



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report
Regarding Unemployment Benefits
For Individuals Who were Wrongfully Incarcerated

January 17, 2023

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **March 28, 2023**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Project Summary

The New Jersey Unemployment Compensation Law¹ (“UCL” or “Act”) provides that an individual who voluntarily leaves work “without good cause attributable to such work” is “disqualified for benefits” until certain conditions have been met.² An individual’s separation from work as a result of incarceration is reviewed, pursuant to the applicable regulations, as if the individual voluntarily left their employment.³

In *Haley v. Board of Review, Department of Labor*, the New Jersey Supreme Court examined “whether pretrial detention premised on charges that are subsequently dismissed is, automatically, a disqualifying separation from work within the meaning of the Act.”⁴ The absence of statutory language to address the loss of employment due to wrongful incarceration leaves open the possibility that “one arm of the government can cause the loss of a person’s job by detaining him on charges later dismissed by a grand jury, and that another arm can find that the exonerated worker ‘voluntarily’ left his position without good cause and thus disabling him from receiving unemployment benefits.”⁵

The Commission proposes modifications to N.J.S. 43:21-5 to clarify that separation from employment as a result of wrongful incarceration will be reviewed as if the employee left work voluntarily. Consistent with the New Jersey Supreme Court’s decision in *Haley*, the Commission recommends that the issue is to be examined based upon the totality of the circumstances surrounding the individual’s separation from employment.⁶

Statute Considered

N.J.S. 43:21-5, entitled “Disqualification for benefits” states, in relevant part that:

An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case. This subsection shall apply to any individual seeking unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, including any individual who was employed in the production and harvesting of

¹ N.J.S. 43:21-1 to – 71.

² N.J.S. 43:21-5(a) (providing that the disqualification will continue until the individual: (1) becomes reemployed and works for eight weeks; and (2) has earned in employment at least ten times the individual’s weekly benefit rate).

³ N.J.A.C. 12:17-9.1(e)(10).

⁴ 245 N.J. 511, 515 (2021).

⁵ *Id.* at 525 (Albin, J., dissenting).

⁶ See Appendix *infra*. See also N.J. L. Revision Comm’n, FINAL REPORT REGARDING UNEMPLOYMENT BENEFITS WHEN AN OFFER OF EMPLOYMENT IS RESCINDED (June 17, 2021) (proposing modification to N.J.S. 43:21-5(a) to address unemployment benefits when an offer of employment is rescinded).

agricultural crops on a contract basis and who has refused an offer of continuing work with that employer following the completion of the minimum period of work required to fulfill the contract. This subsection shall not apply to an individual who voluntarily leaves work with one employer to accept from another employer employment which commences not more than seven days after the individual leaves employment with the first employer, if the employment with the second employer has weekly hours or pay not less than the hours or pay of the employment of the first employer, except that if the individual gives notice to the first employer that the individual will leave employment on a specified date and the first employer terminates the individual before that date, the seven-day period will commence from the specified date.

* * *

Background

Clarence Haley was arrested for a serious criminal offense and incarcerated, pursuant to a court order, pending trial.⁷ His mother contacted his employer and requested, on his behalf, that his job be preserved.⁸ During the eight weeks that followed, Haley was terminated from his employment, a grand jury declined to indict him, and the prosecutor dismissed all of the charges against him.⁹

Haley filed an application for unemployment compensation after he was released from his pretrial detention.¹⁰ His application was denied by the Department of Labor and Workforce Development (“Department”).¹¹ The reason given for the denial was that he had “voluntarily left his job... without good cause attributable to work.”¹² The decision of the Department was affirmed by the Appeal Tribunal, the Board of Review, and the Appellate Division.¹³

The Appellate Division affirmed the decision of the Appeal Tribunal and the Board of Review citing *Fennell v. Board of Review*.¹⁴ The Court concluded that the UCL was “amended in 1961 to disqualify applicants who leave work for purely personal reasons, and that incarceration was a purely personal reason.”¹⁵ Although the Court acknowledged that the Act does not automatically disqualify individuals from receiving benefits “who have quit or [have] been terminated for personal reasons not connected to work,” it reasoned that “the Legislature would

⁷ *Id.* at 515.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 515-16.

