

Were You Turned Down for Unemployment Benefits?

NELP

Fact Sheet for Workers

Advocating for the working poor and the unemployed

Know Your Rights

Employment Law Clinic for Low-Wage and Immigrant Workers

Free legal assistance is available by appointment. Call:

(212) 417-3800 on Mondays & Wednesdays

(888) 218-6974 on Tuesdays & Thursdays

The clinic is a joint project with the Legal Aid Society and MFY Legal Services

National Employment Law Project
www.nelp.org

January 2002

The Basics: You Can Stick Up For Yourself and Win

The bad news is that many people who deserve unemployment benefits are wrongly turned down when they first apply. The good news is that often you can still get your benefits by appealing that decision and presenting your side of the story before a judge. More good news is the fact that you can get help: call the Employment Law Clinic listed on this fact sheet.

Bad News in the Mail: Getting Turned Down for Unemployment Benefits

There are a number of different situations in which the Department of Labor may turn down your claim for benefits. There are two notices to watch for in the mail: the "Monetary Determination" and the "Notice of Determination of Ineligibility or Disqualification."

- You may receive a "**Monetary Determination**" that says "Our records show that you do not have the required employment and earnings in the base period shown below to establish an Unemployment Insurance claim as of the above effective date."
 - If the information listed on the notice is accurate, but you have more recent earnings that are not listed, you may still be able to get benefits by using the *Alternate Base Period*. Just follow the instructions on the notice for using the alternate base period. **You have only ten days to do this from when the notice was mailed.**
 - If your earnings from a job do not show up on the notice, your employer may have failed to report your wages to New York State. This can happen if you were paid "off the books" or if you were improperly labeled an "independent contractor." If this happens to you, check the box that says "Request for Reconsideration/Hearing," write in your actual earnings, and provide any documentation you can, such as check stubs or bank deposit slips.
- You may also receive a "**Notice of Determination of Ineligibility or Disqualification.**" If what it says under "Reason" is not true, you may be still be able to get benefits by proving your case to a judge. This can happen if your employer gave false information to the Department of Labor about why you lost your job. The most common examples are saying you got fired for something that you didn't really do or saying you quit when you really got fired. Sometimes you can receive a notice like this even if you started receiving benefits for a few weeks.

Fighting Back: Requesting an Unemployment Insurance Hearing

1. Check the **date** on your **Monetary Determination Notice or Notice of Determination**. You have **30 days** from the date on your Notice to request a hearing. Don't miss the deadline!
2. Request for a hearing **in writing**.
 - Keep the request simple by stating: "I have received the Notice of Determination dated _____. I disagree with the determination and request a hearing."
 - Include your **Social Security number**, sign the letter, and keep a photocopy for yourself.
 - Send the letter to:
**New York State Department of Labor
PO Box 15131
Albany, NY 12212-5131**

3. While you wait for a hearing date, **call in weekly and claim your UI benefits.** Even if you win your hearing, you will still only receive benefits for the weeks that you claimed

4. In about 2 weeks, you will receive a **Notice of Hearing.** It will contain your case number and hearing date, time and location; and the "Purpose of Hearing." This lists the issue or issues that will be addressed at the hearing.

Your Day in Court: Winning at the Hearing

A hearing is an informal trial held before an Administrative Law Judge (an "ALJ"). Based on the evidence presented at the hearing, the judge will decide whether you are entitled to unemployment insurance benefits. If you live in or worked in the five boroughs, your hearing should take place at **110 King Street (off Hudson Street) on the 6th Floor in Room 6000.** (1/9 train to Houston St. or C to Spring St.)

Preparation for the hearing

- Using a calendar if you can, take time out to remember the date you last worked, the date you filed for benefits, and any other helpful dates. You will be more persuasive if you know these details.
- Prepare an explanation of what happened to make you lose your job. Focus specifically on why you disagree with the reason given in the Notice of Determination.
- Gather and bring both originals and photocopies of anything that will help to prove your case, such as letters you wrote or received, your journal or date book, pay stubs, etc. Try to obtain letters that back up your story, such as a note from your doctor if you missed work due to illness.
- Contact any witnesses that can back up your version of the events, such as a co-worker who saw what happened when you lost your job. Bring any witnesses with you to the hearing.
- Visit the Department of Labor and look at your file. You can do this if you arrive more than half an hour before your hearing, or if you come on an earlier day. Your file will contain any information your employer gave to the Department of Labor, so you know what to expect at the hearing.
- **If you do not feel ready for the hearing, such as if you need more time to bring in witnesses or to find someone to represent you, go to the hearing anyway.** At the beginning of the hearing when the ALJ asks if you are ready, explain why you need more time.

What Happens At the Hearing

- The hearing will be held in a small office with a table that seats 4 to 5 people, with the judge's desk at one end of it. The entire hearing can take anywhere from 30 minutes to a few hours.
- The hearing will be tape-recorded, and everyone who testifies must swear an oath to tell the truth.
- The ALJ will explain what is happening and will probably ask both you and your employer questions about how you lost your job.
- In addition to the ALJ's questions, both sides will be given an opportunity to:
 - present evidence, such as documents or statements by you or your witnesses;
 - ask questions of the other side's witnesses (This means that your employer can ask you questions about what happened.); and
 - make closing statements.
- Remember to focus on what's wrong with the reason give in the Notice, not other complaints you might have about your job.

You will get a decision in the mail in about two weeks. If you disagree with the decision, you may appeal it.

HELP IS AVAILABLE. If you have a problem with your unemployment insurance claim, you may be able to get **free** legal advice from the Employment Law Clinic. You may also be able to get **free representation** at your hearing. Call the phone numbers on the front of this fact sheet.

For more information about the unemployment insurance benefits, read NELP's fact sheets called

Benefits for Unemployed Workers

Getting Unemployment Benefits and Keeping Them