

PRESENTED BY MICHAEL  
BOWERS

.5 CREDIT CLE, JANUARY 24,  
2024

# IDAHO UNEMPLOYMENT INSURANCE BENEFIT APPEALS

---

# ROADMAP:

- 
- Who is this CLE for? Hint: Everyone!
  - UI Benefits and Eligibility Overview
  - Claimant Appeals
    - Process
    - Substance
  - Pending ISC appeals
  - Practical Advice for Claimants/Clients



## WHO IS THIS CLE FOR? EVERYONE!

- My perspective is claimant/employee focused
- But there should be something here for everyone
  - UI is a potential issue in nearly every separation
  - There is a tremendous need! Consider UIB as a pro bono opportunity

---

# ROADMAP:

- 
- Who is this CLE for? Hint: Everyone!
  - **UI Benefits and Eligibility Overview**
  - Claimant Appeals
    - Process
    - Substance
  - Pending ISC appeals
  - Practical Advice for Claimants/Clients

## UI BENEFITS AND ELIGIBILITY OVERVIEW: **APPLICATIONS AND WEEKLY CERTIFICATIONS**

- Claimants apply online through the Department's website
- After the initial eligibility determination, eligibility is considered week-by-week
- Claimants must submit weekly certifications

## UI BENEFITS AND ELIGIBILITY OVERVIEW: **BASIC ELIGIBILITY REQUIREMENTS**

To be eligible for UIB, a claimant must:

- meet minimum earning requirements during the base period;
- have earned those wages from a covered employer in covered employment;
- be un- or under-employed through no fault of their own; and
- be able, available, and seeking work

See I.C. § 72-1366 and IDAPA 09.01.30

## BASIC ELIGIBILITY REQUIREMENTS: MINIMUM EARNINGS DURING BASE PERIOD

- Base period is usually the first 4 of the previous 5 calendar quarters
- Claimant must have earned wages in at least 2 of the quarters in the base period
- Must have been paid at least \$1,872 in wages in one of those quarters
- Claimant's total wages in the base period must equal 1.25 times their highest quarter wages

## BASIC ELIGIBILITY REQUIREMENTS:

# COVERED EMPLOYERS AND COVERED EMPLOYMENT

- The **vast majority of employees work in covered employment**, including
  - government employees
  - non-profit employees
- Notable exceptions
  - Independent contractors
  - Employees of religious institutions (unless employer **voluntarily elects** coverage)

See I.C. § 72-1315 (covered employer); I.C. § 72-1316 (covered employment); I.C. § 72-1316A (exceptions to covered employment)



## BASIC ELIGIBILITY REQUIREMENTS: UNEMPLOYED WITHOUT FAULT

Claimants are not eligible for benefits if:

- they “**voluntarily le[ft] employment without good cause** connected with the claimant's employment,” or
- were “**discharge[d] for misconduct** in connection with the claimant's employment

See I.C. § 72-1366; IDAPA 09.01.30.275 and  
09.01.30.450

# BASIC ELIGIBILITY REQUIREMENTS: UNEMPLOYED WITHOUT FAULT

## QUIT FOR GOOD CAUSE

- Cause must arise from “working conditions, job tasks, or employment agreement” not “personal/non job-related matters.”
- Reasonable employee standard
- Examples:
  - Moral or ethical objection
  - Health or physical condition
  - Illegal harassment of any kind
- IDAPA 09.01.30.450

## DISCHARGE FOR MISCONDUCT

- Enumerated reasons:
  - Disregard of Employer’s Interest
  - Violation of Reasonable Rules
  - Disregard of Standards of Behavior
- Does not include:
  - “Mere inefficiency” unsatisfactory performance or isolated instances of negligence
  - Non-job-related conduct
- IDAPA 09.01.30.275

## BASIC ELIGIBILITY REQUIREMENTS: **UNEMPLOYED WITHOUT FAULT**

**Under-employment counts as unemployment** (up to a point) as long as all other eligibility conditions are met:

- Claimants can earn up to 50% of their weekly benefit amount (WBA) without reduction of benefits
- Earnings in excess of 50% WBA reduce entitlement dollar for dollar



## BASIC ELIGIBILITY REQUIREMENTS: **ABLE, AVAILABLE, AND SEEKING WORK**

**ABLE** = ability to do **some kind of work**

- need not be work in one's "customary occupation" or the same kind of work last performed
- Ability for UIB purposes is not necessarily incompatible with disability for purposes of ADA or SSDI
- IDAPA 09.01.30.100, and .150



