

South Carolina Unemployment Insurance Practice Manual



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South Carolina Unemployment Insurance Practice Manual
South Carolina Appleseed Legal Justice Center

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Introduction

This manual has been developed to assist Legal Services and *pro bono* attorneys in the representation of claimants seeking unemployment compensation benefits. Although an attorney is unlikely to be involved until the appeal stage, it is of some benefit to understand the underlying procedures and events leading to that outcome. The manual is organized with Parts One, Two, and Three presented in narrative form, as these sections consist of overviews and general procedural information. Parts Four, Five and Six are presented in an outline format, as this is somewhat more conducive to quick and easy reference on the substantive issues that unemployment compensation matters typically cover. “Practice notes” are included as tips that may be of assistance to the advocate in certain circumstances. A section containing forms commonly used in the administration of the Unemployment Compensation program is also included. Altogether, this manual should provide the practitioner with a framework for evaluating and preparing a case, and for further research if needed.

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PART ONE

OVERVIEW OF THE UNEMPLOYMENT COMPENSATION PROGRAM

The federal-state unemployment compensation (UC) program, created by the Social Security Act (SSA) of 1935, offers the first economic line of defense against the ripple effects of unemployment. The UC program is a federal-state partnership based upon federal law and administered by state employees under federal law. It is almost totally funded by employer taxes on the wages of their workers (only three states collect UC taxes from employees).

The Federal Unemployment Tax Act (FUTA) authorizes the Internal Revenue Service (IRS) to collect the federal employer tax used to fund state agencies. FUTA covers the cost of administering Unemployment Insurance (UI) and job service programs in the state.

The South Carolina Employment Security Commission (SCESC) administers the state unemployment insurance program which protects employees who become unemployed through no fault of their own. The state law is covered in the Title 41 of the South Carolina Code of Laws, and Chapter 47 of the South Carolina Code of Regulations. SCESC is based in Columbia with thirty-six local offices throughout the state, each of which also contain “One-Stop” job service centers, where job seekers and employers can search and post employment listings, utilize computers, and get information on interviewing, resume-writing and other general skills. Lower level (first stage) appeal hearings are also held at the local offices, usually the one in which the claimant originally filed their claim for UI benefits. Upper level appeals are heard before the commissioners at the central office in Columbia. The commissioners are three individuals elected by the General Assembly in joint session, for terms of four years. Any vacancies are temporarily filled by appointment by the Governor until the next session of the General Assembly.

PART TWO

INITIATING A CLAIM FOR BENEFITS

This section will include information on how an unemployed person can file a claim for UI benefits, and how an advocate can be of assistance during this early stage.

A claimant initiates a claim by visiting their local SCESC office, where he will speak to a claimstaker. The claimstaker will take information to determine the claimant's insured status and monetary eligibility, as well as information regarding the separation itself. Essentially, this is an inquiry to decide who the responsible employer is, whether the employee made enough in wages to be eligible for benefits, and if the employee was separated from his job for qualifying reasons.

The claimant should be prepared to provide his Social Security number, mailing and physical addresses, and education level as well as the name and address of the employer, the claimant's occupation, the last day the claimant worked for that employer, and the claimant's reason for leaving. A claimant should answer as honestly and completely as possible. The claimant will also be asked if he wants federal and state taxes withheld from any benefits received (**see Form UCB-101 Request for Determination of Insured Status**).

[Practice note: When completing forms, a claimant may not fully understand some terms used in the process- for example, "lack of work" generally refers to a layoff, not the employee deciding to go home because he felt that there was "nothing to do." The claimant should be reminded that benefits are taxable and he has a choice to have them taken out each week or to pay taxes later. The claimant should read the completed forms before signing to ensure that all the information is correct.]

Claimants can also file a claim online at the SCESC website (www.sces.org). Since claimants are required to actively look for work, they may also wish to register for work through SCESC when they file for benefits. The website allows the claimant to either complete a claim for unemployment compensation or register for work searches or do both at the same time. At the initial visit, the claimant will also be given a packet of information on filing claims, looking for work, and other rights and responsibilities.

The local office will calculate a monetary determination (**see Form UCB 104-B Initial Determination of Status as an Insured Worker**) which will show the claimant's total wages earned during the last five calendar quarters immediately preceding the first day of the claimant's benefit year (which is the one-year period beginning with the day the request for determination of insured status is filed). The first four of these quarters constitutes the claimant's "base period." A claimant must have made sufficient wages during this base period to be monetarily eligible for benefits; this amount is also used to determine the weekly benefit amount and the maximum benefit amount. If the base period total was deemed to be insufficient, the claimant may request a reconsideration or appeal and provide evidence of additional wages that may not have been previously considered.

The local office will send the claimant's last employer a copy of the completed Request for Determination of Insured Status with a questionnaire (**see Form UCB 101-S Request to Employer for Separation Information.**) The questionnaire asks the employer for detailed information regarding the employee's separation. If the employee was discharged from employment, the employer is asked to list warnings and any company policies that were violated. If the employee voluntarily quit, the employer needs to provide the reason that was given by the employee and what attempts were made to alleviate the condition or whether any changes in the terms and condition of employment occurred. The employer may (and often does) submit attachments to support its position. The employer has seven days from the date the form was sent out to provide a response to the local office. If no response from the employer is received by this deadline, the decision may be made based upon the information available.

The employer and the claimant are given the opportunity to attend an in-person fact-finding interview conducted at the local office. At this informal meeting, the claimstaker will attempt to collect and/or clarify more information regarding the separation. The time and date of the interview may be indicated on the Request to Employer for Separation Information, or the local office may schedule one after it has received the employer's information and determines that there is a need for such.

[Practice note: If possible, obtain a copy of the Request to Employer for Separation Information, as the information contained in it is extremely useful for evaluating and developing your case and examining the employer's witnesses. If the employer missed the response deadline, they are more likely more to appeal if benefits are awarded without their input.]

The information provided by the claimant and employer is collected by the local office and sent to the central office in Columbia, where it is evaluated by a claims adjudicator.

Under state law (S.C. Code Ann. 41-35-120), a claimant may be disqualified for between five and twenty-six weeks if the commission finds that he has been discharged for cause connected with his most recent work. The time of the disqualification will result in a corresponding reduction in the total benefit amount. For example, if a claimant is disqualified for eight weeks, he will not receive benefits for the first eight weeks, and the total benefit amount that he can collect in that benefit year will be reduced by eight times the weekly benefit amount.

[Practice note: A charge of "discharge for cause" cannot be made for failure to meet production requirements or quotas unless "the failure is occasioned by willful failure or neglect of duty."]

In 2005, S.C. Code Ann. §41-35-120(2)(b) was added to specifically deal with discharges for cause related to drug policies, drug tests and admissions of drug use. The same year, S.C. Code Ann. §41-35-125 was added to address eligibility of individuals that leave work due to circumstances directly resulting from domestic abuse. In 2007, S.C. Code Ann. §41-35-126 was amended to allow the eligibility of individuals who leave their employer to accompany a spouse employed by the military who is transferring from one military assignment to another.

A claims adjudicator will review all information that has been submitted and issue either a “**Determination by Claims Adjudicator on Claim for Benefits**” (See Form UCB-103) or a “**Determination of Eligibility for Benefits**” (See Form UCB-103B). Form UCB-103B is usually used when a layoff has occurred and the claimant was determined to be eligible without disqualification for unemployment compensation; Form UCB-103 is used in most other circumstances. The determination will state the reason for any disqualification or ineligibility.

[Practice note: Review the entire determination or re-determination and understand what the information in each box means. Note the date of mailing and the information on appeal rights and procedures.]

Throughout this process, which can take several weeks, the claimant must continue to file weekly claims. Failure to do so may result in benefits being delayed or denied. This can be done in person or over the telephone; in either case, the claimant must answer three questions:

1. Did you work during the week you are claiming?
2. Did you quit a job or were you dismissed from a job since you filed your claim?
3. Were you able to work, available to work and looking for work as instructed by the claims office?

PART THREE
PROCEDURAL NUTS AND BOLTS OF REPRESENTING
CLAIMANTS DURING AN APPEAL

Under S.C. Code App. §41-35-660, the claimant or any other interested party may file an appeal from a determination not later than ten (10) days after the determination was mailed to the party's last known address. This includes the claimant's last known employer or any other employer that may have been affected by the determination.