¹² *Id.* at 516.

¹³ *Id.* at 516.

¹⁴ *Id.* at 517.

¹⁵ *Id.*

not have created explicit exemptions from disqualification ... if benefits were payable for any non-work-related reason an employee is terminated from employment.”¹⁶

The New Jersey Supreme Court granted Haley’s petition for certification.¹⁷

Analysis

The UCL is remedial legislation whose purpose is “to provide some income for the worker earning nothing, because he is out of work through no fault or act of his own.”¹⁸ The remedial nature of the UCL requires that it “must be construed liberally in favor of allowance of benefits.”¹⁹ The New Jersey Supreme Court has consistently recognized that the “public policy behind the Act is to afford protection against hazards of economic insecurity due to involuntary unemployment.”²⁰

The Court examined the language of N.J.S. 43:21-5(a) in conjunction with N.J.A.C. 12:17-9.1(e). The Court noted that where incarceration is the underlying reason for an individual’s separation from work, the regulation indicates that the matter is to be reviewed as a “voluntarily leaving work issue” that necessitates a fact-sensitive analysis.²¹ The Court said that in matters involving a claimant’s illness or lack of transportation, “our jurisprudence is consisted with the direction given by the Department” regarding the necessity of a fact-intensive review of “voluntary leaving” cases.²²

The *Haley* Court determined that incarceration, like illness and lack of transportation, “is not an absolute bar to unemployment benefits.”²³ The Court reversed the judgment of the Appellate Division and remanded for a fact-intensive review of the totality of the circumstances surrounding Haley’s detention and release to determine whether Haley “left work voluntarily.”²⁴ The Court indicated that the analysis would have to go beyond whether Haley was “falsely imprisoned” and consider “that authorities arrested Haley, the court ordered him to be detained pretrial, the grand jury declined to indict, and the charges against him were dismissed” and that he took steps to try to protect his employment.²⁵

¹⁶ *Id.* at 516.

¹⁷ 242 N.J. 123 (2020).

¹⁸ *Haley*, 245 N.J. at 520 citing *Utey v. Bd. of Review*, 194 N.J. 534, 543 (2008) (quoting *Battaglia v. Bd. of Review*, 14 N.J. Super. 24, 27 (App. Div. 1951)).

¹⁹ *Id.* at 520.

²⁰ *Id.* citing *Yardville Supply Co. v. Bd. of Review*, 114 N.J. 371, 374 (1989) [emphasis in original].

²¹ *Id.* citing 30 N.J.R. 2027(a) (June 1, 1998) (providing that a review of the relevant circumstances of the individual’s incarceration will be considered in deciding the voluntary or involuntary nature of the separation). See N.J.R. 263(a) (Jan. 5, 2009) (highlighting that the list of circumstances in N.J.A.C. 12:17-9.1(e)’s list of circumstances reviewable as voluntary work issues – such as incarceration - does not necessitate a finding of disqualification rather requires a fact-sensitive analysis to determine whether the claimant’s separation from work is voluntary).

²² *Id.* at 522-524 discussing *DeLorenzo v. Bd. of Rev. (DeLorenzo II)*, 54 N.J. 361, 364 (1969) (adopting the Board of Review’s holding on remand that “when an employee becomes ill and does those things reasonably calculated to protect the employment[, then] notwithstanding that she is not reinstated, there is no voluntary leaving of work.”) and *Utey v. Bd. of Review*, 194 N.J. 534, 550 (2008) (determining that whether the claimant left his job for good cause attributable to work called for a fact-sensitive analysis).

²³ *Id.* at 523-24.

²⁴ *Id.*

²⁵ *Id.* See Appendix *infra* (a)(1)(B)(i) – (iii).