## BASIC ELIGIBILITY REQUIREMENTS: **ABLE, AVAILABLE, AND SEEKING WORK**

**AVAILABLE** = “a state of mind that encompasses a readiness and willingness to work”

- Cannot place “unreasonable restrictions on working conditions,” etc.
- Taking vacation is incompatible with availability, etc.,
- IDAPA 09.01.30.175



## BASIC ELIGIBILITY REQUIREMENTS: **ABLE, AVAILABLE, AND SEEKING WORK**

**SEEKING WORK** = complying with the Department's work-search requirements

- IDAPA 09.01.30.575



## BASIC ELIGIBILITY REQUIREMENTS: **MISCELLANEOUS ELIGIBILITY ISSUES**

- Outstanding overpayments or interest
- Fraud disqualifications
- Special rules regarding:
  - Employees of educational institutions
  - Corporate officers
  - Labor disputes

## UI BENEFITS AND ELIGIBILITY OVERVIEW: **BENEFITS AND ENTITLEMENTS**

### **The benefit entitlement formula is complicated!**

- Weekly Benefit Amount (WBA) = 50% weekly full-time wages (more-or-less), subject to statutory maximum
- Maximum varies annually = 55% of the statewide average weekly wage
  - **Current weekly max is \$532** (equivalent to ~ 28k/yr)
- Total weeks of eligibility = 10 – 26, depending on current statewide unemployment rate, and consistency of claimant's earnings over the base period
  - Current rate (3.3%) means max eligibility is 21 weeks





## UI BENEFITS AND ELIGIBILITY OVERVIEW: **SOME TAKE-AWAYS**

- Most people are covered by the system, so UIB is a potential issue in most separations
- Part-time work is not automatically disqualifying
- Voluntarily quitting due to harassment is not disqualifying
- Separation or termination due to inability to perform essential functions is not (necessarily) disqualifying
- Nobody is getting rich on unemployment

---

# ROADMAP:

- 
- Who is this CLE for? Hint: Everyone!
  - UI Benefits and Eligibility Overview
  - **Claimant Appeals**
    - Process
    - Substance
  - Pending ISC appeals
  - Practical Advice for Claimants/Clients

# CLAIMANT APPEALS: TYPES OF APPEALS

- Appeals from initial denial of eligibility
- Appeals regarding overpayments (i.e., retroactive denial of eligibility)
  - Often accompanied by a “fraud” determination
- Appeals about the timeliness of appeals

# CLAIMANT APPEALS: PROCESS: BIG PICTURE

Eligibility, Overpayment, and/or Fraud Determination by IDOL staff



Appeal to IDOL Appeals Bureau



Request for Review by the Idaho Industrial Commission



Appeal to the Idaho Supreme Court



## CLAIMANT APPEALS: PROCESS: DETERMINATIONS BY DEPARTMENT STAFF

- Determinations inform claimants of the decision made and period for appeal
  - But they often inadequately explain the basis for the decision (See example)
- Window for appeal is very short – 14 days from the **date of mailing**
  - No good-cause exception if claimants miss the appeal window, only exception is postal error (See IDAPA 09.01.01.037.01)
- Filing an appeal is very informal
  - Emailing the words “I appeal” is likely enough

**ELIGIBILITY DETERMINATION  
UNEMPLOYMENT INSURANCE CLAIM**

**CLAIMANT:**

[REDACTED]

**INTERESTED EMPLOYER(S):**

[REDACTED]

**SSN:**XXXXX

The evidence in the record establishes that the claimant willfully made a false statement or failed to report a material fact on this claim. The claimant is not eligible for benefits effective 5/29/2022 through 5/27/2023. It has also been determined that the claimant provided false information, or benefits were paid, waiting week or offset credit was granted for the week(s) between 4/26/2020 through 6/27/2020, 7/5/2020 through 9/19/2020, 9/27/2020 through 10/10/2020, 10/18/2020 through 1/9/2021, 1/17/2021 through 1/30/2021, 2/7/2021 through 2/13/2021, 2/21/2021 through 2/27/2021 and 3/7/2021 through 3/13/2021 as a result of a willful false statement or failure to report a material fact on this claim. Benefits or waiting week credit received for these weeks are also denied. The claimant will also remain ineligible until the resulting overpayment, civil penalties and interest from this determination have been paid.

