

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Christopher Michael Bauer — PETITIONER
(Your Name)

VS.

Job Service North Dakota, et al. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

North Dakota Supreme Court, North Dakota Northwest Judicial District

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____, or _____, or

a copy of the order of appointment is appended.


(Signature)

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Christopher Michael Bauer, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ N/A	\$ 5480	\$ N/A
Self-employment	\$ 0	\$ N/A	\$ 0	\$ N/A
Income from real property (such as rental income)	\$ 0	\$ N/A	\$ 0	\$ N/A
Interest and dividends	\$ 0	\$ N/A	\$ 0	\$ N/A
Gifts	\$ 0	\$ N/A	\$ 0	\$ N/A
Alimony	\$ 0	\$ N/A	\$ 0	\$ N/A
Child Support	\$ 0	\$ N/A	\$ 0	\$ N/A
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ N/A	\$ 0	\$ N/A
Disability (such as social security, insurance payments)	\$ 0	\$ N/A	\$ 0	\$ N/A
Unemployment payments	\$ 0	\$ N/A	\$ 0	\$ N/A
Public-assistance (such as welfare)	\$ 3550	\$ N/A	\$ 0	\$ N/A
Other (specify): Parents Support \$ 500		\$ N/A	\$ 500	\$ N/A
Total monthly income:	\$ 4550	\$ N/A	\$ 5980	\$ N/A

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Naniq Global	6375 Kulik Dr, Anchorage, AK 99502	07/13/2025 - Current	\$ 5480
Harlows School Bus Services	1002 8th St E, Williston, ND 58801	10/15/2022 - 03/31/2024	\$ 7916
N/A	N/A	N/A	\$ N/A

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A

4. How much cash do you and your spouse have? \$ 100

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
Checkings	\$ 100	\$ N/A
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value N/A

Other real estate
Value N/A

Motor Vehicle #1
Year, make & model 2017 Toyota 4Runner
Value \$25,000 Loan

Motor Vehicle #2
Year, make & model N/A
Value N/A

Other assets
Description 2022 Winniebago Hide Camper
Value \$30,000 Loan

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ 400	\$ N/A
Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ 35	\$ N/A
Home maintenance (repairs and upkeep)	\$ 0	\$ N/A
Food	\$ 400	\$ N/A
Clothing	\$ 0	\$ N/A
Laundry and dry-cleaning	\$ 150	\$ N/A
Medical and dental expenses	\$ 0	\$ N/A

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 300	\$ N/A
Recreation, entertainment, newspapers, magazines, etc.	\$ 0	\$ N/A
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ 0	\$ N/A
Life	\$ 0	\$ N/A
Health	\$ 0	\$ N/A
Motor Vehicle	\$ 85	\$ N/A
Other: Camper	\$ 25	\$ N/A
Taxes (not deducted from wages or included in mortgage payments)		
(specify): N/A	\$ 0	\$ N/A
Installment payments		
Motor Vehicle	\$ 500	\$ N/A
Credit card(s)	\$ 1500	\$ N/A
Department store(s)	\$ 0	\$ N/A
Other: College Loans	\$ 500	\$ N/A
Alimony, maintenance, and support paid to others	\$ 0	\$ N/A
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ 0	\$ N/A
Other (specify): N/A	\$ 0	\$ N/A
Total monthly expenses:	\$ 3895	\$ N/A

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number:

N/A

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? N/A

If yes, state the person's name, address, and telephone number:

N/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Defaulted on accounts and collections due to appealing this case from district courts to North Dakota Supreme courts. Parents support has been nearly \$35,000 since 03/31/2024 to prevent homeless living.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 28, 2025



(Signature)

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER MICHAEL BAUER,

Petitioner,

v.

JOB SERVICE NORTH DAKOTA and HARLOW'S SCHOOL BUS SERVICES,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of North Dakota

PETITION FOR A WRIT OF CERTIORARI

Christopher M. Bauer, Pro Se Legal
U.S.A.F. Military Veteran
6244 Eastwood Court
Anchorage, AK 99504-4433
Tel: 907-764-1270
Email: apricitygroup@gmail.com

QUESTIONS PRESENTED

1. Whether, consistent with the Fourth, Fifth, and Fourteenth Amendments, a State may deny unemployment benefits based solely on an arrest later resolved by acquittal—and alleged to have been obtained in violation of the Fourth Amendment—relying only on speculative reputational harm arising from unadjudicated allegations.
2. Whether drawing an adverse inference from a claimant’s counsel-advised silence in an unemployment-benefits hearing violates the claimant’s privilege against self-incrimination under the Fifth Amendment.
3. Whether a State agency’s failure to follow federal procedural due-process standards for unemployment hearings—including the rights to present and rebut evidence and the bar on speculative findings—violates the claimant’s constitutional rights.
4. Whether off-duty, isolated conduct unrelated to work, and unsupported by evidence of employer harm or policy violation, can constitute “misconduct” sufficient to disqualify a claimant from unemployment benefits under the Due Process Clause.

PARTIES TO THE PROCEEDING

Petitioner: Christopher Michael Bauer, pro se in the proceedings below.

Respondents: Job Service of North Dakota (state administrative agency).

Harlow's School Bus Services (former employer).

RELATED CASES

North Dakota Supreme Court, Case Number 20250003

North Dakota Northwest Judicial District Judgment, Case Number 53-2024-CV-01455

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDING & RELATED CASES.....	ii
TABLE OF CONTENTS	iii
INDEX TO APPENDICES	iv
TALE OF AUTHORITIES.....	v
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	5
REASONS FOR GRANTING THE WRIT	6
A. Post Acquittal Economic Punishment Violates the Fourth, Fifth, and Fourteenth Amendments.....	6
B. The Administrative Proceeding Flouted Core Due-Process Protections	6
C. The Decision Below Conflicts with Federal Unemployment-Insurance Standards	6
D. The Meaning of “Misconduct” Requires National Clarification.....	7
E. The North Dakota Supreme Court’s One-Sentence Affirmance Merits this Court’s Intervention	7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A - Opinion of the North Dakota Supreme Court, <i>Bauer v. Job Service</i> , 2025 ND 72 (summarily affirming denial of unemployment benefits).....	App. 1
APPENDIX B - Order of the North Dakota Supreme Court Denying Petition for Rehearing.....	App. 2
APPENDIX C - Judgment and Memorandum Order of the Williams County District Court (Case No. 53-2024-CV-01455) affirming Job Service decision.....	App. 3
APPENDIX D - Job Service North Dakota Decisions: (1) Appeal Referee Decision; (2) Review-Board Order	App. 4
APPENDIX E - Text of North Dakota Century Code § 52-06-02(2) (“Misconduct” Disqualification).....	App.5
APPENDIX F - Excerpt from U.S. Department of Labor, <i>Handbook for Measuring Unemployment-Insurance Lower-Authority Appeals Quality</i> (procedural-fairness standards).....	App.6

TABLE OF AUTHORITIES

CASES PAGE	PAGE
Bauer v. Job Service, 2025 ND 72 (N.D. 2025)	6
Boynton Cab Co. v. Neubeck, 296 N.W. 636 (Wis. 1941)	7
Goldberg v. Kelly, 397 U.S. 254 (1970)	2
Mathews v. Eldridge, 424 U.S. 319 (1976).....	6
Nelson v. Colorado, 581 U.S. 128 (2017)	6

CONSTITUTION, STATUTES, AND RULES

U.S. Const. amend. IV.....	2
U.S. Const. amend. V	2
U.S. Const. amend. XIV.....	2
28 U.S.C. § 1257(a).....	2
N.D.C.C. § 52-06-02(2).....	2
N.D. R. App. P. 35.1(a)(5).....	6
29 C.F.R. § (Selected UI Appeals Guideline).....	6

OTHER

U.S. Dept. of Labor, Handbook for Measuring Unemployment-Insurance Lower-Authority Appeals Quality (rev. 2017).....	6
---	---

PETITION FOR WRIT OF CERTIORARI

Christopher Michael Bauer, a resident of Anchorage, Alaska by and through Pro Se legal, respectfully petitions this court for a writ of certiorari to review the judgment of the North Dakota Supreme Court of Appeals.

OPINIONS BELOW

The North Dakota Supreme Court's opinion summarily affirming the denial of unemployment benefits under N.D.R.App.P. 35.1(a)(5) was issued on April 10, 2025 reported as Bauer v. Job Service 2025 ND 72 is attached at *Appendix A*. Petitioner's timely Petition for Rehearing was denied on April 23, 2025 is attached at *Appendix B*. Mandate was issued May 3, 2025.

The North Dakota Northwest Judicial District-court judgment was issued on January 2, 2025 (App. C)."

BASIS FOR JURISDICTION

The North Dakota Supreme Court Judgement on April 23, 2025 is attached at *Appendix C*. This Court's jurisdiction rests on 28 U.S.C. § 1257(a), which authorizes review of final state court judgments raising federal constitutional questions. This Petition is timely filed within ninety days after the denial of rehearing with a Motion for Leave to File Petition for Writ of Certiorari Out of Time due to circumstances beyond Petitioner's control, including personal hardship, ongoing pro se legal proceedings, and resource limitations, he was unable to finalize and file the petition within the prescribed time. The motion is submitted shortly after the deadline and is accompanied by a completed petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. IV – Freedom from Unreasonable Seizures:

The Fourth Amendment guarantees the right “to be secure in [one’s] person ... against unreasonable searches and seizures.” See *Nelson v. Colorado*, 581 U.S. 128, 136 (2017). When an arrest lacks probable cause or is effected through excessive force, it constitutes an unconstitutional seizure. Petitioner’s off-duty encounter began with a false 911 report and escalated into a warrantless arrest later deemed baseless; he was ultimately acquitted of every charge. By using that disputed arrest—and nothing more—as the sole ground for withholding state unemployment benefits, North Dakota converted an allegedly unlawful seizure into an enduring economic penalty. The question presented is whether a State may impose such post-acquittal punishment, tethered to an arrest that itself may violate the Fourth Amendment, without running afoul of the Constitution’s protections against unreasonable seizures and the broader due-process guarantees of the Fifth and Fourteenth Amendments.

U.S. Const. amend. V (Due Process Clause):

The Fifth Amendment commands that no person shall “be deprived of life, liberty, or property, without due process of law.” Once a State creates a statutory entitlement—here, unemployment-insurance benefits—that interest becomes “property” protected by the Due Process Clause. See *Goldberg v. Kelly*, 397 U.S. 254 (1970). Accordingly, the federal government itself (and, through the Fourteenth Amendment, the States) must provide fair, neutral procedures, grounded in evidence, before withdrawing that benefit. Petitioner’s claim is that North Dakota denied him this federally guaranteed process by premising

disqualification on unadjudicated allegations and by drawing adverse inferences from his exercise of constitutional rights.

U.S. Const. amend. XIV (Due Process Clause):

The Fourteenth Amendment extends the Fifth Amendment's due-process guarantee to State action, prohibiting any State from depriving a person of "life, liberty, or property, without due process of law." Because unemployment compensation is a state-created property interest, North Dakota could not terminate Petitioner's benefits without procedures that satisfy federal standards of notice, a meaningful opportunity to be heard, an impartial decision-maker, and findings supported by competent evidence. Petitioner alleges that the State's reliance on a later-dismissed arrest and on speculative reputational harm—together with the hearing officer's refusal to consider exculpatory evidence—breached these Fourteenth-Amendment safeguards.

28 U.S.C. § 1257(a) (Supreme Court appellate jurisdiction):

Section 1257(a) grants this Court jurisdiction to review, by writ of certiorari, "final judgments or decrees rendered by the highest court of a State in which a decision could be had" when a federal right or question is "specially set up or claimed." The North Dakota Supreme Court's order of April 23, 2025, denying rehearing is the State's final judgment, and Petitioner squarely raised federal constitutional claims under the Fourth, Fifth, and Fourteenth Amendments throughout the state proceedings. Jurisdiction therefore lies under § 1257(a).

