

SECTION 2: ISSUES THAT ARISE IN DISPUTES OVER UI BENEFITS

Many issues go into determining whether or not a worker will receive unemployment benefits. Some are highly technical, but when benefits are challenged, the issues most commonly raised by employers fall into these categories:

- Misconduct
- Voluntary Leaving
- Refusal of Suitable Work & Availability
- Employee Status

The two most frequent disputes—“voluntary leaving” and “misconduct”— have to do with the reason(s) why the individual is unemployed. Since UI benefits are intended for workers unemployed “through no fault of their own,” eligibility for benefits depends on who decided the worker would no longer be working at this job, and why.

The employer will often claim that it was the worker’s decision to leave the job or that the worker was terminated for conduct that harmed the employer’s interests or that was not allowed by the employer. If the UI representative or the judge accepts this version of events, the worker will be disqualified from benefits.

Section 3 of this handbook gives suggestions on how to present your claim if UI benefits are contested on the basis of “voluntary leaving,” and provides examples of cases where workers were approved for benefits even when their employers claimed that an employee had voluntarily left their job. Defenses for voluntary leaving include: (1) voluntary leaving with good cause attributable to the employer; (2) that the leaving was “involuntary”; (3) voluntary leaving to accept other employment; and (4) that the employer in fact terminated your employment.

Section 4 of this handbook gives suggestions on how to present your case if the employer claims you were fired for “misconduct,” but you believe that your behavior was not misconduct. In the unemployment insurance setting, “misconduct” is more than not meeting an employer’s preferences for how employees should work. In order to be disqualifying, the misconduct needs to involve intentional action against the employer’s best interests or reckless disregard for the employer’s best interests. You can learn more about these issues by reviewing the examples in Section 4.

Both voluntary leaving and misconduct are terms that the UI system uses to determine the reason for a worker’s unemployment, so there can be situations that involve both issues. It may be helpful for you to review both Section 3 and Section 4 whenever either issue is raised.

Section 5 of this handbook addresses disqualifications for “Refusal of Suitable Work” – which addresses whether a worker’s continuing unemployment is caused by a true lack of work, or by the worker refusing to work certain jobs. If an employer can show that you were informed of an available job but chose not to apply for it, or did not accept it when offered, you could be disqualified for UI benefits. The job could be with your former employer, or it could be somewhere else. If your claim was disqualified on this basis, you would need to show that the work available was not actually open or offered to you or was not **suitable** for you, based on any of several factors. Section 5 gives examples of how these factors have been judged in the past, and provides suggestions on how to present your case.

Section 6 provides advice on handling another issue, which arises less frequently than those above, but is still a significant potential disqualification for many workers: the question of whether those working for an employer were **employees or independent contractors**.

Sections 7 and 8 of this handbook give general suggestions on how to prepare for your hearing and how to present your case before the Administrative Law Judge. It is important to remember that a hearing may involve more than one of the potential disqualifications listed above. The notices of Determination and Redetermination identify the issues where they state the reasons for disqualification. You should be prepared to talk about each issue separately. In Section 7, you will also find information on resources and help you can get as you go through this process.

Important: Each section below explains the **burden of proof** that applies for each disqualification. The burden of proof determines which party must bring evidence at the hearing to prove their version of a disputed fact.