This is the stage where claimant representation is most commonly sought, if at all. Preparation is critical. Many claimants are inadequately prepared, both in terms of emotional readiness and in terms of evidence to support their case. It is the goal of the advocate to address both to ensure a fair hearing and just result.

Once a claimant has decided to appeal their case, a Notice of Appeal should immediately be filed with the Appeal Tribunal by mail or fax or in-person at the local office (**see Form APP-100 Notice of Appeal to Appeal Tribunal**). At whichever stage the advocate accepts the case, a letter of representation should also immediately be sent to the Commission and any other parties.

Timeliness

Every appeal of a claim determination must first be filed with the SCESC Appeal Tribunal in accordance with the instructions printed at the bottom of the determination. In the case of an initial appeal, the Notice of Appeal must be filed within ten calendar days of the mailing date printed on the determination. If the tenth day falls on a Saturday, Sunday or holiday, the appeal period will be extended to the next business day. The appeal must set forth in detail the grounds of the appeal. An appeal may be filed in person at any local office or mailed to the Appeal Tribunal at the address given.

Failure to file an appeal timely may result in rejection of the entire appeal without a hearing. If a hearing is scheduled, the appellant bears the burden of showing to the satisfaction of the Appeals Tribunal that an appeal was untimely for good cause. Timeliness is considered before any separation issues on appeal.

[Practice note: When first contacted for assistance, the claimant should be asked if he has already filed an appeal, when it was filed, and how it was delivered. Any determinations, decisions, and appeals should be reviewed. In a hearing where timeliness and separation are both issues, opposing parties may be excluded from the timeliness portion as their testimony is irrelevant on that matter and will not be considered.]

Preparation

For an advocate, preparation is essential to ensure a fair hearing that gives the claimant an opportunity to present her case. This begins with the initial client contact and request for representation. As soon as is possible, the advocate should obtain copies of the determination appealed and any other correspondence or documentation regarding the claim. Forms to compel the presence of witnesses, documents and other evidence are available through the Appeals Tribunal and online (**see Form APP-107 Application for Issuance of Witness Subpoena**) and can be submitted with the appeal.

The attorney should talk to the claimant in person at least once before the hearing to hear his complete side of the story and evaluate his credibility as a witness. The claimant should be advised that although the hearing is somewhat informal, it will still be an adversarial proceeding. The claimant and all witnesses will have to take an oath and the hearing will be recorded. While the claimant will have the opportunity to state their side of the story, he will also have to answer questions asked by the employer and by the hearing officer.

During the initial interview, the attorney should seek answers to the following inquiries, some of which may have already been provided during the screening process:

- Name of job, including classification, description, duties, etc.
- Duration of employment
- Reason(s) that the claimant no longer is employed there
- Review the case objectively
 - Was the initial determination fair in light of the facts known at the time?
 - Are there additional facts that the claims adjudicator may not have been aware of at the time of the initial determination?
 - What documents or witnesses would help establish client's case?

Following is a list of basic items that should be obtained, reviewed, and prepared for possible use at the hearing. Sufficient copies should be made beforehand, and anything that will be used as an exhibit should be marked. This is not meant to include everything and should be modified according to the case, facts and issues.

- Determination appealed
- Notice of Appeal
- Notice of Appeal Hearing
- Names, addresses and phone numbers of witnesses
- Subpoenas
- Employment records
- Disciplinary records
- Medical absence slips or other records, if relevant to the issues
- Company policies and procedures in effect at time of separation, with any signed acknowledgements.
- Statements, affidavits of witnesses present to testify with knowledge of issues

Refer to the appropriate Substantive Issues section below for more specific guidance in case preparation.

Hearing Procedure

The Commission will mail the Notice of Hearing to the last address of record (see **Form APP-105 Notice of Hearing Before Appeal Tribunal**). If the claimant moves or changes her mailing address, a change of address must be filed with the Commission. The change of address card commonly filed with the U.S. Postal Service is not sufficient—change of address must also be filed specifically with the Commission. The Notice of Hearing will indicate the time and location of hearing, the name of the hearing officer, the issue(s) to be heard, and information on evidence and subpoenas. The attorney and the claimant should verify that the information on the notice is accurate, and contact the Appeals Tribunal if there are any discrepancies or questions. The Appeals Tribunal should also be contacted if a Notice of Hearing is not received in a reasonable time after the appeal is filed.

Upon arrival at the local office where the hearing is scheduled, the attorney, claimant, and all witnesses should sign in at the reception desk, inform the staff that they are there for an appeal hearing, and remain in the waiting area for the call of their case. Ten minutes are granted for late arrivals, otherwise the hearing officer has the authority to close the hearing if the appellant is not present and to release the opposing party. If the appellant is the only party present, their testimony may be taken.

The conduct of the hearing itself is governed by S.C. Code Ann. §41-35-720 and Chapter 47, Article 3 of the S.C. Code of Regulations. Opening statements and closing arguments are generally not allowed. The Administrative Hearing Officer assigned to the case will open the hearing by identifying the case, the parties, and the issues. Hearings are *de novo* in nature and held in conformance with the South Carolina Administrative Procedures Act (S.C. Code Ann. §1-23-310 *et seq.*) The record of the hearing will include material Agency records. The parties may stipulate to certain facts or records.

Generally, the presentation of evidence and testimony is the same as in civil cases before the Court of Common Pleas. Proper foundations should be laid and relevance established for any evidence presented. Subpoenas may be issued to compel the presence of witnesses and/or documents, and sequestration of the witnesses may be ordered at the hearing officer's discretion. All testimony should be by witnesses with first-hand knowledge of the relevant events or issues. Hearsay may be accepted but will be given extremely limited weight, if any. The witnesses will be questioned by the hearing officer. Both parties may engage in direct and cross-examination of all witnesses.

[Practice note: Objections must be made timely and should be ruled upon by the hearing officer by the conclusion of the hearing.

Any issue raised for which notice was not received may be objected to on the record or notice may be waived if appropriate.]

The hearing will be adjourned at the discretion of the hearing officer when it is determined that substantial evidence has been gathered and the parties have had a fair chance to present their cases. Under S.C. Code Ann. §41-35-680, the Appeal Tribunal is required to make findings and conclusions promptly and on the basis of such findings and conclusions affirm, modify, or reverse the determination or re-determination within thirty days from the date of the hearing. The parties will be furnished with copies of the decision, including reasons for the decision, which must be considered the final decision of the Commission unless within ten days of the date of the hearing, a further appeal is initiated.

Telephone Hearings

Occasionally, the Commission will schedule a telephone hearing before the Appeal Tribunal. There are several important differences to be aware of when representing a claimant in one of these hearings.

The Commission will send a Notice of Appeal Hearing by Telephone to the parties (**see Form APP 105-T Notice of Appeal Hearing by Telephone**). Both the attorney and claimant should review the notice thoroughly. Verify the telephone number(s) and other information on the notice and follow up with the Commission immediately if any changes are necessary. If the claimant will be available at another number, contact the Commission to make arrangements. Postponements are granted only in emergencies.

[Practice note: It is best that the claimant, the claimant's witnesses, and the attorney gather at the same location, if possible, for ease in communication during the telephone hearing (as opposed to, for example, the attorney participating from her office and the claimant and witnesses from their respective homes.)]

The hearing officer will initiate the telephone hearing and contact all parties at the appointed date and time. If a party is not called within ten minutes of the scheduled start time, they must call the Commission at the number shown on the Notice of Telephone Hearing in order to preserve their interest in the hearing. The hearing may have been delayed for some reason, or the hearing officer may have been unable to contact the party.

The basic format of the hearing is the same as if it were in-person: the hearing officer will introduce the case and the witnesses present for the record; the hearing officer will ask questions of the witnesses; and all parties will have the opportunity to engage in direct and cross examination. All exhibits intended for submission must be forwarded to the hearing officer and the opposing party prior to the hearing and should be properly marked. During the hearing, the witness should provide a thorough description of any item or document testified to, in addition to establishing a proper foundation and relevance. At the conclusion of the hearing, the hearing officer will release the witnesses. A written decision will be mailed within thirty days and will include further appeal instructions.