**SUMMARY OF FACTS**

- The claimant failed to report his work and earnings.
- The claimant also failed to report he had quit a job.
- The Department requested additional information from the claimant. The claimant failed to respond to the Department's request.

Based on the information on file, it can only be concluded the claimant provided false information in an attempt to obtain unemployment insurance benefits for which he was not eligible.



## CLAIMANT APPEALS: PROCESS: DETERMINATIONS BY DEPARTMENT STAFF

- Determinations inform claimants of the decision made and period for appeal
  - But they often inadequately explain the basis for the decision (See example)
- Window for appeal is very short – 14 days from the **date of mailing**
  - No good-cause exception if claimants miss the appeal window, only exception is postal error (See IDAPA 09.01.01.037.01)
- Filing an appeal is very informal
  - Emailing the words “I appeal” is likely enough



# CLAIMANT APPEALS: PROCESS: APPEALS TO IDOL APPEALS BUREAU

- All hearings are telephonic
- Documentary evidence should be submitted in advance via email
- Testimony is sworn, but rules of evidence do not apply
  - “The appeals examiner may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. **All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.**”  
IDAPA 09.01.01.045.13





## CLAIMANT APPEALS:

# PROCESS: APPEALS TO IDOL APPEALS BUREAU, CONT'D

- Party with the burden of proof (usually) presents first
  - But it's anyone's guess when there are multiple issues with different parties bearing the burden of proof – hearings are largely informal and can feel like the Wild West!
- Appeals examiners can – and often will – conduct much of the witness examination themselves
- Decision is de novo
  - Appeals Examiners may raise issues *sua sponte*



## CLAIMANT APPEALS:

# PROCESS: APPEALS TO IDOL APPEALS BUREAU, CONT'D

- Representatives (for any side) need not be attorneys
  - Excellent opportunity to use the skills of law students/interns/summer clerks!
- Department rep (not an attorney) is likely to represent IDOL in appeals of overpayment determinations involving under-reported wages or UI fraud
- Appeals Examiners operate independently of other IDOL staff
  - There may be disconnect between how the Department and its claims investigators view issues, and how the Appeal Examiners view them



## CLAIMANT APPEALS:

# PROCESS: APPEALS TO IDOL APPEALS BUREAU, CONT'D

### IMPORTANT!

- If the claimant requests a continuance, the case **Department practice is to dismiss the case** and require the claimant to **file a request to re-open within 10 days**
  - Requests to re-open appear to be granted as a matter of course
  - This is critical to know, and to advise potential client about, if they need advice regarding or want your representation for a hearing, but the hearing date is imminent (which it always is!!!)

## CLAIMANT APPEALS: PROCESS: REVIEW BY THE INDUSTRIAL COMMISSION

- Claimant must file within 14 days of Appeals Examiner's decision
- As with initial appeal, may be very informal – “I appeal”
- Review is *de novo* (again!)
  - Commission has authority to consider evidence not before the Appeals Examiner, but is unlikely to do so
- Procedural rules (R.A.P.P.) are not on Westlaw!
  - <https://iic.idaho.gov/wp-content/uploads/2021/07/RAPP-July-2021.pdf>



# CLAIMANT APPEALS: PROCESS: APPEALS TO THE IDAHO SUPREME COURT

- The Idaho Supreme Court is the **first court** to hear any UIB appeal!
- Review is constitutionally constrained to **questions of law**
  - Free review of legal issues, but Court usually must accept Commission's factual findings
  - Need not accept findings not supported by “competent and substantial evidence”
    - Low bar, but the Commission sometimes fails to meet it
  - If the facts only support one conclusion (in the Court's view) it may resolve factual issues as a matter of law, notwithstanding the Commission's findings (see *Shumway v. IDOL*, Dkt. 50045 (Dec. 28, 2023)).