N.D.C.C. § 52-06-02(2) (Definition of “Misconduct” disqualifying unemployment benefits):

North Dakota Century Code § 52-06-02(2) disqualifies a claimant who is discharged “for misconduct” connected with employment. North Dakota precedent construes “misconduct” to mean willful or wanton disregard of the employer’s interests—conduct that is intentional, work-related, and demonstrably harmful. By contrast, Petitioner’s alleged off-duty incident produced no proven business loss, violated no explicit policy, and culminated in a complete acquittal. The agency’s expansive reading of § 52-06-02(2) to encompass an unadjudicated arrest—and its use as a basis for permanent disqualification—raises the federal questions presented here.

STATEMENT OF THE CASE

Petitioner Christopher Bauer was employed as a transportation manager for Harlow's School Bus Services. His position was non-public-facing, and no evidence showed he was the "face" of the employer.

In March 2024, while off duty and using a company vehicle for permitted incidental use, Bauer was approached by law enforcement responding to a false 911 call. He was arrested under questionable circumstances but was ultimately acquitted.

Following the incident, Bauer was terminated. Job Service North Dakota denied him unemployment benefits, asserting reputational harm to the employer, despite no formal complaints, no documented loss of business, and no violation of workplace policy.

Bauer appealed, asserting that his off-duty conduct was isolated and unrelated to his job performance, that reputational harm was speculative, and that the administrative hearing violated due process. The North Dakota Supreme Court summarily affirmed without opinion. A petition for rehearing was denied.

REASONS FOR GRANTING THE PETITION

A. Post-Acquittal Economic Punishment Violates the Fourth, Fifth, and Fourteenth Amendments

North Dakota has converted a warrantless arrest—later resolved by complete acquittal—into a *continuing economic sanction*. By denying unemployment benefits on the strength of that invalid seizure alone, the State extended a Fourth-Amendment violation into an ongoing deprivation of property. This Court has never approved collateral punishment flowing from an arrest that (1) lacked probable cause and (2) produced no conviction. Review is essential to confirm that the Constitution forbids States from weaponizing an unconstitutional seizure to strip citizens of statutorily created property interests. *Nelson v. Colorado*, 581 U.S. 128, 136 (2017) (State may not keep money after conviction reversed)

B. The Administrative Proceeding Flouted Core Due-Process Protections

Unemployment benefits are a protected property interest. Yet the Referee admitted hearsay, excluded exculpatory evidence (including the employer's own 37-minute call conceding no reputational harm), and drew adverse inferences from Petitioner's counsel-advised silence. Those flaws would fail *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) balancing even in a low-stakes setting; they are intolerable when a livelihood is on the line. See *Goldberg v. Kelly*, 397 U.S. 254 (1970), *Mathews*, 29 C.F.R. § (DOL UI appeals guideline)

C. The Decision Below Conflicts with Federal Unemployment-Insurance Standards

Department of Labor handbooks mandate findings supported by *substantial evidence* and prohibit speculation. By resting solely on an unadjudicated arrest and conjectural harm, the agency decision—and the courts that affirmed it—squarely conflicts with those federal benchmarks, deepening an emerging split among state courts on how much process is due in UI hearings.

D. The Meaning of “Misconduct” Requires National Clarification

North Dakota stretched the term “misconduct” under N.D.C.C. § 52-06-02(2) to reach off-duty conduct that caused no proven damage, violated no policy, and culminated in acquittal. Other states reject such an expansive reading. Only this Court can resolve whether unproven off-duty allegations may forever bar a worker from a legislatively granted safety-net program. e.g., compare North Dakota with Wisconsin’s narrower view in *Boynton Cab Co. v. Neubeck*, 296 N.W. 636, 640 (Wis. 1941)

E. The North Dakota Supreme Court’s One-Sentence Affirmance Merits this Court’s Intervention

The State’s highest court disposed of these federal questions in a summary affirmance under Rule 35.1(a)(5) and declined rehearing without comment. When a state court bypasses substantial constitutional claims, certiorari is warranted to ensure uniformity and vindicate federal rights.

Taken together, these grounds present an issue of first impression: **May a State impose a permanent economic disability on the basis of an arrest later deemed**

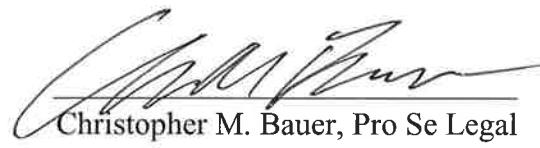
baseless, without affording the claimant full constitutional process? Only this Court can supply the answer.

CONCLUSION

For the foregoing reasons, “The petition should be granted, or the judgment below summarily reversed.”

DATED 28th Day of July 2025.

Respectfully submitted,



Christopher M. Bauer, Pro Se Legal
U.S.A.F. Military Veteran
6244 Eastwood Court
Anchorage, AK 99504-4433
Tel: 907-764-1270
Email: apricitygroup@gmail.com

APPENDIX A

Opinion of the North Dakota Supreme Court, *Bauer v. Job Service*, 2025 ND 72
(summarily affirming denial of unemployment benefits)

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2025 ND 72

Christopher Bauer,

Petitioner and Appellant

v.

Job Service of North Dakota and
Harlow's School Bus Services,

Respondents and Appellees

No. 20250003

Appeal from the District Court of Williams County, Northwest Judicial District,
the Honorable Charles B. Neff, Jr., Judge.

AFFIRMED.

Per Curiam.

Christopher M. Bauer, self-represented, Williston, N.D., petitioner and
appellant.

Michael T. Pitcher, Assistant Attorney General, Bismarck, N.D., for respondent
and appellee Job Service North Dakota.

Jesse H. Walstad, Bismarck, N.D., for respondent and appellee Harlow's School
Bus Services.

Bauer v. Job Service
No. 20250003

Per Curiam.

[¶1] Christopher Bauer appeals from a district court judgment affirming a Job Service of North Dakota decision denying his claim for unemployment benefits. On appeal, he argues his off-duty conduct did not rise to the level of misconduct disqualifying him from unemployment benefits, and he was deprived of due process. After a review of the record, we conclude Job Service's findings of fact are supported by a preponderance of the evidence, and its conclusion that Bauer's actions constituted disqualifying misconduct is supported by the findings. We summarily affirm the district court judgment affirming the Job Service decision under N.D.R.App.P. 35.1(a)(5).

[¶2] Jon J. Jensen, C.J.
Lisa Fair McEvers
Jerod E. Tufte
Douglas A. Bahr
William A. Neumann, S.J.

[¶3] The Honorable William A. Neumann, Surrogate Judge, sitting in place of Crothers, J., disqualified.

Case Highlight

Bauer v. Job Service - No. 20250003

A district court judgment affirming a Job Service of North Dakota decision is summarily affirmed under N.D.R.App.P. 35.1(a)(5).

APPENDIX B

Order of the North Dakota Supreme Court Denying Petition for Rehearing

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER ON PETITION FOR REHEARING

Supreme Court No. 20250003
Williams County Court No. 53-2024-CV-01455

Christopher Bauer,

Petitioner and Appellant

v.

**Job Service of North Dakota
and Harlow's School Bus Services,**

Respondents and Appellees

[¶1] This appeal was considered by the Court at the April 2025 Term and an opinion was filed on April 10, 2025. A petition for rehearing was filed by Christopher M. Bauer, Appellant. The Court considered the matter, and

[¶2] ORDERED AND ADJUDGED, that the petition be and is hereby DENIED.

[¶3] AND IT IS FURTHER ORDERED, that this cause be and it is hereby remanded to the District Court for further proceedings according to law, and the judgment of this Court.

[¶4] A certified copy of the mandate of the Supreme Court in this matter will be filed with the Clerk of Court of Williams County after 4/30/2025.

[¶5] Dated: 4/23/2025

[¶6] Jon J. Jensen, C.J.

Lisa Fair McEvers

Jerod E. Tufte

Douglas A. Bahr

William A. Neumann, S.J.

[¶7] The Honorable William A. Neumann, Surrogate Judge, sitting in place of Crothers, J., disqualified.

APPENDIX C

Judgment and Memorandum Order of the Williams County District Court (Case No. 53-2024-CV-01455) affirming Job Service decision

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

JUDGMENT

Supreme Court No. 20250003
Williams County District Court No. 53-2024-CV-01455

Christopher Bauer,

v.

Job Service of North Dakota

and Harlow's School Bus Services,

Petitioner and Appellant

Respondents and Appellees

[¶1] This appeal was considered by the Court at the April Term of Court and an opinion was filed. The Court considered the matter, and

[¶2] IT IS ORDERED AND ADJUDGED that the judgment of the district court is AFFIRMED under N.D.R.App.P. 35.1(a)(5).

[¶3] IT IS FURTHER ORDERED AND ADJUDGED that under N.D.C.C. § 52-06-32, no costs will be taxed on this appeal.

[¶4] This judgment will be final upon disposition of a petition for rehearing, if any is filed, or when the time for filing such petition has expired and the mandate of this Court issued.

[¶5] This judgment, together with the opinion of the Court, constitutes the mandate of the Supreme Court on the date it is issued to the district court under N.D.R.App.P. 41.

[¶6] Dated: 4/10/2025

Jon J. Jensen
Chief Justice

Attest:

Petra H. Mandigo Hulm
Clerk

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF WILLISTON

NORTHWEST JUDICIAL DISTRICT

Christopher M Bauer,)
Appellant,)
-vs-)
Job Services North Dakota,)
Harlow's School Bus Services,)
Appellees.)

Case No. 53-2024-CV-01455
ORDER ON ADMINISTRATIVE
APPEAL

[¶1] This is a judicial review of an administrative agency proceeding which resulted in a decision adverse to the Appellant. The Hearing Officer issued Findings of Fact, Conclusions of Law, and Decision on July 9th, 2024. R14. Appellant filed his Petition for Judicial Review on August 9th, 2024, arguing due process and bias violations by the hearing officer in how the evidence and hearing were handled, as well as lack of evidence to support a finding of misconduct. R19. Oral argument was held on October 22nd, 2024. This court granted a limited remand under N.D.C.C. § 28-32-45 for the purpose of the hearing officer considering a telephone recording that was not introduced at the original hearing. R101. The hearing officer issued an amended decision on November 14th, 2024 after considering the newly admitted evidence, and still affirmed the underlying decision. R103. After review of the record in this case, and for the reasons stated below, the administrative decision of the hearing officer is AFFIRMED.

[¶2] This Court exercises a limited review of appeals from administrative agencies. Bergum v. WSI, 2009 ND 52, ¶ 8, 764 N.W.2d 178. N.D.C.C. § 28-32-46 provides that a district court shall affirm the order of an agency unless:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

In studying findings of an administrative agency, the reviewing court has no fact-finding authority, as this Court realizes the Hearing Officer is "in a better position to observe and assess the credibility of witnesses and resolve conflicts in evidence." Higginbotham v. WSI, 2014 ND 147, ¶ 17, 849 N.W.2d 233. It does not make independent findings or substitute its judgment for that of the agency. Schlittenhart v. North Dakota Dept. of Transp., 2015 ND 179, ¶ 14; 865 N.W.2d 825. The court determines only whether a reasoning mind reasonably could have determined that the factual conclusions reached by the agency were proved by weight of the evidence from the entire record. Id.

[¶3] "A person is disqualified from receiving unemployment benefits under N.D.C.C. § 52-06-02(2) if discharged for misconduct in connection with

employment. Stalcup v. Job Service North Dakota, 1999 ND 67, ¶ 7, 592 N.W.2d 549. Although not defined by statute, the term “misconduct” is defined in our caselaw:

Misconduct is limited to conduct evincing such wilful [sic] or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

Id.” Baier v. Job Service North Dakota, 2004 ND 27, ¶ 5, 673 N.W.2d 923. This court must consider the following standards in determining misconduct:

The nature of the employment is a consideration when deciding whether an employee's conduct constitutes misconduct. The issue is a mixed question of fact and law. The evidence must support its findings of fact which, in turn, must sustain its conclusion regarding misconduct. If confronted with disputed facts, we defer to Job Service's factual conclusions and ascertain only whether a reasoning mind could have reasonably determined the factual conclusions were proven by a preponderance of the evidence. However, when the facts are undisputed, and contradictory inferences cannot reasonably be drawn from those undisputed facts, we review the legal conclusion anew.

Id at ¶ 7, citing Johnson v. Job Service North Dakota, 1999 ND 42, ¶ 12, 590 N.W.2d 877.

