreligious schools.

In re Conde, 580 N.Y.S.2d 511 (App. Div. 1992): A facility for troubled teens operated by a Christian church serves a religious purpose, but claimant's duties (development and repair of the campus and raising funds for that purpose) were not of a "religious nature." Therefore claimant was improperly excluded from receiving unemployment benefits.

Employment Div. v. Rogue Valley Youth, 307 Or. 490, 770 P.2d 588 (1989): Oregon must treat all religious organizations similarly regardless of whether or not they would qualify as churches under FUTA or the Oregon provision. Therefore, the application of unemployment compensation taxes to all religious organizations does not inhibit the free exercise of religion.

Bishop Leonard Regional Catholic School v. Bd. of Rev., 140 Pa. Commw. 428, 593 A.2d 28 (1991), cert. denied, 503 U.S. 985 (1992): The court reversed the granting of benefits to a woman who was discharged for marrying a man whose divorce was not annulled where the marriage was in violation of the church policy against "public rejection of official teachings, doctrine or laws of the Catholic Church." The court reasoned that she was discharged for willful misconduct and did not find any excessive entanglement in the state denying benefits for that reason.

See also Note, Constitutional Law - First Amendment - Free Expression Clause - Expression of Cultural and Religious Heritage is Not Grounds For Denial of Unemployment Compensation, 61 Miss. L. J. 223 (Spring 1991); Unemployment Compensation and the First Amendment, 23 Clearinghouse Rev. 248 (July 1989).

B. Equal Protection

Sonneman v. Knight, 790 P.2d 702 (Alaska 1990): Claimant who voluntarily terminated his employment to attend law school was properly disqualified from benefits. Distinguishing between law school, and vocational school where one can collect benefits, is not a denial of equal protection.

Stuart-James, Inc. v. Tanner, 259 Ga. 289, 380 S.E.2d 257 (1989): State laws exempting real estate and insurance sales persons who work on commission, but not other securities sales persons, do not violate equal protection.

Winder v. Review Board, 528 N.E.2d 854 (Ind. App. 1988): Claimant denied equal protection under state disqualification provision that applied where a claimant leaves one job for a more favorable position with another employer but is subsequently fired from the second employer without remaining in the second position for at least 10 weeks.
Steele v. Employment Dept., No. CAA89252 (Oregon App., August 28, 1996): Interpreting the state's "misconduct" provision, the court invalidated the "Alcohol Adjudication Policy" of the Oregon Department of Employment which automatically disqualified claimants who were fired for alcohol-related reasons.

Parker v. Commonwealth of Pennsylvania, 115 Pa. Commw. 93, 540 A.2d 313 (1988), aff'd, 521 Pa. 530 (1989): Disqualification for seasonal workers unemployed with reasonable future assurance of employment did not violate equal protection. See also Berland v. Employment Security Department, 52 Wash. App. 401, 760 P.2d 959 (1988)

C. Eleventh Amendment

Paschal v. Jackson, 936 F.2d 940 (7th Cir. 1991), cert. denied, 112 S. Ct. 992 (1992) (White, J., dissenting): Claimants are barred by the Eleventh Amendment (sovereign immunity) from receiving retroactive damages based on the denial of unemployment benefits.

The Paschal decision added to the division of authority in the circuits. Accord Esparza v. Valdez, 862 F.2d 788 (10th Cir.1988), cert. denied, 492 U.S. 905 (1989)(holding that the eleventh amendment barred a retroactive award of unemployment compensation benefits). Contra Brown v. Porcher, 660 F.2d 1001 (4th Cir. 1981), cert. denied, 459 U.S. 1150 (1983) (White, Powell, Rehnquist, JJ., dissenting from denial of certiorari); Brewer v. Cantrell, 622 F. Supp. 1320 (W.D.Va. 1985), aff'd, 796 F.2d 472 (4th Cir. 1986); Bowen v. Hackett, 387 F. Supp. 1212 (D.R.I. 1975)

Tyler v. U.S. Dept. of Labor, 752 F. Supp. 32 (D. Me. 1990): A complaint challenging the Secretary of Labor's policy of determining eligibility for Trade Readjustment Allowance benefits, a federally funded unemployment program, was not barred by the state's eleventh amendment immunity.

V. NON-CITIZEN ELIGIBILITY (26 U.S.C. § 3304(A)(14(A))

Industrial Commission of Colorado v. Yiadiam, 735 P.2d 473 (Colo. 1987): Persons who filed petitions for adjustment of alien status based upon marriage to U.S. citizens, or who received government work authorization, were "permanently residing in the United States under color of law" (PRUCOL) thus rendering them eligible for unemployment benefits.

Castillo v. Jackson, 594 N.E.2d 323 (Ill.): Claimant who applied for legalization under the provisions of the Immigration Reform and Control Act of 1986 (IRCA) were found to be "permanently residing in the United States under color of state law" (PRUCOL) as of IRCA's effective date and were thus deemed eligible for unemployment benefits.

Brambia v. Board of Rev., 124 N.J. 425, 591 A.2d 605 (1991): Claimant must have been lawfully present in the country when base-period wages were earned in order to qualify for unemployment benefits. Seasonal agricultural worker aliens eligible for work authorization but unable to obtain documentation of that authorization considered lawfully present for unemployment benefits purposes.

Pickering v. Labor and Industry Review Comm'n, 156 Wis. 2d 361, 456 N.W.2d 874 (1990): Claimant was ineligible for benefits during the period before he applied for legalization under IRCA. The court rejected claimant's argument that IRCA conferred retroactive PRUCOL status.

See also Alien's Right to Unemployment Compensation Benefits, 37 A.L.R. 3d 694; Irene Scharf, Preemption by Fiat: The Department of Labor's Usurpation of Power Over Noncitizen Workers' Rights to Unemployment Benefits, 56 Albany L. Rev. 561 (1993).