PART FOUR

SUBSTANTIVE ISSUES HEARD ON APPEAL

- I. Leaving work voluntarily
 - a. Any insured worker is ineligible for benefits . . . if the Commission finds that he has left voluntarily, without good cause, his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request and continuing until he has secured employment and shows to the satisfaction of the Commission that he has performed services in employment as defined by Chapters 27 through 41 of this title and earned wages for such services equal to at least eight times the weekly benefit amount of his claim. S.C. Code Ann. §41-35-120(1).
 - b. Burden of proof is on the claimant to show by a preponderance of the evidence that they left employment for “good cause.”
 - c. Whether a circumstance constitutes “good cause” is determined on a case-by-case basis.
 - i. Good cause has been interpreted to mean “cause associated with employment” and may include:
 1. a substantial change in terms and conditions of employment,
 2. violation of agreed-upon terms and conditions of employment,
 3. harassment,
 4. illness or disability related to work.
 - ii. Domestic violence: an individual is eligible for waiting week credit and for unemployment compensation if the Commission finds that the individual has left voluntarily or has been discharged because of circumstances relating to domestic abuse and:
 1. reasonably fears future domestic abuse;

2. needs to relocate to avoid future domestic abuse; or
 3. reasonably believes that leaving work is necessary for his safety or the safety of his family. S.C. Code Ann. §41-35-125.
- iii. Transfer of spouse from one military assignment to another: an individual is eligible for waiting week credit and for unemployment compensation if the Commission finds that the individual has left work voluntarily
 1. to relocate because of the transfer of a spouse who has been reassigned from one military assignment to another, and
 2. the separation has occurred within fifteen days of the scheduled relocation date. S.C. Code Ann. §41-35-126.
- d. When did claimant first notify employer that they quit? How did they provide this notification (verbal, written, in-person, etc.)?
 - e. Why did they decide to ultimately leave their job?
 - i. Ascertaining the relation to work may require uncovering several levels of “why”. (For example: “I quit because I got sick of the boss.” Why? “Because he would not stop bothering me?” Why? “I don’t know.” How was he bothering you? “He kept asking me out and got mad when I refused.”)
 - ii. Awareness and sensitivity to the fact that some claimants may have feared (or still do fear) retaliation from an employer or co-worker may assist the advocate in understanding certain situations.
 - f. Was the claimant given the option to quit or be fired?
 - g. What were the steps the claimant took to resolve the issue, the outcome, and the time frame in which this was done?
 - h. Key cases:
 - i. Stone Manufacturing Company v. South Carolina Employment Security Commission, et al., 219 S.C. 239, 64 S.E.2d 644 (S.C. 1951) (military spouse transfer is a personal reason and not good cause) (**Note: Act. No. 67 of the S.C. 2007 legislative session**

(made this specific scenario good cause for leaving employment under certain circumstances)

- ii. Gibson v. Florence Country Club, 282 S.C. 384, 318 S.E.2d 365 (S.C. 1984) (employee quit after new salary system implemented; evidence showed no material change in working conditions to justify leaving, and that employee received notice of effects)
- iii. Samuel v. SCESC and SCE&G, 285 S.C 476, 330 S.E.2d 300 (S.C.1985) (employee failed to comply with leave-of-absence procedures)
- iv. Sviland v. SCESC, 300 S.C. 305, 387 S.E.2d 688 (S.C.App.1989) (disagreement with management decisions insufficient cause for quitting)
- v. Ex Parte SCESC, In re MUSC v. Deas, 504 S.E.2d 345 (S.C.App. 1998) (employee who left position in exchange for a negotiated separation package was not discharged but was held to have voluntarily resigned)

II. Discharge for cause connected with the employment

- a. Any insured worker is ineligible for benefits . . . if the commission finds that he has been discharged for cause connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with ineligibility beginning with the effective date of the request, and continuing not less than five nor more than the next twenty-six weeks, in addition to the waiting period, with a corresponding and mandatory reduction of the insured worker's benefits to be calculated by multiplying his weekly benefit amount by the number of weeks of his disqualification. S.C. Code Ann. §41-35-120(2).
- b. Burden of proof is on the employer to show by a preponderance of evidence that the claimant was terminated for cause associated with employment.

- c. Claimant may be disqualified for between five and twenty-six weeks.
 - i. Depends on the nature and the seriousness of the cause for discharge
 - ii. No disqualification for failure to meet production quotas, unless occasioned by willful failure or neglect of duty.
 - iii. Must show more than incapacity or inability to perform the work
- d. Other considerations include:
 - i. The reasonable expectations of the employer
 - ii. Relevant company policies, communication of these policies to the employee, acknowledgement of these policies by the employee, adherence to these policies by the employer.
 - iii. Prior disciplinary measures (i.e. warnings, counseling, suspensions, etc.)
- e. If the company has communicated a policy prohibiting the illegal use of drugs, the violation of which may result in termination, and an insured worker fails, or refuses to cooperate in, drug testing, or provides a specimen that indicates the positive presence of illegal drugs or legal drugs used unlawfully (without a prescription), that worker is considered to have been discharged for cause if:
 - i. The sample was collected and labeled by a licensed health care professional or another individual authorized by stat or federal law;
 - ii. The test was performed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists or the State Law Enforcement Division; and
 - iii. Any initial positive test was confirmed on the specimen using the gas chromatography/ mass spectrometry method or more accurate scientifically approved methods approved by the National Institute on Drug Abuse. S.C. Code Ann. §41-35-120(2)(b).
- f. Admissions of drug use made to protect oneself from termination in accordance with a company policy are inadmissible if:

- i. A written company policy has been communicated that provides protection from termination for admissions made before an employer's request for testing; and
 - ii. The employee made the admission specifically pursuant to the employer's policy. S.C. Code Ann. §41-35-120(2)(c).
- g. Information received by the employer through a drug-testing program may be received into evidence in proceedings to determine eligibility for benefits. S.C. Code Ann. §41-35-120(2)(d).
- h. How was the termination communicated to the employee?
- i. Key cases:
- i. Lee v. SCESC, 277 S.C. 586, 291 S.E.2d 378 (defines "misconduct" as including:
 - 1. the wanton and willful disregard of the employer's interests;
 - 2. the deliberate violation of rules;
 - 3. the disregard of the standard of behavior which an employer can rightfully expect from an employee; or
 - 4. intentional and substantial negligent disregard for the employer's interest, duties or obligations.))
 - ii. Milliken & Co., Pendleton Plant v. SCESC, 315 S.C.492, 445 S.E.2d 640, rehearing denied, certiorari granted in part, reversed 321 S.C.349, 468 S.E.2d 638 (Whether conduct on which the termination was based is "connected with work" necessitates a case by case analysis; factors to consider include:
 - 1. whether the act occurred during working hours;
 - 2. whether it occurred on the employer's premises; and
 - 3. whether the employee took advantage of the employment relation in order to commit the act.))
 - iii. DeGroot v. SCESC, 285 S.C. 209, .328 S.E.2d 668 (S.C.App. 1985) (employee discharged due to misconduct and intentional refusal to follow employer's instructions)

- iv. Merck v. SCESC, 290 S.C. 459, 351 S.E.2d 338 (S.C. 1986)
(substantial evidence existed to support Commission's finding that
the employee was discharged for misconduct)

III. Eligibility

- a. Claimant must make weekly claims. S.C. Code Ann. §41-35-110 (1).
- b. Claimant must register for work, and continue to report to the employment office as directed. S.C. Code Ann. §41-35-110 (2).
- c. Claimant must be able to work and available to work at his usual trade, occupation, or business or in such other trade, occupation or business as his prior training or experience shows him to be fitted or qualified. S.C. Code Ann. §41-35-110 (3) (see "Availability" below).
- d. Claimant must be actively seeking work in the usual field of employment
 - i. Exception may be made if claimant is attending approved training.
 - ii. Key cases:
 1. Wellington v. SCESC, 281 S.C.115, 314 S.C. 2d 317 (S.C.App.1984) (undocumented and unverified phone contacts insufficient).
 2. Hyman v. SCESC, 234 S.C.369, 108 S.E.2d 554 (S.C.1959) (requirement of an independent effort to secure employment)
- e. Claimant must have been unemployed for a waiting period of one week during the benefit year. S.C. Code Ann. §41-35-110 (4).
- f. Claimant must have been separated, through no fault of his own, from his most recent bona fide employer. S.C. Code Ann. §41-35-110 (5) (see "Leaving work voluntarily" and "Discharge for cause connected with the employment" above).
- g. Claimant must participate in reemployment services, such as job search assistance services, if such need has been determined through the commission's profiling system. S.C. Code Ann. §41-35-110 (6).