[¶4] Whether misconduct occurred is ordinarily a question of fact, in which deference is provided to the underlying decision. Blueshield v. Job Service North Dakota, 392 N.W.2d 70, 73 (N.D. 1986). “[A] single incident can constitute misconduct disqualifying an employee from receiving unemployment compensation benefits. Schadler v. Job Service North Dakota, 361 N.W.2d at 257.” Blueshield at 73-74. Whether an isolated event equals misconduct is

determined by the facts of individual cases. Id. The nature of the Appellant's work and services to the employer is a contributing factor as to whether one event can equate to misconduct. Schadler 361 N.W.2d at 257. When the misconduct is an isolated incident, "the connection between the conduct and the impact or potential impact on the employer's interests must be especially close." Holiday Inn v. Karch, 514 N.W.2d 374, 376 (N.D. 1994). "For a single ill-advised decision to be disqualifying conduct, we have required that the decision violate either "an important employer interest or explicit policy." Id. citing Tehven v. Job Service North Dakota, 488 N.W.2d 48, 52 (N.D.1992).

[¶5] Off-hours conduct can be, but is not automatically misconduct. Both sides referenced Olson v. Job Service North Dakota, 379 N.W.2d 285 (N.D. 1985) in regards to this point. In Olson, Job Service determined petitioner's off-duty alcohol usage resulted in harm to the employer's interest and denied benefits for misconduct because of it. Id at 288. In earlier cases, the court found that consumption of alcohol off-duty could be misconduct because the employee was a driver and it would be difficult for the employer to get insurance given the off-duty actions. Id. In Olson, though, the court found that her off-duty alcohol consumption did not pose a threat to the business interests of the employer, thus not rising to the level of misconduct. Id.

[¶6] "A person is denied due process or a fair hearing when the defects in the hearing process might lead to a denial of justice. *See, e.g., Carlson v. Job Service North Dakota*, 548 N.W.2d 389, 395 (N.D.1996). The fundamental requirements of due process are notice of the contemplated action and an

opportunity to be heard. Beckler v. North Dakota Workers Compensation Bureau, 418 N.W.2d 770, 773 (N.D.1988) (citations omitted).” Hoffman v. North Dakota Workers Comp. Bureau, 1999 ND 66, ¶ 12, 592 N.W.2d 533. “Due process prescribes that the participant in an administrative proceeding be given notice of the general nature of the questions to be heard, and an opportunity to prepare and to be heard on those questions. Hentz Truck Line, Inc. v. Elkin, 294 N.W.2d 774, 780 (N.D.1980). Notice is adequate if it apprises the party of the nature of the proceedings so that there is no unfair surprise. Erovick v. Job Service North Dakota, 409 N.W.2d 629, 631 (N.D.1987).” Estate of Robertson by Robertson v. Cass County Social Services, 492 N.W.2d 599, 603 (N.D. 1992).

[¶7] “An administrative hearing officer has broad discretion to control the admission of evidence, and we review an officer's evidentiary ruling for an abuse of discretion. May v. Sprynczynatyk, 2005 ND 76, ¶ 24, 695 N.W.2d 196. “A person is denied due process or a fair hearing when the defects in the hearing process might lead to a denial of justice.” Carlson v. Job Serv. North Dakota, 548 N.W.2d 389, 395 (N.D.1996). In adjudicative proceedings before an administrative agency, all parties shall have “the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.” N.D.C.C. § 28–32–35. Although the rules of evidence are more relaxed in unemployment compensation hearings, the hearing must be conducted in a “manner as to ascertain the substantial rights of the parties.” N.D.C.C. § 52–06–20. See also Stalcup v. Job Serv. North Dakota, 1999 ND 67,

¶ 11, 592 N.W.2d 549.” Schweitzer v. Job Service North Dakota, 2009 ND 139, ¶ 18, 770 N.W.2d 238, Unempl.Ins.Rep. (CCH) ¶ 8144.

[¶8] N.D.C.C. § 28-32-27 governs disqualification of hearing officers. “3 K. Davis, Administrative Law Treatise § 19:1 (1980). See also 4 J. Stein, G. Mitchell, and B. Mezines, Administrative Law § 35.03[1] (1992): ‘When an examiner or agency member has prejudged the facts of a case he must be disqualified. When he merely enters the proceeding with advance views on important policy matters in issue, there are no grounds for disqualification.’ Parties to an administrative proceeding have a right to a fair and open proceeding before an impartial decisionmaker, but an ‘impartial decisionmaker’ does not mean one who is ‘uninformed, unthinking, or inarticulate.’

Association of Nat'l Advertisers, Inc. v. FTC, [627 F.2d 1151, 1174 (D.C.Cir.1979), *cert. denied*, 447 U.S. 921, 100 S.Ct. 3011, 65 L.Ed.2d 1113 (1980)].” Municipal Services Corp., *supra*, 483 N.W.2d at 563–564.” Dittus v. North Dakota Dep't of Transp., 502 N.W.2d 100, 103–04 (N.D. 1993). “To satisfy due process requirements, administrative proceedings must be conducted by an impartial trier of the facts. When bias taints an administrative proceeding, no judgment based on that proceeding will be allowed to stand.” 4 J. Stein, G. Mitchell, and B. Mezines, Administrative Law § 35.03[1] (1991).” Municipal Services Corp. 483 N.W.2d at 562. “[A]n erroneous opinion as to the merits of the case or the law relating to the proceedings is not evidence of bias.” Datz v. Dosch, 2014 ND 102, ¶ 17, 846 N.W.2d 724.” State v. Craig, 2019 ND 123, ¶ 10, 927 N.W.2d 99.

[¶9] Reassigning a case on remand can be akin to reassigning a district court case on remand. “The purpose of reassignment is: “in part, to preserve the integrity of the court, to protect litigants from bias, and to ensure that allegations of prejudice do not affect fair administration of the law.” T.F. James Co. v. Vakoch, 2001 ND 112, ¶ 18, 628 N.W.2d 298. Further, “[d]etermining whether or not to assign a different judge requires delicate balancing of numerous competing interests.” Id. at ¶ 19. In Vakoch, we declined judicial reassignment on remand because (1) we appreciated the “district court judge has particular insight that cannot be replicated by a replacement;” (2) the voluminous nature of the record, the number of proceedings, and the experiences of the presiding judge favored retention rather than reassignment; and (3) there were no allegations of actual bias, only subconscious bias, and therefore retention was favored. Id.” Craig at ¶ 9. Adverse rulings alone are not sufficient for recusal. Rath v. Rath, 2013 ND 243, ¶ 15, 840 N.W.2d 656.

[¶10] In the captioned action, the filed record includes:

08-09-24 Petitioner for Judicial Review (R19)
08-23-24 Certificate of Record (R33)
09-16-24 Appellant’s Brief (R58)
09-25-24 Appellee’s Brief (R66)
10-31-24 Order for Remand (R101)
11-14-24 Amended Certificate of Record (R102)
11-14-24 Remand Decision (R103)

[¶11] An objective examination of the record indicates to the court’s satisfaction that a reasoning mind could have reasonably determined that the factual conclusions reached by the agency’s hearing officer were indeed proved by the weight of the evidence from the entire record.

[¶12] Here, the scope of the decision revolves around whether the actions stemming from this single indecent arise to the level of misconduct. Facts show that Appellant had an encounter with Williston PD in a Hardee's parking lot while driving his employer's vehicle, which had the employer's logo. Appellant requested the court take judicial notice of his attorney's suppression brief in his related criminal case, but this court declined. Whether a suppression motion is granted in a criminal case is not germane to the issues here and is determined on a different standard. The facts, as laid out by the hearing officer, are that law enforcement were called for a wellness check, which escalated to an investigation by law enforcement. As part of the engagement, Appellant's pants fell down as part of an attempt to show Appellant was not hiding anything on his person. This led to an arrest initially for indecent exposure, but charged with disorderly conduct. The engagement was filmed and released to social media.

[¶13] Appellant provided his employer a written account of the events of that morning on March 31, 2024, which was entered into evidence at the hearing, R45, p. 4-6. In his description of the event, Appellant stated he moved his clothes around. On a phone call with the employer shortly after the incident, Appellant was asked if anything was left out of his report as to why he would be arrested, and Appellant said no. Appellant was informed that the employer was already hearing about the incident from various entities, and that the local school district was expressing concern about the incident. Employer's sole contracted entity in the area was the local school district; therefore, its most

important customer. Appellant was the transportation manager and responsible for overall operation of the facility and relationship with the school district. Employer also had an ethics policy that required basic honesty, good judgment, and sensitivity to how the community perceives and interprets the actions of Harlow's.

[¶14] This court finds the hearing officer's reasoning within the scope permitted by law, supported by the evidence, and Appellant failed to meet this high burden on appeal. Appellant's pants fell down during an encounter with police on a Sunday morning in a public parking lot. Said encounter was filmed and distributed via social media. Regardless of the motivations of the individuals that either called in the complaint, or released the recording on social media, the fact remains that video existed of Appellant's pants falling down in public near a Harlow's branded vehicle. This court is required to review the hearing officer's finding of misconduct on a case-by-case basis. Here, Appellant was in charge of operations and was the "face" of Harlow's for Williston. The school district was employer's sole contract in the area and a vital interest to employer. Appellant failed to disclose his pulling down of his pants in either the written description or during the phone call with his employer when they were struggling to determine why he was arrested for indecent exposure but charged with disorderly conduct.

[¶15] When judging misconduct based on one incident of off-duty behavior, said conduct must pose a threat to the business interests of the employer. Here, Appellant was the face of Harlow's and his actions were recorded near a

Harlow's branded truck. Even if someone didn't know him, it was easy to conclude his relationship with the employer by the Harlow's logo on the truck. Given the important role that he had with the school district, and the vital importance of the school district contract with Harlow's, these actions were the type of single off-duty incident that arises to misconduct. As opposed to missing a single shift, or having some alcohol off-duty, the actions of the Appellant directly impacted the only relationship that the employer had in the area.

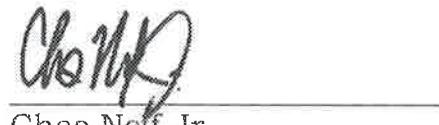
[¶16] As to Appellant's arguments regarding due process concerns or bias, the court initially states it sees no specific evidence of bias by the hearing officer. Because there is no evidence of bias, it was appropriate for this court to remand the case back to the same hearing officer for review of the additional evidence. Similar to the process that the North Dakota Supreme Court uses, because the hearing officer is already familiar with the case and evidence, and no showing of actual bias, it makes sense to remand back to the hearing officer.

[¶17] As to due process concerns, this court has reviewed the record. Appellant was given proper notice of the hearing, and an outline of what a hearing entailed. Appellant was provided a chance at the administrative hearing to call any witnesses he wished, to ask questions of those witnesses that testified, and call himself as a witness if he so chose. He acknowledged the process at the hearing. Appellant argues that he was not able to provide electronic evidence key to his case, and in support argues that he sent it July 1st, 2024 after

calling to determine how to submit the evidence. The fact that he called to attempt to submit the electronic evidence shows to this court that he was aware that evidence needed to be submitted. This court, given the lack of clear guidelines in submission of electronic evidence, remanded for consideration of the telephone call recording. That is the process outlined in statute and would allay any due process concerns. In review of the transcript and exhibits, this court does not find any due process concerns that would warrant either remand or affirmance of unemployment benefits.

[¶18] All things considered, the court concludes the administrative decision was free from any basis (pursuant to statute or otherwise) upon which to justify a judicial reversal. Counsel for the Department shall prepare a proposed Order for Judgment and Judgment of Dismissal of this appeal in accordance with this decision.

[¶19] Dated at Williston, North Dakota, this 2nd of January, 2025.



Chas Neff Jr.
District Court Judge

APPENDIX D

Job Service North Dakota Decisions: (1) Appeal Referee Decision; (2) Review-Board
Order

NONMONETARY DETERMINATION NOTICE

CLAIMANT NOTICE

06/12/2024

CHRISTOPHER M BAUER
801 24TH ST E
WILLISTON ND 58801

256-41-3612
07
BJO
0001MC

HARLOW'S SCHOOL BUS SERV INC

ISSUE: DISCHARGE FROM EMPLOYMENT**STATEMENT OF FACTS:**

YOU WERE DISCHARGED FOR VIOLATING A COMPANY POLICY/RULE OR ACCEPTABLE STANDARD OF BEHAVIOR.