The Dissent

Justice Albin noted that the statutory language regarding whether an employee “has left work voluntarily without good cause attributable to such work... is far from the model of clarity.”²⁶ In his dissent, he questioned whether the Legislature intended to permit “one arm of the government to ... cause the loss of a person’s job by detaining him on charges later dismissed ... and [allow] another arm of the government [to] find that the exonerated worker ‘voluntarily’ left his employment without good cause, thus disabling him from receiving unemployment benefits”²⁷

The dissent rejected the majority’s fact-sensitive analysis because it relied upon a number of “undefined factors” and “certain defined factors”²⁸ According to the dissent, “all exonerated employees who lose their jobs because of pretrial detention are entitled to unemployment benefits under the UCL.”²⁹ Such a determination, the dissent continued, would “advance the socially remedial purposes of the UCL rather than leave the employees doubly victimized – first by a wrongful detention that causes their unemployment and then by a government indifferent to their financial distress.”³⁰

Justice Albin concluded by stating that “[b]ecause this case is ultimately about the meaning of the UCL, the Legislature – by its silence or actions – will have the final word on whether... [the Court’s] decision is consistent with the law it enacted.”³¹

Pending Bills

There are no pending bills in New Jersey that concern the issue raised in this Report.

Conclusion

The Appendix sets forth proposed modifications to N.J.S. 43:21-5(a) based upon the New Jersey Supreme Court’s determination in *Haley v. Board of Review, Department of Labor* to clarify that wrongful incarceration shall be treated as a voluntary leaving work issue that is to be examined based upon the totality of the circumstances surrounding the individual’s separation from employment.

²⁶ *Id.* at 528. Emphasis original.

²⁷ *Id.* at 525 (Albin, J., dissenting).

²⁸ *Id.* at 529 (noting defined factors to be whether the applicant engaged in voluntary acts resulting in absence from work, whether he actively tried to keep the job, and the length of absence from work).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 531. See also *Fennell v. Bd. of Rev.*, 297 N.J. Super. 319, 325 (citing *Self v. Bd. of Rev.*, 91 N.J. 453 (1982) and recognizing that unemployment compensation is a benefit conferred by the Legislature which has set limits on that benefit and that “if additional exceptions to the rule are created, this change must be made by the Legislature.”).

Appendix

The relevant text of N.J.S. 43:21-5, including proposed modifications (proposed additions are shown with underlining, and proposed deletions with ~~striketrough~~), follows:

N.J.S. 43:21–5. Disqualification for benefits

An individual shall be disqualified for benefits:

(a) (1) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case.

(A) For purposes of this subsection, an individual's separation from employment shall be reviewed as a voluntarily leaving work issue where the separation was for the following reasons, including:

(i) Lack of transportation;

(ii) Care of children or other relatives;

(iii) School attendance;

(iv) Self-employment;

(v) Lack of housing;

(vi) Relocation to another area for personal reasons;

(vii) Relocation to another area to accompany a spouse, a civil union partner, or other relatives;

(viii) Voluntary retirement;

(ix) To accept other work; or

(x) Incarceration.³²

(B) To determine whether an individual left work voluntarily, for purposes of subsection (a)(1)(A)(i)-(x), the Department of Labor and Workforce Development shall consider the totality of the circumstances surrounding the individual's separation from employment, including:

³² N.J.A.C. 12:17-9(e)(1)-(10).

(i) whether the applicant for benefits engaged in voluntary acts resulting in the absence from work;

(ii) whether the applicant actively tried to keep the job; and

(iii) the length of the absence from work.³³

(2) This subsection shall apply to any individual seeking unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, including any individual who was employed in the production and harvesting of agricultural crops on a contract basis and who has refused an offer of continuing work with that employer following the completion of the minimum period of work required to fulfill the contract. ~~This subsection shall not apply to an individual who voluntarily leaves work with one employer to accept from another employer employment which commences not more than seven days after the individual leaves employment with the first employer, if the employment with the second employer has weekly hours or pay not less than the hours or pay of the employment of the first employer, except that if the individual gives notice to the first employer that the individual will leave employment on a specified date and the first employer terminates the individual before that date, the seven-day period will commence from the specified date.~~³⁴

(3) This subsection shall not apply to an individual who voluntarily leaves work with one employer to accept employment from a second employer with weekly hours or pay that are not less than the hours or pay of the employment of the first employer and which

(A) commences not more than seven days after the individual leaves employment with the first employer; or,

(B) is scheduled to commence not more than seven days after the individual leaves employment with the first employer, but whose offer of employment from the second employer is rescinded prior to the start date through no fault of the individual.