IV. Availability

- a. Under S.C. Code Ann. §41-35-110 (3), claimant availability is one of the required factors of eligibility for benefits.
- b. Claimant must have “unrestricted exposure to the labor market.” In other words, there must be no personal circumstances limiting or restricting access to labor market or availability for comparable employment.
 - i. Key cases:
 1. McEachern v. SCESC, 370 S.C. 553, 635 S.E.2d 644 (S.C.App. 2006) (the purpose of the availability for work requirement is to provide a test for determining whether the claimant is actually and currently attached to the labor market)
 2. Sherbert v. Verner, 374 U.S.398, 83 S.Ct.1790 (1963) (benefits cannot be denied to claimant refusing employment due to religious beliefs forbidding work on Saturday)
 3. Murphy v. SCESC, 328 S.C. (availability is a question of fact for the Employment Security Commission)
- c. Self-employment
 - i. Claimant likely had control over own “unemployment” decision
 - ii. May negate “availability” since there is no attachment to the labor market other than in own business and the claimant may actually still be putting hours of work into reviving the business.
 - iii. May also negate “actively seeking work” since there are no attempts to obtain employment other than in own business and claimant may only intend to go back to work in the business.
- iv. Key case:
 1. McEachern v. SCESC, 370 S.C. 553, 635 S.E.2d 644 (S.C.App. 2006) (corporate officer of own business was not sufficiently attached to the labor market, was not “unemployed,” and was ineligible for benefits)

- d. Contracts for academic year
 - i. Teachers or other school employees that have been given a reasonable expectation of contract renewal for the next academic term are not eligible for unemployment benefits during the academic break.
 - ii. Applied to athletes and other workers with reasonable expectations of contracts to work at the conclusion of a regularly scheduled break.
- V. Timeliness of Appeal (see “Timeliness” under Part Three above)
 - a. A signed letter containing the required information may serve as a notice of appeal in lieu of Form APP-100.
 - b. Appellant’s reason for failure to file timely must constitute “good cause” as determined by the hearing officer in order for remaining issues to be considered and decided.
 - c. When was the determination mailed and received?
 - d. What efforts were made to appeal timely?
 - e. What was the method of appeal?
- VI. Absence (from previously scheduled hearing(s))
 - a. Appellant’s reason for failure to appear at a hearing must constitute “good cause” as determined by the hearing officer in order for remaining issues to be considered and decided.
 - b. Did the claimant receive the hearing notice? When?
 - c. Did the claimant provide prior notification of their absence to the tribunal?
- VII. Voluntary Retirement
 - a. Any insured worker is ineligible for benefits . . . if the Commission finds that he voluntarily retired from his most recent work.
 - i. The ineligibility begins with the effective date of the claim and continues until the individual submits satisfactory evidence of

- having earned wages not less than eight times his weekly benefit amount.
- ii. "Most recent work" means the job that the claimant retired from.
 - b. Retirement plans that include a waiver or release of employee claims to unemployment compensation benefits as part of participation in the plan are prohibited.
 - c. Key case:
 - i. Richey v. Riegel Textile Corporation, 253 S.C. 59, 169 S.E.2d 101 (S.C. 1969) (claimant voluntarily participated in plan requiring mandatory retirement age)

VIII. Overpayment

- a. A person who has received a sum as benefits under Chapter 27 through 41 while conditions for the receipt of benefits imposed by these chapters were not fulfilled or while he was disqualified from receiving benefits is liable to repay the Commission . . . a sum equal to the amount received by him. S.C. Code Ann. §41-41-40(A)(1).
- b. Upon written request by the person submitted to the Commission within the statutory appeal period from the issuance of overpayment, the Commission may waive repayment if the Commission finds that the:
 - i. overpayment was not due to fraud, misrepresentation or willful nondisclosure on the part of the person;
 - ii. overpayment was received without fault on the part of the person; and
 - iii. recovery of the overpayment from the person would be contrary to equity and good conscience. S.C. Code Ann. §41-41-40 (B)(2).
- c. Request supporting information from Commission, if necessary
- d. Verify amount and reason for overpayment (**see Form BPC-128 Determination of Overpayment**).
- e. The facts of the underlying appeal cannot be argued if the deadline for appeal of that matter has passed.

- f. Whoever makes a false statement or representation, knowing it to be false or who knowingly fails to disclose material facts,
 - i. to obtain or increase benefits under an employment compensation program of this state or any other state, for the claimant or another person, shall be punished by a fine of up to one hundred dollars or by imprisonment of not longer than thirty days. S.C. Code Ann. §41-41-10.
 - ii. to prevent or reduce payment of benefits or contributions shall be punished by a fine of up to one hundred dollars or by imprisonment of not longer than thirty days. S.C. Code Ann. §41-41-30.
- g. Any claimant found to have knowingly made a false statement or who knowingly failed to disclose a material fact shall be ineligible to receive any benefits for the week in which such claim was filed and for up to fifty-two consecutive weeks. S.C. Code Ann. §41-41-20.
- h. Five-year statute of limitations on overpayment actions (from date of final determination.) S.C. Code Ann. §41-41-40 (A)(4).

IX. Job Offer and Referral (Failure to Accept Work)

- a. An insured worker is ineligible for benefits . . . if the Commission finds that he has failed, without good cause
 - i. either to apply for available suitable work;
 - ii. to accept available suitable work; or
 - iii. to return to his customary self-employment (if any). S.C. Code Ann. §41-35-120(3), S.C. Code of Regulations 47-23.
- b. The employer must provide a written offer of work, including specific information about the proposed employment, and submit this to the Commission within seven (7) days of the offer. (If an oral offer of work is made, a sworn statement must be submitted to the Commission.)

- c. “Suitable” considers degree of risk involved to claimant’s health, safety and morals; physical fitness and prior training; experience and prior earnings.

X. Unemployment Due to Labor Disputes

- a. An insured worker is ineligible for benefits . . . for any week that the Commission finds that his total or partial unemployment is directly due to a labor dispute in active progress at the site at which he was last employed. S.C. Code Ann. §41-35-120(4).
 - i. Exception: if it is shown that the claimant was not participating in, financing, or directly interested in the labor dispute.
 - ii. Exception: if it is shown that the claimant did not immediately before separation, belong to the bargaining unit or class of workers that were participating in or directly interested in this labor dispute.
- b. If separate branches of work are commonly conducted as separate businesses in separate premises, or separate departments of the same premises, each department for purposes of this section is considered a “separate” premises.
- c. The employer is required to submit notice to the Commission on the dispute and the number of workers affected and a special examiner is designated by the Commission to determine whether an insured worker’s unemployment exists due to the labor dispute and to review other related matters. S.C. Code of Regulations 47-21(D).

PART FIVE

SUBSEQUENT APPEALS

I. Appeal to Commission

- a. Any party aggrieved by the decision of the Appeal Tribunal may apply for leave to appeal such decision to the Commission, within ten (10) calendar days after the date of notification or mailing of the Appeal Tribunal's decision. S.C. Code Ann. §41-35-710, S.C. Code of Regulations 47-52(A).
(See Form APP-111 Application for Leave to Appeal to Commission.)
- b. Transcript of Appeal Tribunal hearing is prepared for all parties.
- c. Commission may grant or deny any Application for Leave to Appeal without a hearing, or may notify the parties to appear before it for argument.
- d. Copies of notice are sent to all parties
- e. Commission may limit the parties to oral argument or may permit the filing of written argument, or both.
- f. A complete record is kept of all proceedings, but will not be transcribed unless the claim is further appealed.
- g. Scope of review:
 - i. On appeal of unemployment benefits decision, Employment Security Commission has the authority to make its own findings of fact consistent with or inconsistent with those of the Appeal Tribunal.
 1. Merck v. SCESC, 290 S.C. 459, 351 S.E.2d 338 (S.C. 1986) (regarding the Employment Security Commission's authority to make its own findings of fact)
 - ii. No new evidence will be taken. The case shall be heard solely upon the evidence in the record before the Appeal Tribunal.
 - iii. If additional evidence is required it is taken in the manner prescribed for the conduct of hearings before the Appeal Tribunal,

including seven (7) days calendar notice. After the new evidence and testimony is taken as directed by the Commission, either a new decision is issued or the case is sent back to the Commission for its consideration and decision.

h. Commission Decisions

- i. Two members constitute a quorum.
- ii. If a decision is not unanimous, the decision of the majority shall control. The minority may be recorded as dissenting or may file a written dissent, setting forth the reasons for disagreement with the majority.
- iii. Written decisions are mailed to the interested parties. S.C. Code Ann. §41-35-710, S.C. Code of Regulations 47-52 (E).