TO BE DENIED UNEMPLOYMENT INSURANCE BENEFITS, THE EMPLOYER MUST SHOW YOUR ACTIONS OR BEHAVIOR ROSE TO THE LEVEL OF MISCONDUCT.

AFTER REVIEWING ALL THE INFORMATION PROVIDED, WE HAVE DETERMINED THE EMPLOYER HAD GROUNDS TO DISCHARGE YOU AND THAT THEY DID SO FOR A REASON THAT CONSTITUTES MISCONDUCT.

BENEFITS ARE DENIED. YOU ARE DISQUALIFIED FROM BENEFITS EFFECTIVE 05/19/2024 AND UNTIL YOU HAVE EARNED \$7280.00 FROM AN EMPLOYER WHO PROVIDES UNEMPLOYMENT INSURANCE COVERAGE FOR WORKERS AND ARE SEPARATED FOR A NON-DISQUALIFYING REASON.

VIOLATION OF POLICY, YOU WERE ARRESTED WHILE IN COMPANY VEHICLE. THIS COULD CAUSE NEGATIVE IMPACT TO EMPLOYER.

Important: If you were denied benefits and have appealed the determination or decision, you must continue to certify your weekly eligibility and meet all other eligibility requirements while your appeal is pending. If the appeal decision is in your favor and you have met all other eligibility requirements, benefits will be paid for weeks you certified. No benefits will be paid for any weeks for which you did not certify in a timely manner.

RIGHT OF APPEAL:

If you believe the facts or the law applied in this determination are incorrect, you have 12 days in which to file an appeal. Your request must be in writing and filed on or before 06/24/2024.

You must state the reason(s) you disagree with this determination so another determination may be made or an appeal scheduled. You can file your appeal online by going to the Unemployment Insurance Information link on [UIICE \(\[www.jobsnd.com\]\(http://www.jobsnd.com\)\)](http://UIICE) and clicking on the Issues/Appeal link. You may also file your appeal by completing the attached form and faxing it to (701)328-2728 or by submitting through the mail addressed to Job Service North Dakota, Attention Appeals, PO Box 5507, Bismarck, North Dakota 58506-5507.

You can receive assistance in filing your appeal by calling 1-800-351-9098.

(SEE REVERSE FOR RELEVANT CITATION)

Job Service North Dakota is an equal opportunity employer/program provider.
Auxiliary aids and services are available upon request to individuals with disabilities.

AN INDIVIDUAL IS DISQUALIFIED FOR BENEFITS:

FOR THE WEEK IN WHICH HE HAS BEEN DISCHARGED FOR MISCONDUCT IN CONNECTION WITH HIS MOST RECENT EMPLOYMENT AND THEREAFTER UNTIL SUCH TIME AS HE:

- A. CAN DEMONSTRATE THAT THE INDIVIDUAL HAS EARNED REMUNERATION FOR PERSONAL SERVICES IN EMPLOYMENT FROM AND AFTER THE DATE OF THE UNEMPLOYMENT COMPENSATION CLAIM FILING EQUIVALENT TO AT LEAST TEN TIMES THE INDIVIDUALS WEEKLY BENEFIT AMOUNT AS DETERMINED UNDER SECTION 52-06-04; AND
- B. HAS NOT LEFT HIS MOST RECENT EMPLOYMENT UNDER DISQUALIFYING CIRCUMSTANCES.

FOR THE PURPOSE OF THIS SUBSECTION, "MOST RECENT EMPLOYMENT" MEANS EMPLOYMENT WITH ANY EMPLOYER FOR WHOM THE CLAIMANT LAST WORKED AND WAS DISCHARGED FOR MISCONDUCT IN CONNECTION WITH HIS EMPLOYMENT OR WITH ANY EMPLOYER, IN INSURED WORK, FOR WHOM THE CLAIMANT LAST WORKED AND EARNED WAGES EQUAL TO OR EXCEEDING TEN TIMES HIS WEEKLY BENEFIT AMOUNT.

MISCONDUCT HAS BEEN DEFINED AS CONDUCT EVINCING SUCH WILLFUL OR WANTON DISREGARD OF AN EMPLOYER'S INTERESTS AS IS FOUND IN DELIBERATE VIOLATIONS OR DISREGARD OF STANDARDS OF BEHAVIOR WHICH THE EMPLOYER HAS THE RIGHT TO EXPECT OF HIS EMPLOYEE, OR IN CARELESSNESS OR NEGLIGENCE OF SUCH DEGREE OR RECURRENCE AS TO MANIFEST EQUAL CULPABILITY, WRONGFUL INTENT, OR EVIL DESIGN, OR TO SHOW AN INTENTIONAL AND SUBSTANTIAL DISREGARD OF THE EMPLOYER'S INTEREST OR OF THE EMPLOYEE'S DUTIES AND OBLIGATIONS TO HIS EMPLOYER. ON THE OTHER HAND, MERE INEFFICIENCY, UNSATISFACTORY CONDUCT, FAILURE IN GOOD PERFORMANCE AS THE RESULT OF INABILITY OR INCAPACITY, INADVERTENCIES OR ORDINARY NEGLIGENCE IN ISOLATED INSTANCES, OR GOOD FAITH ERRORS IN JUDGEMENT OR DISCRETION ARE NOT TO BE DEEMED "MISCONDUCT" WITHIN THE MEANING OF THE STATUTE.

0001MC

3-003

JOB SERVICE NORTH DAKOTA
APPEAL SECTION
PO BOX 5507
BISMARCK, ND 58506-5507
DECISION

DECSN
(R. 2-16)

IN THE MATTER OF A CLAIM FOR JOB INSURANCE BENEFITS

CHRISTOPHER M BAUER
801 24TH STE
WILLISTON ND 58801 0000

HARLOW'S SCHOOL BUS SERV INC
1021 S 23RD ST
BISMARCK ND 58504-6808

CLAIMANT SSN: 256-41-3612

REFEREE: DAVID MAIER

Attached is your copy of the Referee's decision.

You have 12 days from the mailing of this notice to your last known address in which to file a request for a bureau review of this decision.

Unless the request is filed on or before JULY 22 2024 the decision will become final, as provided in section 52-06-15 of the North Dakota Century Code.

In the event that you did not participate in the hearing because you failed to call in to confirm your attendance as directed in the Notice of Hearing or did not answer your phone when called by the referee at the start of the scheduled hearing, you may request the bureau to consider whether you had a good cause for failing to do so. You must provide an explanation of why you did not confirm your attendance or did not answer your phone when called by the referee at the start time of the hearing.

With the exception of the above, please note that in accordance with section 52-06-19 of the North Dakota Century Code, a request for a bureau review of this decision will only be granted in cases where the adjudicator's determination is not affirmed by the Appeal Referee's decision.

If the enclosed decision affirms the determination made by the adjudicator and you wish to appeal further, you will need to file a timely request for a bureau review. This will generate a written decision from the bureau denying the review request and informing you of further appeal rights through the court system. The written decision is necessary for you to continue with judicial review of the determination.

If you request a bureau review it must be in writing providing the reasons for requesting the review and filed with Appeals Section of Job Service North Dakota on or prior to the deadline date listed above. Requests for bureau review may be delivered in person to any Job Service office, faxed to 701-328-2728, or mailed to: Appeals Section, PO Box 5507, Bismarck, North Dakota 58506-5507.

DATE OF MAILING: 07/09/2024

CC:

Electronic Notification: elm

I hereby certify that on the 9 day of JULY , 2024 at Bismarck, North Dakota a copy of this notice was mailed to each party in interest as so identified in the proceedings. AS

**DECISION
IN THE MATTER OF A CLAIM FOR
UNEMPLOYMENT COMPENSATION BENEFITS**

Procedural History

A determination dated June 12, 2024, denied the claimant unemployment insurance benefits. It was determined the claimant was discharged for misconduct. The claimant appealed the determination. In response to the claimant's appeal, a hearing was held on July 8, 2024. The claimant appeared with one witness and the employer had legal representation and one witness.

Issue

The issue to be determined is whether the claimant voluntarily left employment without good cause attributable to the employer or was discharged for misconduct connected with the work.

Findings of Fact

The claimant began employment with Harlow's Bus Service in October 2023. He most recently worked as the transportation manager and generally was responsible for the overall operation of the employer's facility in Williston. The employer's most important customer was the local school district. The claimant was considered the face of the company in the Williston community.

During his employment, the claimant was advised of the employer's ethics policy. The policy stated, "Harlow's depends on the basic honesty and good judgment of its employees, and their sensitivity to the way others see us and may interpret our actions."

On March 31, 2024, the claimant was parked in a restaurant parking lot with the employer's truck. This vehicle had the employer's name displayed. The claimant had fallen asleep in the truck and a caller to the Williston police department reported an unresponsive man in a Harlow's truck. A police officer was dispatched to do a wellness check. The situation escalated and the claimant was arrested for disorderly conduct. This arrest was captured by a citizen and subsequently posted to social media.

On April 2, 2024, the claimant was placed on administrative leave by the employer while they investigated the incident that led to the arrest of the claimant. After conducting an investigation, the claimant was discharged on April 11, 2024, because the incident was causing a negative impression of the employer's business and could result in the loss of the employer's most important client.

Because of the pending criminal trial for disorderly conduct, the claimant refused to provide any information concerning the reason for the arrest, but instead testified that it would soon be dismissed. The claimant's trial is still pending, and no decision has been entered by the court as of the time of the hearing.

The claimant further testified that the employer used information provided by an unreliable source to discharge the claimant. This is not supported by the record as the overriding issue for discharge was the arrest of the claimant on March 31, 2024, and the subsequent posting of the event on social media.

Applicable Law

Applicable law is found in North Dakota Century Code § 52-06-02:

52-06-02. Disqualification for benefits. An individual is disqualified for benefits:

2. For the week in which the individual has been discharged for misconduct in connection with the individual's most recent employment and thereafter until such time as the individual:
 - (a) Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment compensation claim filing, equivalent to at least ten times the individual's weekly benefit amount as determined under section 52-06-04; and
 - (b) Has not left the individual's most recent employment under disqualifying circumstances

Reason for the Decision

The greater weight of evidence in the record is the claimant was discharged by the employer. Discharge alone does not disqualify an individual from unemployment insurance. Rather, North Dakota's unemployment compensation law provides that an individual is disqualified from unemployment insurance benefits if he or she was discharged from his or her most recent employment for misconduct.

Misconduct has been defined as conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of the standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to

his employer. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct. It is the employer's burden to establish by a preponderance of the evidence that the employee's acts constitute misconduct which results in a disqualification of benefits.

The North Dakota Supreme Court has previously considered a case concerning off-work misconduct. In Olson v. Job Service, 379 N.W.2d 285 (N.D. 1985), a claimant was generally discharged for off-work consumption of alcohol. The Court reversed the claimant's disqualification from unemployment insurance benefits, stating, "[Olson's] off-duty consumption of alcohol is not shown to pose a threat to [the employer's] business interests. We do not see a reasonable relationship between the off-duty rule and the employer's interests. We cannot conclude that [the claimant's] conduct constitutes misconduct..."

Unlike Olson, the claimant's off-work conduct did affect the employer's interests. The claimant was an important figure in the employer's business and improper off-duty conduct created negative publicity that undermined his work. Moreover, the employer had a formal policy prohibiting inappropriate words or actions that reflected poorly on the employer. Furthermore, the claimant was using the employer's marked vehicle that was captured on video during his arrest. As the record reflects the claimant was discharged for conduct that could have had a significant negative impact of employer's interests, the record supports a conclusion the claimant was discharged for a disregard of the standard of behavior which the employer has the right to expect of an employee. The employer has therefore established the claimant was discharged for misconduct and he remains disqualified from unemployment insurance benefits.

Decision

The determination dated June 12, 2024, is AFFIRMED. The claimant is disqualified from unemployment insurance benefits effective May 19, 2024, and until he returns to work and earns \$7,280 from an employer or employers who provide unemployment insurance coverage and has not left work under disqualifying circumstances.