(4) If an individual gives notice to the first employer pursuant to the provisions of subsection a.(3) that the individual will leave employment on a specified date, and the first employer terminates the individual before that date, then the seven-day period will commence from the specified date.

* * * *

³³ *Haley*, 245 N.J. at 523 *citing Utley v. Bd. of Rev.*, 194 N.J. 534, 548 (2008).

³⁴ The changes recommended in subsections (a)(2) – (a)(4) were the subject of the N.J. L. Revision Comm’n, FINAL REPORT REGARDING UNEMPLOYMENT BENEFITS WHEN AN OFFER OF EMPLOYMENT IS RESCINDED (June 17, 2021) (proposing modification to N.J.S. 43:21-5(a) to address unemployment benefits when an offer of employment is rescinded). Companion bills A1316 and S1606 were introduced in the current session of the New Jersey Legislature and A1316 was passed by the Assembly in June 2022.

COMMENTS

Consistent with contemporary legislative drafting practices, the proposed language divides the statute into subsections to improve accessibility. The proposed modifications divide subsection a. into four subsections.

Subsection (a)(1)(A) – (B)

The proposed modifications in subsection (a)(1) clarify that wrongful incarceration shall be treated as a voluntary leaving work issue as determined by the New Jersey Supreme Court in *Haley v. Board of Review, Department of Labor*.³⁵

The ten reasons set forth in N.J.A.C. 12:17-9.1(e)(1)-(10) that are reviewed by the Board as a “voluntarily leaving work issue” are explicitly enumerated in the proposed modifications in subsection (a)(1)(A). Subsection (a)(1)(B) clarifies that “voluntary leaving work issues” are to be examined based upon the totality of the circumstances.³⁶

Subsection (a)(2) – (4)³⁷

This proposed language is adapted primarily from the suggested language offered by the New Jersey State Bar Association Labor and Employment Law Section. The proposed amendatory language adds a subsection to exempt from disqualification employees who leave their current job upon receipt of an offer of employment with a new employer, scheduled to begin within seven days, which is subsequently rescinded by the new employer through no fault of the employee, as held in *McClain v. Bd. of Review, Dep’t of Labor*. The National Employment Lawyers’ Association – New Jersey suggested that the timeframe be expanded to ten days and the limiting condition be struck, but because these proposals represent an express change in the statute’s substance and are not merely a codification of the New Jersey Supreme Court’s holding in *McClain v. Bd. of Review, Dep’t of Labor* or a “clarification” of an ambiguity, and because we are uncertain about the ramifications of such substantive revisions, we leave consideration of the proposal to the Legislature.

³⁵ 245 N.J. 511 (2021).

³⁶ *Id.* at 523, 524 (noting that finding that where a separation occurs under one of the circumstances listed in N.J.A.C. 12:17-9(e), it is reviewed as a voluntary leaving work issue and should be determined on a case-by-case basis in which all relevant factors must be considered.) (*citing* 41 N.J.R. 263(a)). *See Utley v. Bd. of Rev.*, 194 N.J. 534, 548 (2008) (noting that the relevant factors to be considered include “whether the applicant for benefits engaged in voluntary acts resulting in the absence from work, whether [they] actively tried to keep the job, and the length of absence from work.”).

³⁷ *See also* N.J. L. Revision Comm’n, FINAL REPORT REGARDING UNEMPLOYMENT BENEFITS WHEN AN OFFER OF EMPLOYMENT IS RESCINDED (June 17, 2021).