II. Judicial Appeals

- a. Under S.C. Code Ann. §41-35-740, only after an aggrieved party has exhausted all administrative remedies is judicial review permitted. A petition for review must be filed with the Court of Common Pleas in the appropriate county and served within 30 days of issuance of Commission's decision.
 - i. County in which employee resides
 - ii. County in which the employee was last employed
- b. SCESC is named as a party.
- c. Placed on motion roster and given high priority.
- d. Judge can reverse, remand or uphold Commission's decision.
- e. Scope of review:
 - i. In reviewing a decision of the Employment Security Commission, the circuit court must affirm the factual findings of the Commission if they are supported by substantial evidence. S.C. Code Ann. 1-23-380.

- ii. Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency in question reached.
- iii. On questions of witness credibility, the courts will defer to the judgment of the agency.
- iv. S.C. Code Ann. §41-35-750 states that “[i]n a judicial proceeding under this chapter, the findings of the commission as to the facts, if supported by the evidence and in the absence of fraud, must be conclusive and the jurisdiction of the court must be confined to questions of law.”
- v. Key cases:
 - 1. Milliken & Co., Pendleton Plant v. SCESC, 315 S.C.492, 445 S.E.2d 640 (S.C. App. 1994) rehearing denied, certiorari granted in part, reversed 321 S.C.349, 468 S.E.2d 638 (substantial evidence supported Commission finding that alleged misconduct did not occur, but see J. Toal’s dissent recommending remand to consider evidence improperly disregarded)
 - 2. Merck v. SCESC, 290 S.C. 459, 351 S.E.2d 338 (S.C. 1986) (substantial evidence existed to support Commission’s finding that the employee was discharged for misconduct)

PART SIX

MISCELLANEOUS ISSUES

- I. Collateral estoppel does not apply.
 - a. Findings of fact made during SCESC hearing will not be given any preclusive effect in any subsequent litigation between employer and employee.
 - b. Key case:
 - i. Shelton v. Oscar Meyer Foods Corp., 319 S.C 81, 459 S.E.2d 851 (S.C. App., 1995), aff'd 325 S.C. 248, 481 S.E.2d 706 (S.C.1997) (application of the doctrine would frustrate the purposes of the hearing)
- II. Child support obligations must be disclosed and payments will be deducted from benefits. (S.C. Code of Regulations, 47-42)
- III. Other UI programs administered by ESC.
 - a. Extended benefits (S.C. Code Ann. §41-35-310 et seq.)
 - i. Claimant must have exhausted benefits
 - ii. Any disqualifications must be terminated
 1. Claimant may be required to return to work for a specified period of time.
 2. Claimant may be required earn four times the weekly benefit amount of his claim.
 - iii. Claimant must also meet all other eligibility requirements for regular benefits (see S.C. Code Ann. §41-35-110).
 - iv. Key case:
 1. Floyd v. South Carolina Employment Security Commission, 281 S.C. 483, 316 S.E. 2d 143 (S.C. 1984) (to

- terminate disqualification, claimant must be employed for a period of time after application for extended benefits)
- b. Trade Adjustment Assistance (TAA) and Trade Readjustment Allowances (TRA)
 - i. Federal programs administered by SCESC that provide assistance to workers who lose their job or have their hours reduced as a result of outsourcing or increased imports
 - ii. Requires certification issued by U.S. Department of Labor
 - iii. Claimant may be required to enroll in training
 - c. Disaster Unemployment Assistance (Disaster Relief and Emergency Assistance)
 - i. Federal program provides temporary financial assistance to individuals unemployed as result of a major disaster declared by the President
 - ii. Eligibility requirements
 - 1. An individual must be out of work as a “direct result” of a major disaster;
 - 2. does not qualify for regular unemployment insurance from any state; and
 - 3. must apply for benefits 30 days after disaster declared (late applications accepted with showing of “good cause”)
 - d. Federal Bonding Program
 - i. Provides bonding insurance coverage to high-risk individuals that may have been denied commercial coverage.
 - ii. Individuals must meet at least one of the following criteria to qualify: criminal record, history of alcohol or drug abuse, lack of employment, poor credit history, dishonorable military discharge, or TANF recipient.
 - iii. Insures the employer for any type of theft, forgery, larceny or embezzlement for a six-month period.
 - iv. Employer needs to have made an offer with a start date.

Appendix I

References and Resources

South Carolina Code of Laws, 1976 Annotated, with 2006 Cumulative Supplement
Title 41 Labor and Employment, Chapters 27 – 41

South Carolina Code of Regulations,
Chapter 47 South Carolina Employment Security Commission

Labor and Employment Law for South Carolina Lawyers,
South Carolina Bar- CLE Division, 1999
Edited by M. Malissa Burnette, Leigh M. Nason, and M. Baker Wyche III

Unemployment Compensation: Federal State Partnership
U.S. Department of Labor, Office of Workforce Security, Division of Legislation, 2006

National Employment Law Project
Washington, D.C.
www.nelp.org

South Carolina Employment Security Commission
Columbia, SC
www.sces.org

Philadelphia Unemployment Project
Philadelphia, PA
www.pliaup.org

U.S. Department of Labor
Washington D.C., (Wage and Hour Division, Columbia SC)
www.dol.us.gov