DRM

David Maier
Appeals Referee



NOTICE OF DECISION
JOB SERVICE NORTH DAKOTA
UNEMPLOYMENT INSURANCE/BUREAU
3-018 (R. 03-19)

Job Service North Dakota
Unemployment Insurance
PO Box 5507
Bismarck, ND 58506-5507

SSN 256413612
ACCOUNT 0572853
ISSUE 0001MC

Christopher M Bauer
801 24th St E
Williston ND 58801

Harlow's School Bus Service Inc
1021 S 23rd St
Bismarck ND 58504-6808

This is a copy of the decision of Job Service North Dakota in response to a request for a review of the Appeal Referee's decision.

This decision will become final unless a petition requesting a Judge to review the decision of Job Service is filed in the District Court. The petition must be filed according to the requirements specified in Section 52-06-27 of the North Dakota Century Code, within thirty days from the date of mailing of this decision.

Dated at Bismarck, North Dakota this 11th day of July, 2024.

I hereby certify that on the 11th day of July, 2024, at Bismarck, North Dakota, a copy of this notice was mailed to each party in interest as so identified in the proceedings.

Rebecca Aman

JOB SERVICE NORTH DAKOTA

ORDER
DENYING
REVIEW

Christopher M Bauer
801 24th St E
Williston ND 58801

Harlow's School Bus Service Inc
1021 S 23rd St
Bismarck ND 58504-6808

SSN: 256413612
ISSUE: 0001MC

The claimant made application for leave to appeal to the Bureau.

By law, a timely appeal to the Bureau is a matter of right only if the Appeals Referee's decision does not affirm the initial determination (N.D.C.C. §52-06-19).

In this case, the Appeals Referee's decision affirmed the initial determination, which denied the claimant benefits. Consequently, this appeal to the Bureau is not a matter of right.

The application for leave to appeal to the Bureau is hereby denied and it is so ordered. The Appeals Referee's decision is deemed to be a decision of the Bureau for the purposes of judicial review with the thirty-day time period for initiating such review starting from the date of the notice attached to this order. (N.D.C.C. §52-06-19).

Dated at Bismarck, North Dakota this 11th day of July, 2024.

JOB SERVICE NORTH DAKOTA

John Welder
John Welder (Jul 11, 2024 11:34 CDT)
JOHN WELDER
Bureau Referee

APPENDIX E

Text of North Dakota Century Code § 52-06-02(2) (“Misconduct” Disqualification)

CHAPTER 52-06 BENEFITS

52-06-01. Conditions required to be eligible for benefits.

An unemployed individual is eligible to receive benefits with respect to any week only if the bureau finds that:

1. The individual has made a claim for benefits with respect to such week in accordance with such regulations as the bureau may prescribe;
2. The individual has registered for work and thereafter continued to complete all assigned services and report to a local office as required in accordance with such regulations as the bureau may prescribe, except that the bureau may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of the North Dakota unemployment compensation law; provided, that no such regulation shall conflict with section 52-06-03;
3. The individual is able to work and is available for suitable work and actively seeking work, provided:
 - a. That notwithstanding any other provisions in this section, no otherwise eligible individual may be denied benefits for any week because the individual is in training with the approval of the bureau by reason of the application of provisions of this subsection relating to availability for work and to active search for work, or the provisions of subsection 3 of section 52-06-02 relating to disqualification for benefits for failure to apply for, or a refusal to accept, suitable work; and
 - b. That no claimant may be considered ineligible in any week of unemployment for failure to comply with this subsection, if the failure is due to an illness or disability not covered by workforce safety and insurance and which occurred after the claimant has registered for work and no work has been offered the claimant which is suitable;
4. The individual has been unemployed for a waiting period of one week. The executive director may suspend the waiting period during periods of time when federal reimbursement for benefit charges incurred for the suspended waiting period is made available to the bureau. Any suspension of the waiting period applies to all new initial claims filed with an effective date within the time period in which the waiting period is suspended. No week may be counted as a week of unemployment for the purposes of this subsection:
 - a. Unless it occurs within the benefit year which includes the week with respect to which the individual claims payment of benefits;
 - b. If benefits have been paid with respect thereto; and
 - c. Unless the individual was eligible for benefits, with respect thereto as provided in this section and section 52-06-02; and
5. The individual participates in re-employment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need re-employment services pursuant to a profiling system established by the bureau, unless the bureau determines that:
 - a. The individual has completed these services; or
 - b. There is justifiable cause for the claimant's failure to participate in these services.

52-06-02. Disqualification for benefits.

An individual is disqualified for benefits:

1. a. For the week in which the individual has left the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as the individual:
 - (1) Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment

compensation claim filing, equivalent to at least eight times the individual's weekly benefit amount as determined under section 52-06-04; and

(2) Has not left the individual's most recent employment under disqualifying circumstances.

b. A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's workforce in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.

c. This subsection does not apply if job service North Dakota determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.

d. This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer, other than a reimbursing employer, from whom the individual became separated as a result of the illness or injury. Job service North Dakota may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.

e. This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

f. For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.

g. For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.

h. This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.

i. This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base-period employer who laid

off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, "demonstrated job attachment" requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.

j. (1) This subsection does not apply if the reason for separation from the individual's employment is directly attributable to domestic violence, stalking, or sexual assault that is verified by documentation submitted to job service North Dakota which substantiates the individual's reason for separation from the most recent employment and such continued employment would jeopardize the safety of the individual or of the individual's spouse, parent, or minor child. After receiving a claim for unemployment insurance benefits for which the individual identifies domestic violence, stalking, or sexual assault as the reason for separation, job service North Dakota shall notify the most recent employer of the reason for separation provided by the individual.

(2) For purposes of this subdivision, documentation of domestic violence or sexual assault includes:

- (a) A court order, protection order, restraining order, or other record filed with a court;
- (b) A police or law enforcement record;
- (c) A medical record indicating domestic violence or sexual assault; or
- (d) A written affidavit provided by an individual who has assisted the claimant in dealing with the domestic violence or sexual assault and who is a:
 - [1] Licensed counselor;
 - [2] Licensed social worker;
 - [3] Member of the clergy;
 - [4] Director or domestic violence advocate at a domestic violence sexual assault organization as defined in section 14-07.1-01; or
 - [5] Licensed attorney.

(3) For purposes of this subdivision, documentation of stalking must include:

- (a) A police or law enforcement record; and
- (b) A written affidavit provided by an individual who has assisted the claimant in dealing with the stalking and who is a:
 - [1] Licensed counselor;
 - [2] Licensed social worker;
 - [3] Member of the clergy;
 - [4] Director of domestic violence advocate at a domestic violence sexual assault organization as defined in section 14-07.1-01; or
 - [5] Licensed attorney.

(4) Documentation must be received by job service North Dakota within fourteen calendar days from the date the individual files a claim for unemployment insurance benefits after separating from employment for reasons directly attributable to domestic violence, stalking, or sexual assault.

(5) A false statement of domestic violence, stalking, or sexual assault in a claim for unemployment insurance benefits is subject to subsection 8 and section 52-06-40.

k. This subsection does not apply if the individual is a military spouse who, after disclosure to the individual's employer and a reasonable attempt to maintain the employment relationship through accommodation, voluntarily left the most recent employment to relocate because of permanent change of station orders of the individual's military-connected spouse. For purposes of this subdivision:

(1) "Military spouse" means the spouse of a member of the armed forces of the United States or a reserve component of the armed forces of the United

States stationed in this state in accordance with military orders or stationed in this state before a reassignment to duties outside this state.

(2) "Permanent change of station orders" means the assignment, reassignment, or transfer of a member of the armed forces of the United States or a reserve component of the armed forces of the United States from the member's present duty station or location without return to the previous duty station or location.

2. For the week in which the individual has been discharged for misconduct in connection with the individual's most recent employment and thereafter until such time as the individual:

- Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment compensation claim filing, equivalent to at least ten times the individual's weekly benefit amount as determined under section 52-06-04; and
- Has not left the individual's most recent employment under disqualifying circumstances.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and was discharged for misconduct in connection with the claimant's employment or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding ten times the claimant's weekly benefit amount.

3. If the individual has failed, without good cause, either to accept suitable employment; to apply for suitable employment; or to return to the individual's customary self-employment, if any, when so directed to do so by the bureau or its authorized representative. Such disqualification must continue for the week in which such failure occurred and thereafter until such time as the individual:

- Can demonstrate that the individual has earned remuneration for personal services in employment equivalent to at least ten times the individual's weekly benefit amount as determined under section 52-06-04; and
- Has not left the individual's most recent employment under disqualifying circumstances.

4. For any week with respect to which it is found that the individual's unemployment is due to any kind of labor dispute, including a strike, sympathy strike, or lockout; provided, that this subsection does not apply if it is shown that:

- The individual is not participating in or directly interested in the labor dispute; and
- The individual does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises at which the labor dispute occurs, any of whom are participating in or directly interested in the labor dispute; provided, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department must, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises.

5. For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States; provided, that if the appropriate agency of such state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification does not apply.

6. For any week of unemployment if such individual is a student registered for a full-time curriculum at, and is regularly attending, an established school, college, or university, and the scheduled class hours are the same time period or periods as the normal work hours of the occupation from which that individual earned the majority of the wages in that individual's base period, unless that individual is authorized to receive benefits while in training pursuant to subsection 3 of section 52-06-01. However, this disqualification does not apply to students registered for a full-time curriculum who have earned the majority of the wages in their base periods for services performed

during weeks in which the individual was so registered and attending school. As used in this subsection, the term "full-time curriculum" means a course load of twelve or more credit hours or a course load found to be equivalent by rule adopted by job service North Dakota.

7. For any week in which the individual is partially or totally unemployed by reason of a disciplinary suspension of not more than thirty days by the individual's employer for misconduct connected with the individual's employment, and the bureau so finds.
8. For the week in which the individual has filed an otherwise valid claim for benefits and:
 - a. For one year from the date on which a determination is made that such individual has made a false statement for the purposes of obtaining benefits to which the individual was not lawfully entitled. Provided, however, that this disqualification does not apply to cases in which it appears to the satisfaction of job service North Dakota that the false statement was made by reason of a mistake or misunderstanding of law or of facts without fraudulent intent; or
 - b. For one year when the individual has been separated from the individual's last employment because of gross misconduct in connection with work.
9. Which are based on service performed in an instructional, research, or principal administrative capacity for any educational institution, for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performed such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or to an individual with respect to services performed in employment other than employment as defined in subdivisions f and g of subsection 17 of section 52-01-01. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota unemployment compensation law.
10. Which are based on services performed in any other capacity not described in subsection 9 for any educational institution, for any week which commences during a period between two successive academic years or terms if the individual performed such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or to an individual with respect to services performed in employment other than employment as defined in subdivisions f and g of subsection 17 of section 52-01-01. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota unemployment compensation law. If compensation is denied to any individual under this subsection and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, that individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.
11. Which are based on any services described in subsection 9 or 10 for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation

period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

12. Which are based on any services described in subsection 9 or 10 if the individual performed the services in an educational institution while in the employ of an educational service agency. The disqualification must be as specified in subsections 9, 10, and 11. For this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.
13. Which are based on service, substantially all of which consists of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.
14. Which are based on service performed by an alien, unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or otherwise was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of sections 207 and 208 or section 212(d)(5) of the Immigration and Nationality Act.
 - a. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status must be uniformly required from all applicants for benefits.
 - b. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status may be made except upon a preponderance of the evidence.
15. For any week with respect to which an individual is receiving a pension, including a governmental pension other than federal social security retirement benefits, and any other pension, retirement pay, retired pay, annuity, and any other similar periodic payment under a plan maintained or contributed to by a base-period or chargeable employer as determined under applicable law, unless the weekly benefit amount payable to such individual for such week is reduced, but not below zero:
 - a. By the prorated weekly amount of the pension after deduction of three-fourths of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed after June 30, 1985, and by the prorated weekly amount of the pension after deduction of the portion of the pension that is directly attributable to the percentage of the contributions made to the plan by such individual for claims filed after June 30, 1986;
 - b. By the entire prorated weekly amount of the pension if subdivision a or c does not apply; or
 - c. By one-fourth of the pension if the entire contributions to the plan were provided by such individual, by the individual and an employer, or by any other person that is not a base-period or chargeable employer as determined under applicable law, for claims filed after June 30, 1985, and by no part of the pension if the entire contributions to the plan were provided by such individual, by the individual and an employer, or by any other person that is not a base-period or chargeable employer as determined under applicable law, for claims filed after June 30, 1986.

