

**PETITIONS FOR JUDICIAL REVIEW OF DECISIONS DENYING
UNEMPLOYMENT INSURANCE
FOR
MISCELLANEOUS REASONS**

This document should be used in conjunction with the model Petition for Judicial Review prepared by Nevada Legal Services which is available at the Self Help Center. The most common disqualifications from receiving unemployment insurance benefits are misconduct connected with the work or quitting without good cause. Use these instructions if you were disqualified for any reason other than those two.

The court will not hear new evidence or re-evaluate the evidence which was submitted to the Employment Security Division (ESD). It will reverse ESD's decision only if the court determines that either there is no substantial evidence in the record supporting a finding that you should be disqualified or that as a matter of law you should not be disqualified.

You write out your arguments as to why the record does not show that you are should be disqualified in the blank spaces at Section III ARGUMENT in the model PETITIONER'S OPENING BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW

To help you understand what behavior justifies disqualifying you from receiving benefits the below information is provided. You can use them to help frame your arguments. Disclaimer: other than the statutes themselves, this information does not have the force of law. The information does, however, generally reflect a common understanding of what evidence justifies disqualifying you from receiving unemployment compensation benefits.

Read through the information to find the reasons that ESD used to disqualify you from receiving unemployment insurance benefits or to reduce your benefits. Analyze your situation in light of this information to see if you have a legal argument as to why ESD should not have done so.

EXAMPLE: ESD disqualified you because it considered you unavailable for work because you're caring for an elderly relative in your home. However there was undisputed evidence in the record that your sister offered to take your place while you are on the job. You might therefore argue that you were available for work.

Use your analysis to write out your argument in the blank spaces in the model brief.

- If ESD disqualified you for a reason which does not meet the

standard for disqualifying you make your argument in the spaces following *A. Respondent's decision was clearly erroneous as a matter of law in so far as....*

- If ESD disqualified you without providing any reason as to why you were disqualified or if ESD conducted the hearing in some unfair/arbitrary fashion, make your argument in the spaces following *B. Respondent's decision was arbitrary and capricious and an abuse of discretion...*
- If ESD disqualified you for a reason which does meet one of the reasons for disqualifying you but the record does not contain any "substantial evidence" (something beyond hearsay) that you should be disqualified for that reason, make your argument in the spaces following *C. Respondent's decision was not based on substantial evidence....*

Miscellaneous reasons to disqualify a claimant from receiving benefits or to reduce benefits

Labor Dispute: NRS 612.395

A claimant will be disqualified for unemployment benefits if his unemployment is due to a labor dispute in active progress where he was last employed, unless he can show that he is not participating in or financing or directly interested in the labor dispute, or does not belong to a grade and class of workers directly involved in the dispute. This section has been upheld in a number of Nevada Supreme Court opinions. A striking worker can demonstrate his lack of involvement in the dispute by making an unqualified offer to return to work. Four Queens V. Nevada Employment Security Department, 105 Nev. 53, 769 P. 2d 49 (1989)

Vacation Pay: (NRS 612.425 and NRS 612.430)

NRS 612.425 Vacation Pay: A claimant will be disqualified for any period of time that is compensated by vacation pay if that period could have been compensated by vacation pay had termination not occurred. Such payment must have been issued on the day of termination or within the next two paydays following termination.

NRS 612.430 Receipt of pay for vacation on termination of employment: A claimant shall be disqualified for benefits for any week following termination of work, which could have been compensated by vacation pay had termination no occurred, if the claimant actually receives such compensation at the time of separation or on regular paydays immediately following termination.

Wages in Lieu of Notice; Severance Pay: NRS 612.420

NRS 612.420 Receipt of wages in lieu of notice; severance pay. A person is disqualified for benefits for any week with respect to which he receives either wages in lieu of notice or severance pay.

Able and Available: NRS 612.375

To receive benefits, NRS 612.375 requires that you be both able to work and available for work. Being available for work means that you have the potential for and are willing to accept suitable employment. Being able to work means that you must be physically able to perform the job duties of the work sought at the time you file a claim and you must have a realistic attachment to the labor market.

- **Are you able to work?** To determine whether you are able to work, such things as illness, injury, pregnancy, and hearing, speech and vision defects may be considered. If the evidence showed that you were able to work full time in occupations in which you have had training or experience then you can argue that you were wrongly disqualified. On the other hand, if the record shows you received compensation for temporary total disability or permanent partial disability or social security disability, that is evidence that you are unable to work which you must overcome.
- **Are you available for work?** You can argue that you are "available for work" if the record shows that you have arranged your personal circumstances (child care, transportation, etc.) in a way that you can immediately accept suitable work. Unreasonable, self-imposed restrictions (such as unwillingness to work all customary hours) may be considered as evidence that you are unavailable. Evidence of a willingness to remove any controllable restrictions supports availability.

Suitable Work: NRS 612.390

NRS 612.390 allows ESD to disqualify you if you fail, without good cause, either to apply for available, suitable work when so directed by ESD, or to accept suitable work when offered.

- **Was there a bona fide offer or referral of work?** You may argue that there was not a genuine offer of work for a specific job. If the record does not show a starting date, time to report, hours of work and rate of pay that the offer was conveyed to you, you might argue that the offer or referral was not "bona fide".
- **Was the job "suitable"?** You might argue that considering your skills, training, experience, capabilities and previous earnings that the job offered was not "suitable". If the record shows that the wages, hours or other conditions of the job are substantially less favorable than those prevailing for similar work in the area or that as a condition of employment you were required to join a union, or resign or refrain from joining a union the job arguably would not be "suitable". Generally suitable covers your customary work but if you have been unemployed for a long time the court might expect you to be more flexible.
- **Was there "good cause" to refuse?** If the record shows you had reasons for refusing, such as illness or lack of childcare or transportation you might argue that you had "good cause". If the circumstances were within your control, does the record show that you made every reasonable effort to remove the restrictions before refusing? Also if the particular job offered would be detrimental for your health you might argue good cause. Be careful, however, that the "good cause" claimed doesn't mean you are unavailable for suitable work.

Academic Breaks; Paid Sabbaticals: NRS 612.432 and NRS 612.434

Generally, both professional and non-professional employees of an educational institution or educational service will be ineligible for unemployment benefits during school vacations or holiday recesses and between academic terms or years if there is reasonable assurance of employment the following term or year. A paid sabbatical leave is also disqualifying.

Misrepresentation: NRS 612.445

When the Division determines that a claimant has made a false statement or representation, knowing it to be false, or knowingly failed to disclose a material fact in order to obtain or increase benefits, the claimant will be required to repay the funds obtained and may be disqualified for up to 52 weeks.