

Why Can't I Collect Unemployment Benefits?

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Recently I was laid off from my job that I had been at for more than a year. When I went to apply for unemployment benefits they told me that I was not eligible to receive unemployment. What should I do? Should I reapply?

S.F

Dear S.F:

Unfortunately, to accurately answer your question, additional information is required. The law governing Unemployment compensation is particularly fact sensitive and each case is dealt with on its specific facts and merits. Although the actual scenario may be similar the results are not necessarily consistent. If you have worked for the same employer for at least a year and you were in fact "laid off", you should file an appeal of the initial decision which denied your Unemployment benefits. Ordinarily, after a person applies for benefits, the former employer is contacted and requested to respond to several questions, the most significant of which is the reason for the separation from employment. The employer does not decide who does and does not qualify for benefits; this is purely a function of the Division of Unemployment. It is possible in your scenario that the employer somehow indicated that you left work voluntarily and effectively resigned which could be the reason for the initial denial. Voluntary resignation usually disqualifies one for benefits. If the employer was less than honest in providing a reason and you can prove you were fired, rather than resigned, you should appeal this decision.

Generally, to qualify for benefits, you must be involuntarily terminated from your job and not have been separated for reasons known generally as gross misconduct. After an initial denial, as long as you follow the strictly interpreted timing provisions, you can appeal the decision to the Appeals Tribunal of

the Division of Unemployment. You must state your case in writing. You can represent yourself or appear with an attorney representing you. An in person or telephone hearing will be arranged and you can explain the circumstances giving rise to what you think is a valid claim. The Appeals Tribunal may also take testimony from the employer who will be invited to participate in the hearing. A written decision will then be forthcoming from the Appeals Tribunal. Based on the number of persons seeking benefits, this unfortunately is currently a slow process. If you receive an adverse decision, you are then entitled to appeal this decision to what is known as the Board of Review, another entity within the Division of Unemployment. You will again have to explain your case in writing, providing all evidence as to why you believe the denial of benefits is unlawful. If you again receive an additional denial of benefits, there is one more area of appeal if you truly think you have been dealt an injustice. You can appeal the Board of Review decision to the Appellate Division of the Superior Court. This is a more formalized process which is generally handled by an attorney as there are specific requirements related to the submissions you make and it is often a difficult process to represent yourself at this level. To be clear, you are able to represent yourself at this level but we would recommend you speak with a qualified attorney before doing so.

The bottom line is that if you were terminated from employment due to lack of work, a plant closing, a reduction in force or a host of other reasons and you have worked sufficient time as defined in the law, you should qualify for benefits. There are extenuating circumstances where you were fired for gross misconduct or certain other reasons which could disqualify you for a period of time or permanently. Don't just take the initial denial and assume it was correct. Fight for your rights. After all, you contributed through your payroll taxes and have often earned the benefit you are seeking. Keep in mind that severance pay is often a confusing issue for the Unemployment Division and the receipt of severance pay is often misconstrued and often an improper reason for a denial of benefits. Always consider consulting with a qualified employment attorney who should be able to explain all of your rights and obligations relating to Unemployment benefits.