A reduction may not be made under this subsection by reason of the receipt of a pension if the services performed by the individual during the base period, or remuneration received for such services, for the employer did not affect the individual's

eligibility for, or increase the amount of, the pension, retirement pay, retired pay, annuity, or similar payment. This limitation does not apply to pensions paid under the Railroad Retirement Act of 1974, or the corresponding provisions of prior law. Payments made under the Railroad Retirement Act of 1974 must be treated solely in the manner specified by subdivisions a, b, and c. A reduction may not be made under this subsection by reason of receipt of federal social security retirement benefits.

16. Except that no otherwise eligible individual may be denied benefits for any week because the individual is in training approved under section 236(a)(1) of the Trade Act of 1974 [19 U.S.C. 2296(a)(1)], nor may such individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any such week in training of provisions in the North Dakota unemployment compensation law, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work.

For purposes of this subsection, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

17. With respect to services to which subdivisions f and g of subsection 17 of section 52-01-01 apply, if the services are provided to or on behalf of an educational institution, benefits are not payable under the same circumstances and subject to the same terms and conditions as described in subsections 9, 10, 11, and 12.

52-06-03. When benefits payable.

Beginning twenty-four months after the date when contributions first accrued under the North Dakota unemployment compensation law, benefits become payable from the fund. Benefits must be paid through public employment offices in accordance with such regulations as the bureau may prescribe.

52-06-04. Weekly benefit amount - Average annual wage - Average weekly wage - Minimum weekly benefit amount - Maximum weekly benefit amount - Qualifying wage - Insured worker and insured work defined.

1. The procedures, provisions, and conditions of this section must determine the "weekly benefit amount" of those individuals who establish a benefit year:
 - a. For the purpose of this section, the bureau shall each year, on or before the first day of June, determine the average annual wage paid to insured workers and, from that determination, an "average weekly wage", by the following computation:

The total wages reported on contribution reports for the preceding calendar year must be divided by the average monthly number of covered workers, whose number must be determined by dividing by twelve the total covered employment reported on contribution reports for the preceding calendar year, and the quotient obtained by dividing the total wages by the average monthly number of covered workers is the average annual wage; and such quotient must be divided by fifty-two and the amount thus obtained, rounded to the nearest cent, is the "average weekly wage".
 - b. An individual's "weekly benefit amount" is one sixty-fifth, if not a multiple of one dollar to be computed to the next lower multiple of one dollar, of the sum of:
 - (1) The individual's total wages for insured work paid during the two quarters of the individual's base period in which the individual's wages were the highest; and
 - (2) One-half of the individual's total wages for insured work paid during the third highest quarter in the individual's base period.

However, if that amount is less than the "minimum weekly benefit amount" the individual is monetarily ineligible for benefits. The "minimum weekly benefit amount" is forty-three dollars. The "maximum weekly benefit amount" is sixty-two

percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar. However, if on October first of any calendar year this state's average contribution rate is below the nationwide average for the preceding calendar year, the maximum weekly benefit amount is sixty-five percent of the "average weekly wage", rounded to the next lower multiple of one dollar if not a multiple of one dollar.

2. To qualify as an insured worker an individual must have been paid wages for insured work in at least two calendar quarters of the individual's base period totaling not less than one and one-half times the individual's total wages paid during the quarter of the individual's base period in which the individual's wages were the highest. However, the wage credits of an individual earned during the period commencing with the end of the prior base period and ending on the date on which the individual filed a valid claim are not available for benefit purposes in a subsequent benefit year unless, in addition thereto, the individual has subsequently earned wages for insured work in an amount equal to at least ten times the individual's current weekly benefit amount. Base-period wages used to determine an individual's monetary eligibility under this subsection, as a result of the following employment, may not exceed ten times the individual's weekly benefit amount:
 - a. Employment by a partnership, if one-fourth or greater ownership interest in the partnership is or during such employment was owned or controlled, directly or indirectly by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.
 - b. Employment by a corporation, if one-fourth or more of the ownership interest, however designated or evidenced in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.
 - c. Employment by a limited liability company, if one-fourth or more of the ownership interest, however designated or evidenced in the limited liability company is or during such employment was owned or controlled, directly or indirectly, by the individual's spouse or child, or by the individual's parent if the individual is under eighteen, or by a combination of two or more of them.
 - d. The exceptions in subdivisions a, b, and c do not apply if, at the time of making the claim, the ownership interest described in those subdivisions has been ceded. An ownership interest is ceded within the meaning of this subdivision if:
 - (1) The appropriate official of the partnership, corporation, or limited liability company has officially filed articles of dissolution, a notice of intent to dissolve, or a notice of termination with the secretary of state, and presents proof of that filing to job service North Dakota;
 - (2) The appropriate official of the corporation has received a certificate of dissolution from the secretary of state;
 - (3) The partnership, corporation, or limited liability company has sold or otherwise transferred to uninvolved third parties substantially all the assets of the partnership, corporation, or limited liability company with an intent to end the business operation and terminate or dissolve the partnership, corporation, or limited liability company. As used in this subdivision, "uninvolved third parties" excludes all relatives of the partners, directors, members of a board of governors, or substantial stockholders or holders of a substantial membership interest in a limited liability company; and excludes any corporation, limited liability company, or partnership, in which the relative holds a one-fourth or greater ownership interest. As used in this paragraph, "relative" means the following persons whether related by blood, marriage, or adoption: grandparents, parents, siblings, spouses, children, grandchildren, uncles, aunts, and first cousins; or

- (4) Substantially all of the assets of the partnership, corporation, or limited liability company have been legally seized by creditors rendering the business incapable of further operation.
- 3. With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term "previously uncovered services" means services:
 - a. Which were not employment as defined in subsection 17 of section 52-01-01 and were not services covered pursuant to section 52-05-03 at any time during the one-year period ending December 31, 1975; and
 - b. Which are:
 - (1) Agricultural labor as defined in subdivision m of subsection 17 of section 52-01-01, or domestic service as defined in subdivision n of subsection 17 of section 52-01-01; or
 - (2) Services performed by an employee of this state or a political subdivision thereof, as provided in subdivision f of subsection 17 of section 52-01-01, or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in paragraph 3 of subdivision h of subsection 17 of section 52-01-01; except to the extent that assistance under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.
- 4. For the purpose of the North Dakota unemployment compensation law, the term "insured worker" means an individual who, with respect to a base period, meets the wage and employment requirements of this chapter and "insured worker" means employment for "employers".

52-06-05. Maximum potential benefits.

Any otherwise eligible individual is entitled during the individual's benefit year to benefits for the number of times the individual's weekly benefit amount appearing in the following table on the line which includes the individual's ratio of total base-period wages to highest quarter base-period wages:

Ratio of Total Base-Period Wages to High Quarter	Times Weekly Benefit Amount
1.50 to 2.29	12
2.30 to 2.44	14
2.45 to 2.59	16
2.60 to 2.74	18
2.75 to 2.89	20
2.90 to 3.04	22
3.05 to 3.19	24
3.20 or more	26

52-06-06. Weekly benefit for unemployment.

Each eligible individual who is unemployed with respect to any week must be paid with respect to such week a benefit in an amount equal to the individual's weekly benefit amount less that part of the wages, if any, payable to the individual with respect to such week which is in excess of sixty percent of the individual's weekly benefit amount. Such benefit, if not a multiple of one dollar, must be computed to the next higher multiple of one dollar. For the purposes of this section, wages are payable with respect to the weeks for which they were reasonably intended to be payable, irrespective of whether services were performed in those weeks.

52-06-06.1. Weekly benefit reduction for child support.

- 1. An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes child support obligations as defined under subsection 7. If any such individual discloses that the individual owes child support obligations, and is determined to be eligible for unemployment

compensation, the bureau shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

2. The bureau shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations as defined under subsection 7:
 - a. The amount specified by the individual to the bureau to be deducted and withheld under this subsection, if neither subdivision b nor c are applicable;
 - b. The amount, if any, determined pursuant to an agreement submitted to the bureau under section 454(20)(B)(i) of the Social Security Act [42 U.S.C. 654(20)(B)(i)] by the state or local child support enforcement agency, unless subdivision c is applicable; or
 - c. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section 459(i)(5) of the Social Security Act [42 U.S.C. 659(i)(5)], properly served upon the bureau.
3. Any amount deducted and withheld under subsection 2 must be paid by the bureau to the appropriate state or local child support enforcement agency.
4. Any amount deducted and withheld under subsection 2 must for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.
5. For purposes of subsections 1 through 4, the term "unemployment compensation" means any compensation payable under the North Dakota unemployment compensation law, including amounts payable by the bureau pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.
6. This section applies only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the bureau under this section which are attributable to child support obligations being enforced by the state or local child support enforcement agency.
7. The term "child support obligations" is defined for purposes of these provisions as including only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act [42 U.S.C. 654] which has been approved by the secretary of health and human services under part D of title IV of the Social Security Act.
8. The term "state or local child support enforcement agency", as used in these provisions, means any agency of this state or a political subdivision thereof operating pursuant to a plan described in subsection 7.

52-06-07. Wages payable prior to January 1, 1941, deemed wages paid within calendar quarter.

For the purposes of section 52-06-04 and subsection 30 of section 52-01-01, wages payable to an individual for insured work performed prior to January 1, 1941, must be deemed to be wages paid within the calendar quarter with respect to which such wages were paid.

52-06-08. Claims for benefits - How made.

Claims for benefits under the North Dakota unemployment compensation law must be made in accordance with such regulations as the bureau may prescribe.

52-06-09. Determinations upon claim filed - Contents.

A determination upon a claim filed pursuant to section 52-06-08 must be made promptly by an examiner and must include a statement as to whether and in what amount the claimant is entitled to benefits for the weeks with respect to which the determination is made and in the event of a denial must include a statement of the reasons therefor. A determination with respect

to the first week of a benefit year also must include a statement as to whether the claimant has been paid the wages required under section 52-06-04 and if so, the first day of the benefit year, the claimant's weekly benefit amount, and the maximum total amount of benefits payable to the claimant with respect to such benefit year.

52-06-10. Determinations in labor dispute cases.

Whenever any claim for benefits under the North Dakota unemployment compensation law involves the application of the provisions of subsection 4 of section 52-06-02, the examiner handling the claim, if so directed by the bureau, shall transmit such claim promptly to the appeals referee for the purpose of making a determination upon the issues involved under that section or upon such claim. The appeals referee shall make the determination on the claim after such investigation as the appeals referee deems necessary and after affording the parties entitled to notice an opportunity for a fair hearing in accordance with the provisions of the North Dakota unemployment compensation law with respect to hearings and determinations of the appeal tribunals. The parties must be notified promptly of the determination, together with the reasons therefor, in the event of the denial of the claim. Such determination must be deemed to be the final decision on the claim, unless within seven days of the mailing of the notice to a party's last-known address, or in the absence of such mailing, within ten days after the delivery of such notice, an appeal is filed with the bureau.

52-06-11. Determination of benefits for individual who secures work on a regular attachment basis.

Notwithstanding any other provisions of the North Dakota unemployment compensation law, the bureau, by regulation, may prescribe that the existence of unemployment, the eligibility for benefits, and the amount of benefits shall be determined for that portion of the week occurring before or after a separation from, or securing of, work in the case of any otherwise eligible claimant who, within a week of unemployment, is separated from or secures work on a regular attachment basis. Such rules must be reasonably calculated to secure general results substantially similar to those provided by the North Dakota unemployment compensation law with respect to weeks of unemployment.

52-06-12. Notice of determinations - Dispensing with.

Notice of a determination upon a claim must be given promptly to the claimant by delivery thereof or by mailing such notice to the claimant's last-known address. In addition, notice of any determination which involves the application of the provisions of section 52-06-02 together with the reasons therefor, must be given promptly in the same manner to the last employing unit by whom the claimant was employed. The bureau may dispense with the giving of notice of any determination to any employing unit and such employing unit shall not be entitled to such notice if it has failed to indicate prior to the determination if and as required by regulation of the bureau, that such employing unit was the claimant's base-period employer, as defined in the North Dakota unemployment compensation law, and that the claimant may be ineligible or disqualified under any provisions of the North Dakota unemployment compensation law.