---

# ROADMAP:

- 
- Who is this CLE for? Hint: Everyone!
  - UI Benefits and Eligibility Overview
  - **Claimant Appeals**
    - Process
    - **Substance**
  - Pending ISC appeals
  - Practical Advice for Claimants/Clients



# CLAIMANT APPEALS: SUBSTANCE: SEPARATION ISSUES

## QUIT FOR GOOD CAUSE

- Cause must arise from “working conditions, job tasks, or employment agreement” not “personal/non job-related matters.”
- Reasonable employee standard
- Examples:
  - Moral or ethical objection
  - Health or physical condition
  - Illegal harassment of any kind
- IDAPA 09.01.30.450

## DISCHARGE FOR MISCONDUCT

- Enumerated reasons:
  - Disregard of Employer’s Interest
  - Violation of Reasonable Rules
  - Disregard of Standards of Behavior
- Does not include:
  - “Mere inefficiency” unsatisfactory performance or isolated instances of negligence
  - Non-job-related conduct
- IDAPA 09.01.30.275



# CLAIMANT APPEALS: SUBSTANCE: SEPARATION ISSUES

## QUIT FOR GOOD CAUSE

- Cause must arise from “working conditions, job tasks, or employment agreement” not “personal/non-job-related matters.”
- Reasonable employee standard
- Examples
  - Moral or ethical objection
    - Health or physical condition
    - Illegal harassment of any kind
- IDAPA 09.01.30.450

**BURDEN OF PROOF ON EMPLOYEE**

## DISCHARGE FOR MISCONDUCT

- Enumerated reasons:
  - Disregard of Employer’s Interest
  - Violation of Reasonable Rules
  - Disregard of Standards of Behavior
- Not include:
  - “Mere inefficiency” unsatisfactory performance or isolated instances of negligence
  - Non-job-related conduct
- IDAPA 09.01.30.275

**BURDEN OF PROOF ON EMPLOYER**



# CLAIMANT APPEALS: SUBSTANCE: OVERPAYMENTS AND FRAUD

- Idaho Code section 72-1366(12):“A claimant shall **not be entitled to benefits for a period of fifty-two (52) weeks** if it is determined that he has **willfully made a false statement or willfully failed to report a material fact in order to obtain benefits**. The claimant shall also . . . **repay any sums** received . . . as a result of having willfully made a false statement or willfully failed to report a material fact.“
- Idaho Code section 72-1369(2):The director shall assess the following **monetary penalties** for each determination in which the claimant is found to have made a false statement, misrepresentation, or failed to report a material fact to the department:
  - (a) Twenty-five percent (25%) of any resulting overpayment for the first determination;
  - (b) Fifty percent (50%) of any resulting overpayment for the second determination; and
  - (c) One hundred percent (100%) of any resulting overpayment for the third and any subsequent determination.

# CLAIMANT APPEALS: SUBSTANCE: OVERPAYMENTS AND FRAUD

- Income reporting requirements for partially-employed claimants are a trap for the unwary!!!
  - IDOL reporting week runs Sunday to Saturday, regardless of employer pay-periods
    - Employees are usually compensated based on calendar date (1<sup>st</sup> – 15<sup>th</sup>, 16<sup>th</sup> – end of month), or for bi-weekly periods that may not align with the Department's reporting weeks
  - Failure to report accurately based on **Department's reporting periods** may result in OP and fraud determinations – even if all income is reported in the aggregate
  - In my experience, employer reports are not scrutinized for accuracy to the same extent as employee reports (i.e., when there is a discrepancy, the presumption is that employer reports are accurate and employee reports are inaccurate)

---

# ROADMAP:

- 
- Who is this CLE for? Hint: Everyone!
  - UI Benefits and Eligibility Overview
  - Claimant Appeals
    - Process
    - Substance
  - **Pending ISC appeals**
  - Practical Advice for Clients



## PENDING ISC APPEALS

- Banks v. Primary Health Source (Dkt. No. 50202) and Scott v. Home Depot (Dkt. No. 50660)
  - Challenges to the sufficiency of notice of Determinations by mail
- Flynn v. Sun Valley Brewing Co. (Dkt. No. 50921)
  - Challenge to IDOL's and the IIC's standard for UIB fraud

---

# ROADMAP:

- 
- Who is this CLE for? Hint: Everyone!
  - UI Benefits and Eligibility Overview
  - Claimant Appeals
    - Process
    - Substance
  - Pending ISC appeals
  - **Practical Advice for Claimants/Clients**

## PRACTICAL ADVICE FOR CLAIMANTS/CLIENTS

- **Apply if you are eligible!!!** UIB is insurance YOU have paid for!
- Call the Department to ask questions if you are uncertain of how to report
- Answer eligibility questions accurately, even if you believe they are irrelevant
- If eligibility is in dispute, continue filing weekly certifications through appeal
- Keep careful records



**QUESTIONS?**