Appendix II

Unemployment Insurance Sample Forms

**SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
REQUEST FOR DETERMINATION OF INSURED STATUS**

U.P. ENTRY

1. NAME						
NAME WORKED UNDER IF DIFFERENT		2. SOCIAL SECURITY NUMBER		21. LOCAL OFFICE NO.		
3. ADDRESS (ALL CORRESPONDENCE)				22. O*NET SOC CODE	23. FIPS CODE	
CITY _____ COUNTY _____ STATE _____ ZIP _____				45	0	
PHYSICAL LOCATION (OF CLAIMANT)						
CITY _____ COUNTY _____ STATE _____ ZIP _____				24. PROGRAM CODE		
4. TELEPHONE		5. MALE <input type="checkbox"/> FEMALE <input type="checkbox"/>	6. DATE OF BIRTH	25. CLAIM TYPE		
			Month Year	<input type="checkbox"/> 1.1G	<input type="checkbox"/> 3. HOME	
				<input type="checkbox"/> 2.1G/ADP	<input type="checkbox"/> 4. UPP/ICK	
				<input type="checkbox"/> 3.1G/CK	<input type="checkbox"/> 7. CKX	
				<input type="checkbox"/> 4.1G/CE/CKX	<input type="checkbox"/> 8. CKW	
				OTHER		
7. EDUCATION (CHECK HIGHEST GRADE COMPLETED) 0□1□2□3□4□5□6□7□8□9□10□11□12□13□14□15□16□17+□						
8. BONA FIDE EMPLOYER (COMPANY NAME / ADDRESS) ACCT. NO. _____ NAME _____ STREET _____ CITY _____ STATE _____ ZIP _____ TELEPHONE _____				26. ETHNIC CODE	27. RACE CODE	
				<input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5 <input type="checkbox"/> 6		
28. ALIEN <input type="checkbox"/> PERMIT NUMBER _____						
29. DATE CLAIM FILED 30. CLAIM EFFECTIVE DATE						
			month day year	month day year		
31. PENSION TO BE DEDUCTED 32. DRP INTERVAL						
<input type="checkbox"/> OTHER						
S _____ PER MONTH						
33. NO EMPLOYER REPLY <input type="checkbox"/>						
34. CLAIMSTAKER NUMBER _____						
35. INCOMPLETE (CLAIMANT DID NOT RETURN FOR FACT FINDING) <input type="checkbox"/>						
9. LAST DAY WORKED		10. MAIN OCCUPATION				
Month	Day	Year				
11. WHY DID YOU LEAVE YOUR BONA FIDE EMPLOYER? LACK OF WORK <input type="checkbox"/> QUIT <input type="checkbox"/> DISCHARGED <input type="checkbox"/> STILL WORKING <input type="checkbox"/> REASON _____						
12. NON SEPARATION ISSUE		13. WEEKLY BENEFIT AMOUNT				
<input type="checkbox"/> CODE						
14. DO YOU WANT FEDERAL AND STATE TAXES WITHHELD FROM ANY UNEMPLOYMENT YOU RECEIVE? THE TAXES WITHHELD WILL EQUAL 17% OF THE GROSS WEEKLY BENEFIT AMOUNT. <input type="checkbox"/> YES <input type="checkbox"/> NO						
15. I hereby certify under penalty of perjury, that I am a citizen or national of the United States..... If no: I hereby certify under penalty of perjury, that I am in a satisfactory immigration status. <input type="checkbox"/> YES <input type="checkbox"/> NO						
16. Have you worked in another state within the past 24 months? <input type="checkbox"/> YES <input type="checkbox"/> NO						
17a. Do you have any restrictions due to health concerning your ability to work? <input type="checkbox"/> YES <input type="checkbox"/> NO						
18. Do you have Federal civilian employment or active military service within the past 18 months? <input type="checkbox"/> YES <input type="checkbox"/> NO						
19. Are you seeking or receiving benefits under another state or federal law? (Example: WIA training payments, workers' compensation, unemployment insurance in another state, etc.) <input type="checkbox"/> YES <input type="checkbox"/> NO						
20. Are you receiving, or will you receive , retirement payments in the next twelve months? (Exclude Social Security) If "YES" indicate amount per month \$ _____ Type _____ What is the effective date of the pension or retirement payment? _____ Did you contribute to the retirement plan? <input type="checkbox"/> YES <input type="checkbox"/> NO Amount _____						
I hereby request a determination of my insured status. I verify that all information included on this form is correct, and I understand that penalties are provided for making false statements or failing to disclose material facts to obtain benefits. I understand that I must report to the local office as instructed to continue my claim for benefits. I did complete this form in person and in the local office where I am filing this claim.						
DO NOT WRITE IN THIS BOX		CLAIMANT'S SIGNATURE				
EMPLOYER		JOB LOCATION	DATES FROM _____ TO _____		SEPARATION REASON	
BONA FIDE ACCOUNT NO. _____					AMOUNT PAID	
TAXFILE ACCOUNT NO. _____						
Q/HIC (IF REQUIRED) ACCOUNT NO. _____						

UCB-101 Request for Determination of Insured Status

Base Period Explained

Base Period Shown by Shaded Months

Oct Nov Dec	Jan Feb Mar	April May June	July Aug Sept		Jan Feb Mar	← If your claim's effective date is in:	
Oct Nov Dec	Jan Feb Mar	April May June	July Aug Sept	Oct Nov Dec		April May June	
	Jan Feb Mar	April May June	July Aug Sept	Oct Nov Dec	Jan Feb Mar		July Aug Sept
	Jan Feb Mar	April May June	July Aug Sept	Oct Nov Dec	Jan Feb Mar	April May June	Oct Nov Dec
Previous Year							

Your base period is the first four of the last five completed calendar quarters.

Your base period is controlled by the effective date of your claim, not by the date you become unemployed. Using the table above, if your claim is effective during the first three months (the first quarter) of the year, then your base period is the first three quarters in last year plus the last quarter of the previous year. This is true even if your claim is effective on March 31, the last day of the quarter. If your claim is effective during the period April 1 through June 30, your base period is the four quarters of the prior year.

<http://www.sces.org/ui/claimant/IDBook/baseperiod.htm>

Explanation of Claimant Base Period

INITIAL DETERMINATION OF STATUS AS AN INSURED WORKER

LOCAL OFFICE

EFFECTIVE DATE

DATE FILED

DATE PREPARED

SAMPLE

POTENTIAL BENEFITS ESTABLISHED

MILITARY ASSIGNMENTS

WEEKLY BENEFIT AMOUNT

MAXIMUM TOTAL BENEFITS

BENEFIT YEAR ENDS

SEE BACK FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		BASE PERIOD QUARTERLY EARNINGS							
EMPLOYER	ACCOUNT NO.	YEAR	1 QTR	YEAR	2 QTR	YEAR	3 QTR	YEAR	4 QTR

NOTE:

1 - APR, JUN, JULY, AUG, SEPT

2 - APR, MAY, JUNE

BASE QUARTER TOTAL

3 - OCT, NOV, DEC

UCB 104-B Initial Determination of Status as an Insured Worker

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
Request To Employer For Separation Information

CLAIMANT'S
NAME _____

SOCIAL
SECURITY# _____

The claimant named above stated that he/she is a former/current employee of the following employer:

EMPLOYER INFORMATION	
NAME	_____
ADDRESS	_____
ACCT#	TELEPHONE#

1. Dates Worked:
From _____ To _____

2. Total Earnings: \$ _____

3. Claimant's Reason for Separation:
 Still Working
 Lack of Work
 Voluntarily Quit
 Discharged

4. Explanation of Separation: _____

CLAIMANT'S SIGNATURE _____

This claimant has named you as a former employer for whom he/she worked before filing this claim. The information requested must be given in detail and received within seven (7) days or it cannot be considered in making a determination. If you keep this form and reply by letter, you must include all information requested and the name and social security number of the claimant. If you do not wish to reply in writing, you may appear in person to present the information requested. If you wish to appear in person, you have the right to representation; however, any person designated to appear at the proceeding to present information on your behalf should either have direct knowledge of the circumstances surrounding the issue or be able to present the written statement of a person who has such knowledge and/or pertinent written records.

ATTENTION EMPLOYER

Separation information concerning this claim is needed from you even though you may not be the claimant's very last employer.

Please complete the reverse side and return. It must be returned no later than the seventh (7) day from the date shown below.

Month	Day	Year
-------	-----	------



Date Employer Reply Sent

PLEASE RETURN TO:

OVER

UCB 101-S Request to Employer for Separation Information (pg. 1)

- Contact the Employment Security Office shown on the reverse side within the seven (7) day time limit if you wish to appear or be represented at an interview.
- An interview has already been scheduled and will be held at the Employment Security Office indicated on _____ at _____

1. Please indicate the reason for separation and give information requested so that a determination can be made on the claimant's eligibility for unemployment insurance benefits. Attach additional pages if necessary. Failure to respond by the above date could result in a determination being made without information from you.

LACK OF WORK (NO REASON NECESSARY)

DISCHARGED: (Give specific reason.) _____

(If discharged for absenteeism, list number and dates of absences.) _____

(List any warnings and give dates.) _____

(State company policy that was violated, if applicable, and give final incident that caused separation.) _____

VOLUNTARILY QUIT: (Give specific reason.) _____

(If work related, what attempts were made to try to alleviate the condition? What was the agreement at the time of hire regarding this condition, if applicable?) _____

OTHER: (Give specific reason, ex: voluntary retirement, failure to return from a leave of absence (was a definite leave granted, list start and end dates), partially unemployed, etc. Explain in detail.) _____

2. Dates of employment: From _____ To _____

3. During all terms of employment have you paid this claimant as much as: \$ _____ YES NO

If "NO," how much have you paid this claimant in all terms of employment? \$ _____

4. Are you paying, or will you pay this claimant a pension or retirement pay within the next twelve (12) months?

YES NO

If "YES," monthly amount \$ Type _____

What is the effective date of the pension or retirement payment? _____

Did claimant contribute to pension plan? YES No If "YES," what percent. %

EMPLOYER NAME _____ ACCOUNT NUMBER _____

EMPLOYER SIGNATURE* _____ TITLE _____

ENTER NAME AND TELEPHONE NUMBER OF PERSON TO BE CONTACTED FOR ADDITIONAL INFORMATION

NAME _____ TELEPHONE () _____

*FORM MUST BE SIGNED IN ORDER FOR INFORMATION TO BE CONSIDERED.