52-06-12.1. Determination of eligibility - Notification of charges.

The bureau shall, upon determination of an individual's eligibility for benefits chargeable against each base-period employer's account, notify each of the individual's base-period employers, including employers electing to finance benefit payments on a reimbursable basis, of the individual's eligibility and maximum potential charges against the base-period employer's account resulting from the individual's eligibility for benefits.

52-06-13. Notice of appeal from determination - Filing - Hearing - Special notice required.

The claimant or any other party entitled to a notice of a determination as provided in the North Dakota unemployment compensation law may file an appeal from such determination with the appeal tribunal within twelve days after the date of mailing of the notice to the person's

last-known address or, if such notice is not mailed, within twelve days after the service of such notice. Unless the appeal is withdrawn with the permission of the appeal tribunal or is removed to the bureau, the appeal tribunal after affording the parties reasonable opportunity for a fair hearing shall make findings and conclusions and on the basis thereof shall affirm, modify, or reverse such determination. Whenever an appeal involves a question as to whether services were performed by the claimant in employment or for an employer, the tribunal shall give special notice of such issue and of the pendency of the appeal to the employing unit and to the bureau, both of whom thenceforth shall be parties to the proceeding and must be afforded a reasonable opportunity to adduce evidence bearing on such question.

52-06-14. Appeal tribunals - How comprised - Duties - Fees - Alternates - Chairman.

The bureau shall appoint one or more impartial appeal examiners known as the appeal tribunal, who shall hear and decide appealed claims. Each such tribunal shall consist of a referee selected in accordance with chapter 52-02, or a body composed of three members, one of whom must be a referee who shall serve as chairman and who must be a salaried full-time member of the staff of the job insurance division, and one of whom must be a representative of employers, and the other of whom must be a representative of employees. Each of the latter two members may be selected without regard to section 52-02-06 and shall serve at the pleasure of the bureau and be paid a fee of twenty-five dollars per day of active service on such tribunal, plus necessary expenses. The bureau may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member or member's alternates. In no case may the hearings proceed unless the chairman of the appeal tribunal is present.

52-06-15. Appeal tribunal's decision - Copy to be furnished - To be final - Exception.

The parties must be notified promptly of an appeal tribunal's decision upon an appeal taken as is provided in section 52-06-13 and must be furnished with a copy of the decision and the findings and conclusions in support thereof. The decision is final unless, within twelve days after the date of mailing the notice thereof to the party's last-known address, or in the absence of such mailing, within twelve days after the delivery of such notice, further review is initiated pursuant to section 52-06-19.

52-06-16. When redeterminations made by division - Notice.

The job insurance division may reconsider a determination of a claim whenever it finds:

1. That an error in computation or identity has occurred in connection therewith;
2. That wages of the claimant pertinent to such determination but not considered in connection therewith have been newly discovered; or
3. That benefits have been allowed or denied or the amount of benefits fixed on the basis of a misrepresentation of facts.

No such redetermination may be made after two years from the day of the original determination, except that a reconsidered determination involving a finding that benefits have been allowed or denied or the amount of benefits fixed on the basis of nondisclosure or misrepresentations of fact may be made within three years from the date of the determination. Notice of any such redetermination must be given promptly to the parties entitled to the notice or original determination and in the manner prescribed in section 52-06-12.

52-06-17. Appeal from redetermination - Regulations governing.

If the amount of benefits is increased upon such redetermination, an appeal from the redetermination, solely with respect to the matters involved in such increase, may be filed in the manner and subject to the limitations provided in this chapter. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal from any determination upon a subsequent claim for benefits which may be affected in amount or duration by such redetermination. Subject to the same limitations and for the same reasons, the job insurance division may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal,

the bureau, or a court and may apply to that body or court which rendered such final decision to issue a revised decision.

52-06-18. When appeal from original determination treated as appeal from redetermination.

If an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, must be treated as an appeal from such redetermination.

52-06-19. Review of decision of appeal tribunal by the bureau.

The bureau, on its own motion, and within the time specified in section 52-06-15, may initiate a review of the decision of the appeal tribunal or may allow an appeal from such decision upon an application filed within such time by any party entitled to notice of such decision. An appeal filed by such parties must be allowed as a matter of right if such decision was not unanimous or if the examiner's determination was not affirmed by the appeal tribunal. Upon a review on its own motion, or upon an appeal, the bureau upon the basis of the evidence previously submitted in such case or upon the basis of such additional evidence as it may direct to be taken, may affirm, modify, or reverse the findings and conclusions of the appeal tribunal. The bureau may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings removed to the bureau prior to the completion of a fair hearing must be heard by the bureau in the same manner as proceedings before an appeal tribunal. The bureau shall notify promptly the parties to any proceeding before it of its decision, including its findings and conclusions in support thereof. Such decision is final unless within thirty days after the mailing of a notice thereof to the party's last-known address, or in the absence of such mailing, within thirty days after service of such notice, a proceeding for a judicial review is initiated pursuant to section 52-06-27. Upon a denial by the bureau of an application for appeal from the decision of the appeal tribunal, the decision of the appeal tribunal must be deemed to be a decision of the bureau within the meaning of this section for the purposes of judicial review and is subject to judicial review within the time and in the manner provided with respect to decisions of the bureau, except that the time for initiating such review must run from the date of notice of the order by the bureau denying the application for appeal.

52-06-20. Procedure in hearings and appeals - Consolidating claims.

The bureau and appeal tribunal shall not be bound by common law or statutory rules of evidence or by technical rules of procedure, but any hearing or appeal before such tribunals must be conducted in such manner as to ascertain the substantial rights of the parties. The bureau shall adopt reasonable regulations governing the manner of filing appeals and the conduct of hearings and appeals, consistent with the provisions of the North Dakota unemployment compensation law. When the same or substantially similar evidence is relevant and material to the matters in issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, a single record of the proceedings made, and evidence adduced with respect to one proceeding considered as introduced in the others when, in the judgment of the appeal tribunal having jurisdiction of the proceeding, such consolidation would not be prejudicial to any party. No person may participate on behalf of the bureau in any case in which the person has a direct or indirect interest.

52-06-21. Conclusiveness of determinations and decisions.

Any right, fact, or matter in issue directly passed upon or necessarily involved in a determination or redetermination which has become final, or which has become final following a decision or appeal under the North Dakota unemployment compensation law, is conclusive for all the purposes of the North Dakota unemployment compensation law as between the bureau, the claimant, and all employing units who had notice of such determination, redetermination, or decisions. Any determination, redetermination, or decision as to rights to benefits which has

become final and conclusive in accordance with this section is not subject to collateral attack by any employing unit, irrespective of notice. As used in this section, "collateral attack by any employing unit" includes a collateral attack by a reimbursing or contributory base-period employer on a final and conclusive determination of benefits involving a different employer provided that an employer challenging the propriety of charging any benefits paid as a result of a final determination, redetermination, or decision is entitled to receive data and information from job service North Dakota concerning the monetary basis for the claimant's right to the benefits at issue. Provided further, that at any hearing on the challenge, job service North Dakota is not required to call or subpoena the claimant or the claimant's last or most recent employer as a witness.

52-06-22. Rule of decision.

The final decisions of the bureau or of an appeal tribunal and the principles of law declared by it in arriving at such decisions, unless expressly or impliedly overruled by a later decision of the bureau or by a court of competent jurisdiction, are binding upon the bureau and any appeal tribunal in subsequent proceedings which involve similar questions of law. In any subsequent proceeding, if the job insurance division or any appeal tribunal has serious doubt as to the correctness of any principle so declared, the division or appeal tribunal may certify its findings of fact in the case, together with the question of law involved, to the bureau, which after giving notice and reasonable opportunity for hearing upon the law to all parties to such proceeding thereupon shall certify to the division, or to the appeal tribunal, and the parties, its answer to the questions submitted. If the question thus certified to the bureau arises in connection with a claim for benefits, the bureau in its discretion may remove to itself the entire proceedings on such claim, and after proceeding in accordance with the requirements of the North Dakota unemployment compensation law with respect to proceedings before an appeal tribunal, shall render its decision upon the entire claim. Any decision made under the North Dakota unemployment compensation law after the removal of the proceedings upon a claim to the bureau has the effect of a decision under section 52-06-19 and is subject to judicial review within the same time and to the same extent.

52-06-23. Administering oaths - Taking depositions - Compelling attendance of witnesses and memoranda - Penalty.

In the discharge of the duties imposed by the North Dakota unemployment compensation law, the chairman of an appeal tribunal, or any duly authorized representative or member of the bureau, may administer oaths and affirmations, take depositions, certify to official acts, and issue a subpoena to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of the North Dakota unemployment compensation law. Any person who willfully fails to obey a subpoena issued under this section, unless good cause for failure to obey is shown, is guilty of a class B misdemeanor.

52-06-24. Record of testimony to be kept - Witness fees.

A record must be kept of all testimony and proceedings before the bureau or in connection with any appeal, but the testimony need not be transcribed unless further review is initiated. Witnesses subpoenaed pursuant to this chapter must be allowed fees at the rate specified by law, and the fees of such witnesses subpoenaed either by the bureau or on behalf of any party to said appeal must be deemed part of the expenses of administering the North Dakota unemployment compensation law.

52-06-25. Order issued by court upon failure to obey subpoena - Failure to obey order.

In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the chairman of an appeal tribunal or the bureau or its duly

authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before an appeal tribunal or the bureau, or its duly authorized representative, there to produce evidence, if so ordered, or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

52-06-26. Self-incrimination not to exempt person from testifying - Regulations governing.

No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the chairman of an appeal tribunal, the bureau or any member thereof, or any duly authorized representative of the bureau, in any cause or proceeding before the bureau, on the grounds that the testimony or evidence, documentary or otherwise, required of the person, may tend to incriminate the person or subject the person to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed the individual's privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

52-06-27. Judicial review of decision - Petition - Filing.

A party to proceedings before the bureau may obtain a judicial review of the decision of the bureau by filing a petition for review within thirty days after the date of mailing the bureau's decision to the party at the party's last-known address, or in the absence of mailing, within thirty days after delivery of the decision to the party. The petition for review must be filed in the district court of the county in which the petitioner resides, must be verified, and must state the grounds upon which review is sought. All other parties to the proceeding before the bureau must be parties respondent. The bureau is deemed to be a party to any such proceeding. If the bureau is a party respondent, the petition must be served upon it by leaving with it or its chairman, or any other representative as it may designate for that purpose, as many copies of the petition as there are respondents. With its answer or petition, the bureau shall certify and file with the court a verified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the bureau's findings, conclusions, and decision therein. Upon the filing of a petition for review by the bureau or upon the service of the petition upon it, the bureau forthwith shall send by registered mail to each other party to the proceeding a copy of such petition and such mailing is deemed to be completed service upon all such parties. In any proceeding under this section the finding of the bureau as to the facts, if supported by evidence and in the absence of fraud, is conclusive and the review by the court must be confined to questions of law. Such proceedings must be heard by the court and must be given precedence over all other civil cases except cases arising under the workforce safety and insurance statute of this state. An appeal may be taken from the decision of the district court to the supreme court of this state in the same manner as is provided in civil cases. Upon the final termination of such judicial proceeding, the bureau shall enter an order in accordance with the mandate of the court.

52-06-28. Bureau entitled to notice upon claim for benefits - Attorney upon judicial review.

The bureau is entitled to notice as a party in any proceeding involving a claim for benefits before the bureau or an appeal tribunal. In any proceeding for judicial review pursuant to section 52-06-27, the bureau may be represented by the attorney employed by it for that purpose.

52-06-29. Payment of benefits.

Benefits must be promptly paid in accordance with a determination or redetermination regardless of any appeal or pending appeal. If a determination allowing benefits is affirmed in any amount by an appeals referee or is so affirmed by the bureau or if a decision of an appeals referee allowing benefits is affirmed in any amount by the bureau, such benefits must be

promptly paid regardless of any further appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits may be issued by any court but if such decision is finally reversed, no employer's account may be charged with benefits so paid pursuant to the erroneous determination, except on those employer accounts which make payments in lieu of contributions, and benefits may not be paid for any subsequent weeks of unemployment involved in such reversal. Benefits due and payable to a deceased or judicially declared incompetent person may be paid in accordance with such regulations as the bureau shall prescribe, to the person or persons, payment to whom the bureau finds would effectuate the purposes of the North Dakota unemployment compensation law. Such regulations need not conform to the statutes applicable to the descent and distribution of decedents' estates. A receipt from the person or persons to whom the bureau makes payment shall fully discharge the fund and the bureau from liability for such benefits.

