

To: New Jersey Law Revision Commission
From: Samuel M. Silver, Dep. Dir.
Re: Update: Unemployment Compensation Benefits for the Wrongfully Incarcerated,
N.J.S. 43:21-5(a) as discussed in *Haley v. Bd. of Rev., Dept. of Lab.*, 245 N.J. 511 (2021)
Date: June 06, 2022

MEMORANDUM

Project Summary

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

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

In January of 2022, the Commission authorized Staff to conduct research and outreach while keeping in mind that the Commission may ultimately decline to make a recommendation on policy decisions.⁶

Statute Considered

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

An individual shall be disqualified for benefits:

(a) For the week in which the individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual

¹ N.J.S. 43:21-1 to – 71.

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

³ N.J.A.C. 12:17-9.1(e)(10).

⁴ 245 N.J. 511, 515 (2021).

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

⁶ N.J. Law Revision Comm’n, *Minutes NJLRC Meeting *5* (Jan. 20, 2021) <https://static1.squarespace.com/static/596f60f4ebbd1a322db09e45/t/62152fab5bd63c63c224a52a/1645555627695/MIN012022r.pdf>.

becomes reemployed and works eight weeks in employment, which may include employment for the federal government, and has earned in employment at least ten times the individual's weekly benefit rate, as determined in each case. This subsection shall apply to any individual seeking unemployment benefits on the basis of employment in the production and harvesting of agricultural crops, including any individual who was employed in the production and harvesting of agricultural crops on a contract basis and who has refused an offer of continuing work with that employer following the completion of the minimum period of work required to fulfill the contract. This subsection shall not apply to an individual who voluntarily leaves work with one employer to accept from another employer employment which commences not more than seven days after the individual leaves employment with the first employer, if the employment with the second employer has weekly hours or pay not less than the hours or pay of the employment of the first employer, except that if the individual gives notice to the first employer that the individual will leave employment on a specified date and the first employer terminates the individual before that date, the seven-day period will commence from the specified date.

* * * *

Background

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

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

The Appellate Division affirmed the decision of the Appeal Tribunal and the Board of Review citing *Fennell v. Board of Review*.¹⁴ The Court concluded that the UCL was “amended in 1961 to disqualify applicants who leave work for purely personal reasons, and that incarceration was a purely personal reason.”¹⁵ Although the Court acknowledged that the Act does not

⁷ *Id.* at 515.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 515-16.

¹² *Id.* at 516.

¹³ *Id.* at 516.

¹⁴ *Id.* at 517.

¹⁵ *Id.*

automatically disqualify individuals from receiving benefits “who have quit or [have] been terminated for personal reasons not connected to work,” it reasoned that “the Legislature would not have created explicit exemptions from disqualification ... if benefits were payable for any non-work-related reason an employee is terminated from employment.”¹⁶

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

Analysis

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

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

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

¹⁶ *Id.* at 516.

¹⁷ 242 N.J. 123 (2020).

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

¹⁹ *Id.* at 520.

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

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

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

²³ *Id.* at 523-24.

²⁴ *Id.*

jury declined to indict, and the charges against him were dismissed” and that he took steps to try to protect his employment.²⁵

The Dissent

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

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

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

Preliminary Outreach

Following the guidance of the Commission during the January 2022 meeting, Staff conducted targeted outreach to knowledgeable individuals and organizations including: the Labor and Employment Law Section of the New Jersey State Bar Association; practitioners who engage in employment law; and practitioners involved in the practice of criminal law.

To this time, the Commission has not received any opposition to working in this area. The Employment Law Section of the New Jersey State Bar Association (NJSBA) advised the Commission that they have “no input to offer on this issue.”³² The Chair of this section advised that the “NJSBA may contact [the Commission] separately with such input.”³³

²⁵ *Id.*

²⁶ *Id.* at 528.

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

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

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 531.

³² E-mail from Keith Waldman, Esq., Chair, Labor & Employment Section, N.J. State Bar Ass’n to Samuel M. Silver, Dep. Dir., N.J. Law Revision Comm’n (Apr. 21, 2022, 5:04 PM EST) (on file with the NJLRC).

³³ *Id.*

Support for the Commission’s work in this area was received from a criminal defense attorney.³⁴ Counsel stated that “[m]y sense is that a legislative change would be appropriate” noting that his view “favors the reasoning of the dissent, for the reasons expressed therein.”³⁵ This commenter would modify N.J.S. 43:21-5(a) “to specify categorically that an employee terminated because of an arrest and pretrial detention – followed by a dismissal of the charges – has not “left work voluntarily” and is therefore not disqualified from benefits solely on account of that arrest and pretrial detention.”³⁶

Pending Legislation

There is no pending legislation in New Jersey that concerns the issue raised in this Memorandum.

Conclusion

Staff requests authorization to conduct work in this area including additional research and outreach to determine whether it would be useful to modify N.J.S. 43:21-5(a) to clarify its impact on an employee terminated from employment solely because of an arrest and pretrial detention followed by a dismissal of the criminal charges.

³⁴ E-mail from Alan Marain, Esq., Law Offices of Allan Marain to Samuel M. Silver, Dep. Dir., N.J. Law Revision Comm’n (Apr. 20, 2022, 9:02 AM EST) (on file with the NJLRC).

³⁵ *Id.*

³⁶ *Id.*