Request to Employer for Separation Information (pg. 2)

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. BOX 895, COLUMBIA, SC 29202

1

DATE OF THIS NOTICE

CLAIMANT'S NAME			SOCIAL SECURITY NUMBER	Effective Date	DISQUALIFICATION ENDS		
EO. NO.	TYPE	CATEGORY*	WEEKLY BENEFIT AMOUNT	MAXIMUM POTENTIAL ENTITLEMENT	LESS REDUCTION OF	NET TOTAL BENEFITS	BENEFIT YEAR ENDS
			\$	\$	\$	\$	

DETERMINATION BY CLAIMS ADJUDICATOR ON CLAIM FOR BENEFITS

- You are eligible for benefits from the above effective date.
— You have been disqualified from receiving benefits or have found to be ineligible for benefits for the following reason(s).

SAMPLE

L

— LAST SEPARATION FROM NON-LIABLE EMPLOYER

UI CLAIMS ADJUDICATOR

IMPORTANT: THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE. IF THE TENTH DAY FALLS ON A SATURDAY, SUNDAY, OR HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT BUSINESS DAY. YOUR APPEAL MAY BE FILED IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE, OR BY MAIL, ADDRESSED TO THE "APPEAL TRIBUNAL," P.O. BOX 895, COLUMBIA, SOUTH CAROLINA 29202. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE.

UCB 103- Determination by Claims Adjudicator on Claim for Benefits

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P. O. BOX 995, COLUMBIA, S. C. 29202

DETERMINATION OF ELIGIBILITY FOR BENEFITS				
CLAIMANT'S NAME	SOCIAL SECURITY NUMBER	L. O. NO.	TYPE	CATEGORY
WEEKLY BENEFIT AMOUNT	MAXIMUM BENEFIT AMOUNT	EFFECTIVE DATE	BENEFIT YEAR ENDS	DATE OF NOTICE
\$	\$			

It has been determined that you are eligible without disqualification for unemployment compensation. This determination is made based on the South Carolina Employment Security Law and on evidence available at the time of this notice.

The last separation was from a non-liable employer.

SAMPLE
IMPORTANT

THIS DETERMINATION WILL BE THE FINAL DECISION OF THE COMMISSION UNLESS YOU FILE AN APPEAL SETTING FORTH IN DETAIL THE GROUNDS FOR APPEAL WITHIN TEN (10) CALENDAR DAYS, INCLUDING WEEKENDS AND HOLIDAYS, FROM THE MAILING DATE SHOWN ABOVE. IF THE TENTH (10TH) DAY FALLS ON A SATURDAY, SUNDAY, OR HOLIDAY, THE APPEAL PERIOD IS EXTENDED TO THE NEXT BUSINESS DAY. YOUR APPEAL MAY BE FILED IN PERSON AT ANY EMPLOYMENT SECURITY OFFICE OR BY MAIL TO THE "APPEAL TRIBUNAL," AT THE ADDRESS BELOW. FOR ADDITIONAL INFORMATION OR ASSISTANCE IN FILING AN APPEAL, YOU MAY CONTACT YOUR LOCAL EMPLOYMENT SECURITY OFFICE.

APPEAL TRIBUNAL

UCB- 1038
5-98

P. O. BOX 995
COLUMBIA, S.C. 29202

U-8

SOUTH CAROLINA
EMPLOYMENT SECURITY COMMISSION
P. O. BOX 995
COLUMBIA, S. C. 29202
OFFICIAL BUSINESS
UCB- 1038

FORWARDING SERVICE REQUESTED

UCB 103-B Determination of Eligibility for Benefits

BPC-128
REV. 5/104SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
DETERMINATION OF OVERPAYMENT

TO:

S.S. NO.:

DATE:

OVERPAYMENT TYPE FRAUD NONFRAUD

AMOUNT OVERPAID:

WEEKS OVERPAID:

An overpayment determination has been made on your unemployment insurance claim in accordance with Section 41-41-20 of the South Carolina Employment Security Law. You have received benefits to which you were NOT entitled. See items checked below.

- You were paid benefits during a disqualification or a period of ineligibility.
- A revision in your base period wages resulted in a reduction of your weekly benefit entitlement.
- Earnings were not deducted. Pension was not deducted.
- Your claim was withdrawn.
- You knowingly withheld information to obtain or increase your benefits.
- Other:

BENEFIT PAYMENT CONTROL

MAILING DATE

- If this box is checked and the overpayment is non-fraud, you may request a waiver of the overpayment.

IMPORTANT: This Determination will be the final decision of the Commission unless you file an appeal or request for waiver within ten (10) calendar days, including weekends and holidays, from the mailing date shown above. If the tenth (10th) day falls on a Saturday, Sunday or holiday, the period is extended to the next business day. Your request for waiver must be filed in person at any local Employment Security Office. If you cannot report in person, please contact your local Employment Security Office for additional information or assistance. An appeal may be filed in person or by mail addressed to Appeals, P.O. Box 225, Columbia, SC 29202.

Section 41-41-40 of the South Carolina Employment Security Law requires that you return the overpayment regardless of the cause for the overpayment. Please make your personal check, money order, or cashier's check payable to the South Carolina Employment Security Commission and MAIL TO:

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
ATTN: BPC COLLECTIONS, ROOM 100
P.O. BOX 2254
COLUMBIA, SC 29202

DO NOT SEND CASH MONEY THROUGH THE MAIL

To ensure proper credit to your account, please be sure to write your social security number on your payment. If you are unable to pay the entire amount, you can make arrangements to repay your overpayment in installments. If you use the section below to show how you intend to repay your overpayment, if assistance is needed in making such arrangements, contact the BPC Collections Unit at local 737-3327. You may also contact our field representative through your local unemployment insurance office to arrange an installment plan. Failure to repay this overpayment may result in prosecution if the overpayment is fraud, wage garnishment, similar your state tax refund being intercepted and applied to your overpayment.

REPAYMENT AGREEMENT

I UNDERSTAND THAT I AM OVERPAID AND MUST REPAY MY OVERPAYMENT. THEREFORE, I AGREE TO REPAY MY OVERPAYMENT IN INSTALLMENTS OF \$ _____ WEEKLY BI-WEEKLY MONTHLY UNTIL THE BALANCE IS PAID IN FULL.

I UNDERSTAND THAT THIS AGREEMENT HAS TO BE APPROVED BY THE SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION'S BPC COLLECTIONS UNIT AND IS NOT VALID UNLESS A PAYMENT IS ENCLOSED.

I UNDERSTAND THAT IF I BECOME ELIGIBLE FOR UNEMPLOYMENT INSURANCE BENEFITS, THEY WILL BE APPLIED TO MY OVERPAYMENT AND THIS INSTALLMENT AGREEMENT WILL NOT PREVENT THIS FROM HAPPENING.

SOCIAL SECURITY NUMBER

SIGNATURE

DATE

RETURN THIS PORTION WITH YOUR FIRST PAYMENT

BPC-128 Determination of Overpayment

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P. O. Box 995, Columbia, South Carolina 29202

Notice of Appeal to Appeal Tribunal

Claimant's Name: _____ **Social Security Number:** _____ - _____ - _____

Social Security Number: - - -

Claimant's Address:

Date of Birth: _____ Date of Initial Claim: _____ Telephone: _____
(Month/Day/Year) (Month/Day/Year)

Employer's Name: _____ Telephone: _____

Employer's Address:

On _____ I received a claims examiner's determination mailed _____ from
(Date) _____ (Date)
which I appeal and hereby apply for a hearing because I believe it was issued in error for the following reasons:

If appeal is untimely, state the reason:

I know that I must continue to file my claim for each week of unemployment until I receive the Appeal Tribunal's or Commission's decision, until I return to work, or until my claim is exhausted. If I win the appeal, I know I can only be paid for those weeks that I have claimed timely.

(Claimant's Initials)

Does claimant need an interpreter? YES NO What language/dialect? _____ Claimant is Deaf Mute
(If it appears necessary to subpoena witnesses or documents, the Workforce Center representative should use Form 107 and attach them to this form at the time of transmittal to the Central Office.)

SUBPOENA YES NO

Appellant:

Signed By:

Title: _____ Date: _____

*Date Determination Delivered
by Workforce Center:*

Signed: _____
(Workforce Center Representative)

Filed at: _____ Date: _____ 20_____
(Workforce Center Name and Number) (Month) (Day) (Year)

APP-100...Revised 2/06 Received By: _____
Catalog#_ 0548II (Workforce Center Representative)

APP-100...Revised 2/05 Received By: _____
Catalog#_ 05(18) _____ (Workforce Center Representative)

Received By:

(Workforce Center Representative)

APP 100 Notice of Appeal to Appeal Tribunal

APP. 107
Rev. 11/92
Cat. 05140

Appeal File No. _____

**SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
Columbia, South Carolina**

APPLICATION FOR ISSUANCE OF WITNESS SUBPOENA

Claimant's Name _____ SSN _____

Address _____

Employer's Name _____

Address _____

Request for the following to be duly summoned to appear and testify under oath. Certified as necessary in the proper presentation of case. Please limit to three, if possible.