52-06-30. Assignment of benefits prohibited - Benefits exempt from remedies for collection of debt - Exception.

1. No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under the North Dakota unemployment compensation law is valid. Such rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of a debt. Benefits received by any individual, as long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except debts incurred for necessities furnished to the individual, that person's spouse, or dependents during the time when the individual was unemployed. No waiver of any exemption provided for in this subsection is valid. However, this subsection does not impair the operation of subsection 2 or section 52-06-06.1 or the continuous levy authorized under Public Law No. 105-34, section 1024 [111 Stat. 923-924; 26 U.S.C. 6331(h)].
2. An individual filing a new claim for unemployment compensation benefits, at the time of filing the claim, must be advised that:
 - a. Unemployment compensation is subject to federal income tax and state income tax;
 - b. Requirements exist pertaining to estimated federal and state tax payments;
 - c. The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation benefits at the amount specified in the federal Internal Revenue Code;
 - d. The individual, having elected to have federal income tax withheld, may also elect to have state income tax deducted and withheld from the individual's payment of unemployment compensation at a rate determined by the tax commissioner pursuant to section 57-38-59; and
 - e. The individual is permitted to change a previously elected withholding status. Amounts deducted and withheld from unemployment compensation must remain in the unemployment fund until transferred to the federal and state taxing authority as payment of income tax. The bureau shall follow all procedures specified by the United States department of labor, the federal internal revenue service, and the tax commissioner pertaining to the deducting and withholding of income tax. Amounts must be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, or any other amounts required to be deducted and withheld under this chapter.

52-06-31. Waiver of rights of individual prohibited.

No agreement by any individual to waive, release, or commute the individual's rights to benefits or any other rights under the North Dakota unemployment compensation law is valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under the North Dakota unemployment compensation law from such employer, is valid. No employer may make, require, or accept, directly or indirectly, any deduction from wages to finance the employer's contributions required from the

employer, nor require nor accept any waiver of any right hereunder by any individual in the employer's employ. However, this section does not impair the operation of section 52-06-06.1.

52-06-32. Individual claiming benefits not to be charged fees by bureau - Fees of individual's attorney.

A claimant may not be charged fees by the bureau or by any court or officer thereof in any proceeding under this chapter. Any party in any proceeding before the bureau may be represented by counsel or other duly authorized agent. A claimant's attorney's fees for representation in district court must be paid by the bureau, in an amount determined to be reasonable by the bureau, if the claimant finally prevails; however, the bureau may not pay attorney's fees if the claimant's attorney is employed by or contracting with a legal services organization funded totally or in part by public funds. A claimant's attorney's fees are those fees charged to the claimant by the attorney and which would otherwise be payable by the claimant to the attorney. The bureau may not pay attorney's fees for representation in any proceeding before the bureau or its representatives.

52-06-33. Recovery and recoupment - Penalty.

A person who has received any amount of benefits under the North Dakota unemployment compensation law to which the person is not entitled shall be liable to refund to the bureau for the fund the amount so paid or to have such amount deducted from any future benefits payable to the person under the North Dakota unemployment compensation law or the unemployment compensation law of another state or the federal government following a finding that such payment occurred. Such findings shall have become final and shall specify the reason for such finding, the week or weeks for which such benefits were paid, and the amount of benefits so paid. The bureau, in its discretion, may release such person from liability to refund when it finds that recovery would be contrary to equity and good conscience. Amounts determined collectible may be so collected by civil action in the name of the bureau. If the bureau has found that the individual has made a false statement for the purpose of obtaining unemployment compensation benefits to which the individual was not lawfully entitled, the bureau shall assess a monetary penalty of fifteen percent of the amount of unemployment compensation benefits overpaid. The penalty must be applied to all forms of state and federal unemployment compensation and the federally mandated penalty amounts collected must be deposited in the state unemployment compensation fund. Amounts unpaid on the date on which they are due and payable, as determined by the bureau, may bear interest at the rate of one and one-half percent per month from and after that date until payment plus accrued interest is received by the bureau. However, no interest may be assessed for the first one hundred eighty days on any overpayment when the bureau has found that the individual did not make a false statement to obtain benefits to which the individual was not lawfully entitled.

52-06-34. Benefits payable only to extent provided - State or bureau not liable for excess sums.

Benefits may be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment compensation fund. Neither the state nor the bureau is liable for any amount in excess of such sums.

52-06-35. Statements relating to benefit rights and claims to be posted - Regulations governing.

Each employer shall post and maintain in places readily accessible to individuals in the employer's employ printed statements concerning benefit rights, claims for benefits, and such other matters relating to the administration of the North Dakota unemployment compensation law as the bureau may prescribe by regulation. Each employer shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits when and as the bureau may prescribe by regulation. Such printed statements and other materials must be supplied by the bureau to each employer without cost.

52-06-36. Factors considered in determining suitability of work and good cause for voluntary leaving.

In determining whether or not any work is suitable for an individual and in determining the existence of good cause for voluntarily leaving the individual's work under subsections 1 and 3 of section 52-06-02, there must be considered among other factors, and in addition to those enumerated in this section, the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the length of the individual's unemployment, the individual's prospects for obtaining work in the individual's customary occupation, the distance of available work from the individual's residence, and the prospects for obtaining local work. However, any work paying wages equal to the maximum weekly benefit amount must be determined suitable for an individual who has filed for and received benefit payments for eighteen consecutive weeks; provided, that consideration must be given to the degree of risk involved to the individual's health, safety, morals, the individual's physical fitness, and the distance of the work from the individual's residence. No work may be deemed suitable and benefits may not be denied under the North Dakota unemployment compensation law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
2. If the wages, hours, or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

52-06-37. Action for libel or slander not to be predicated upon disqualification for benefits.

No action for slander or libel, either civil or criminal, may be predicated upon information furnished by an employer to the job insurance division in connection with the imposition of any of the disqualifications set forth in section 52-06-02.

52-06-37.1. Applicability of decision to separate proceedings.

Any finding of fact or law, judgment, conclusion, or decision made by a claims examiner, appeals referee, the bureau, or any person with the authority to make findings of fact or law in any action or proceeding before the bureau is not conclusive or binding on, nor may it be used as evidence in, any separate or subsequent action or proceeding unrelated to the North Dakota unemployment compensation law, except for workforce safety and insurance purposes, between an individual and the individual's present or prior employer brought before an arbitrator, court, or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

52-06-38. Penalty for making false statement or failure to disclose material fact to obtain or increase benefits.

Repealed by S.L. 1975, ch. 106, § 673.

52-06-39. Penalty for false statement or failure to disclose material fact to prevent or reduce benefits.

Repealed by S.L. 1975, ch. 106, § 673.

52-06-40. Penalty for violation or failure to perform duty when no penalty provided.

Any person who willfully violates any provision of this title, or any order, rule, or regulation thereunder, and for which a penalty is neither prescribed in this title nor provided by any other applicable statute, is guilty of a class B misdemeanor.

APPENDIX F

Excerpt from U.S. Department of Labor, *Handbook for Measuring Unemployment-Insurance Lower-Authority Appeals Quality* (procedural-fairness standards)

A Guide to Unemployment Insurance Benefit Appeals

Principles and Procedures

I. Introduction

This guide for appeals and hearings sets forth procedures synthesized from the experience of the several States and the principles on which such procedures are based. The procedures are sound and practical, as well as fair to claimants and to other interested parties. However, it should be understood that while the procedures expressed here are appropriate for most cases, other procedures are equally effective for some cases.

The “fair hearing” provision in section 303(a)(3) of the Social Security Act requires a reasonable opportunity for workers whose claims are denied to be heard by an impartial tribunal in an adjudicatory proceeding which assures them of elementary fairness. The “methods of administration” provision in section 303(a)(1) requires that procedures for appeals and hearings be reasonably calculated to pay benefits promptly when due. From the outset of the unemployment insurance program it has been recognized by both State and Federal officials that the mandate of these sections is for appeal and hearing procedures that take account of the circumstances of unemployed workers and the special needs of the program.

Payments of unemployment insurance are of comparatively small amounts; they represent at best a partial wage replacement calculated to do no more than pay for basic, non-deferrable necessities; and unless paid promptly they do not serve their purpose. Further, claimants are workers who are unemployed and typically are unrepresented. Finally, each agency has a great volume of claims which it must handle.

Accordingly, to be sound and practical, as well as fair to claimants and to other interested parties, appeal and hearing procedures in this program must, as one respected authority has said, be “simple, speedy and inexpensive.”¹ Simplicity assures that parties may know and understand their rights; it precludes formal and technical procedures which place undue burdens on parties which tend to impair their ability to protect their rights. Speed assures the prompt payment of benefits when due. Low expense means that no individual may be deprived of his rights merely because he cannot afford to retain representation or to incur other expense in the pursuit of these rights. In addition, procedures should include making all parties aware of available assistance by claims and appeals personnel, so that they may exercise, as well as understand, their rights.

A. Fair Hearing

Hearings must be fair, and they must therefore be conducted in accordance with procedural safeguards. The essential requisites of fairness, although expressed in many ways, include the following elements which have been excerpted from case law:

- “timely notice to all claimants of every material step in the proceedings”²

¹ Robert M. Benjamin, *Administrative Adjudication in the State of New York*, 1942, at page 13.

² Pacific Live Stock Co v. Oregon Water Board, 241 U.S. 440, 453 (1916).

A Guide to Unemployment Insurance Benefit Appeals Principles and Procedures

- “full opportunity to be heard in respect of all that bears upon the validity, extent and priority of their claims”³
- “to hear the evidence introduced against him” and “to know the claims of his opponent”⁴
- “to produce evidence and witnesses” and to “offer evidence in explanation or rebuttal”⁵
- “to cross-examine witnesses”⁶
- “to make argument”⁷
- “evidence adequate to support pertinent and necessary findings of fact”⁸
- “that the decision of the Board shall be governed by and based upon the evidence produced at the hearing”⁹
- “that the decision shall not be without substantial evidence taken at the hearing to support it.”¹⁰

As the courts have held, however, no particular form or procedure is required to constitute due process in administrative hearings.”¹¹

³ Ibid.

⁴ Philadelphia Co. v. Securities and Exchange Commission, 175 F.2d 808, 817 (CA DC, 1948), dismissed 337 U.S. 901 (1949).

⁵ National Labor Relations Board v. Prettyman, 117 F.2d 786, 790 (CCA 6, 1941); 18 ALR 2d 556. See also Whitfield v. Hanges, 222 Fed. 745, 749 (CCA 8, 1915).

Interstate Commerce Commission v Louisville & Nashville Railroad Co., 227 U.S. 88, 93 (1913). See also Svarney v. United States, 7 F.2d 515 517 (CCA 8, 1925).

⁶ Interstate Commerce Commission v. Louisville & Nashville Railroad Co., *supra*. See also The Ottawa, 70 U.S. 268, 271 (1865O); Philadelphia Co. v. Securities and Exchange Commission, *supra*; and Svarney v. United States, *supra*.

⁷ Philadelphia Co. v. Securities and Exchange Commission, *supra*. See also Morgan v. United States, 298 U.S. 468 480 (1936); WJR v. Federal Communications Commission, 174 F.2d 226 (CA DC, 1948), reversed on other grounds, 337 U.S. 265 (1949); and L.B. Wilson, Inc., v. Federal Communications Commission, 170 F.2d 793 (CA DC, 1948).

⁸ Morgan v. United States, 298 U.S. 468, 479 (1936).

⁹ National Labor Relations Board v. Prettyman, *supra*. See also Morgan v. United States, *supra*; Interstate Commerce Commission v. Louisville & Nashville Railroad Co., *supra*; and Whitfield v. Hanges, *supra*.

¹⁰ Whitfield v. Hanges, 222 Fed. 745, 749 (CCA 8, 1915). See also Morgan v. United States, *supra*. See also Morgan v. United States, *supra*.