1. Name/Documents _____ Address _____

Telephone No. _____

Title, if any, and point at issue on which witness will testify _____

2. Name/Documents _____ Address _____

Telephone No. _____

Title, if any, and point at issue on which witness will testify _____

3. Name/Documents _____ Address _____

Telephone No. _____

Title, if any, and point at issue on which witness will testify _____

Applicant _____

Signed by _____

Title _____ Date _____

(For Local Office Use Only)

Filed at _____ Date _____
Received by _____ (Month) (Day) (Year)

(Local Office Representative)

APP-105
Revised 7/02

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. Box 995, Columbia, South Carolina 29202

NOTICE OF HEARING BEFORE APPEAL TRIBUNAL

Claimant's Name: _____ Social Security Number: _____
Address: _____

Employer's Name: _____

Appeal Number: _____ Hearing Date: _____ Hearing Time: _____
Year/Month/Year Day/Hour/Minute

Hearing Location: _____

Before: _____

IMPORTANT: IF YOU HAVE APPREALED AND FAIL TO APPEAR WITHIN TEN (10) MINUTES AFTER THE SCHEDULED TIME FOR THE HEARING TO BEGIN, YOUR APPEAL MAY BE DISMISSED; FAILURE OF EITHER PARTY TO PARTICIPATE MAY RESULT IN YOUR INTERESTS BEING ABANDONED.

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Commission at (803) 737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing. Also, if you require any special needs, such as an interpreter, please contact us prior to the hearing.

ISSUES:

- | | | |
|--|---|---|
| <input type="checkbox"/> Voluntary Quit (for good cause) | <input type="checkbox"/> Voluntary Retirement | <input type="checkbox"/> Timeliness of Appeal |
| <input type="checkbox"/> Discharge (for disqualifying cause) | <input type="checkbox"/> Absence from Hearing | <input type="checkbox"/> Fraud & Overpayment |
| <input type="checkbox"/> Availability | <input type="checkbox"/> Overpayment | <input type="checkbox"/> Job Offer & Referral |
| <input type="checkbox"/> Eligibility | <input type="checkbox"/> Other _____ | |

EVIDENCE: This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge. Only documents, such as business records (for example: timesheets, employer's policies or handbook, warnings) can be considered and must be submitted with an original and two copies. The original will be returned. No testimony or evidence will be considered from witnesses who are not present.

SUBPOENAS: If a witness is reluctant to appear, you may apply for a subpoena through the Commission's local offices or the Appeal Tribunal at (803) 737-2520.

LEGAL REPRESENTATION: An attorney licensed to practice in South Carolina may represent you. It is your responsibility to obtain representation prior to the hearing. Fees charged to represent claimants are limited by the Commission.

BENEFITS: A claimant should continue to file for benefits during the appeal process. Weeks not claimed cannot be paid, even if the claimant is held eligible.

THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

MAILING DATE: _____

DRAFT COPY - DO NOT FILE

SMALL CHILDREN AND PETS ARE NOT ALLOWED IN HEARINGS

GENERAL INFORMATION ON THE S.C. EMPLOYMENT SECURITY LAW IS ON THE BACK OF THIS NOTICE.

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
P.O. Box 995, Columbia, South Carolina 29202
NOTICE OF APPEAL HEARING BY TELEPHONE

Claimant's Name: _____ Social Security Number: _____

Claimant's Telephone Number: _____

Employer's Name: _____ Telephone Number: _____

Appeal Number: _____ Hearing Date: _____ Month/Day/Year _____ Hearing Time: _____ AM/PM/Eastern Time

Administrative Hearing Officer: _____ for the South Carolina Employment Security

Commission will conduct this hearing by means of a **TELEPHONE CONFERENCE**. The parties will be called by the Administrative Hearing Officer at the telephone numbers shown on this form. IF NO TELEPHONE NUMBER IS SHOWN OR THE NUMBER IS INCORRECT, YOU MUST CALL THIS TOLL FREE NUMBER (866) 289-5680 IMMEDIATELY TO INFORM US OF YOUR NUMBER SO THAT WE MAY INCLUDE YOU IN THE HEARING.

IF YOU HAVE NOT BEEN CALLED WITHIN 10 MINUTES AFTER THE SCHEDULED TIME OF THE HEARING, YOU MUST CALL (803) 737-2520 EITHER ANOTHER HEARING IS STILL IN PROGRESS OR WE ARE UNABLE TO CONTACT YOU. FAILURE TO CALL OR PARTICIPATE IN THE HEARING MAY RESULT IN YOUR INTERESTS BEING CONSIDERED ABANDONED.

THE HEARING WILL NOT BE POSTPONED EXCEPT FOR AN EMERGENCY. Contact a representative of the Commission at (803) 737-2520, AT ONCE, if you cannot be present at the time scheduled and wish to request a postponement of the hearing. Also, if you require any special needs, such as an interpreter, please contact us prior to the hearing.

ISSUES

Voluntary Quit (for good cause) Voluntary Retirement Timeliness of Appeal

Discharge (for disqualifying cause) Absence from Hearing Fraud & Overpayment

Availability Overpayment Job Offer & Referral

Eligibility Other _____

EVIDENCE: This hearing is your only chance to testify and present evidence. Sworn testimony is required from witnesses with first-hand knowledge. Any documents that you want to be considered in the hearing must be mailed to the Appeal Tribunal at the address above, or faxed to (803) 737-0287. Only documents, such as business records (e.g. timesheets, employment policies or handbook, warnings, etc.) can be considered. In addition to the copy sent to the Appeal Tribunal, you must mail or fax copies to the opposing party. No testimony or evidence can be considered from witnesses who are not present. Documents sent to another address or fax number may not be considered.

SUBPOENAS: If a witness is reluctant to appear, you may apply for a subpoena through the Commission's local office or the Appeal Tribunal at (803) 737-2520.

LEGAL REPRESENTATION: An attorney licensed to practice in South Carolina may represent you. It is your responsibility to obtain representation prior to the hearing. Fees charged to represent claimants are limited by the Commission.

BENEFITS: A claimant should continue to file for benefits during the appeal process. Weeks not claimed cannot be paid, even if the claimant is held eligible.

THIS NOTICE SUPERSEDES ANY PREVIOUS HEARING NOTICE YOU MAY HAVE RECEIVED. IF THE DATE ON THIS NOTICE IS LATER THAN THE DATE ON ANY OTHER NOTICE, YOU SHOULD ASSUME THAT THE PREVIOUS HEARING HAS BEEN POSTPONED AND FOLLOW THE INSTRUCTIONS ON THIS NOTICE.

MAILING DATE: _____

GENERAL INFORMATION ON THE S.C. EMPLOYMENT SECURITY LAW IS ON THE BACK OF THIS NOTICE.

105-T Notice of Appeal Hearing by Telephone

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION

APPLICATION FOR LEAVE TO APPEAL TO COMMISSION

Claimant's Name _____ SSN _____

Address _____ Date of Initial Claim _____

Employer's Name _____

Address _____

Party Appealing _____

On _____, I received Appeal Tribunal Decision No. _____
mailed to me on _____ and ask for review of the record on the following grounds:

*If appeal is untimely, state the reason. If appellant failed to attend Appeal Tribunal hearing, state the reason and whether postponement was requested:

I know that I must continue to file my claims for each week of unemployment during the pendency of this appeal, I know that I can only be paid for those weeks that I have timely claimed. If I have received benefits and am ruled disqualified or ineligible, I know that I will be required to repay the benefits I have received for that time period.

**As a Board of Review, the Appellant _____
Commission is confined solely to the Signed by _____
record submitted by the Appeal Title _____ Date _____
Tribunal and does not accept additional evidence or testimony in its consideration of the appeal.

(For Local Office Use Only)

Filed at _____ Date _____
(Name and Number of Local Office)

Received by _____
(Local Office Representative)

