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Comments by Legal Services Advocates on Final Amendments to Ch. 101 Regulations

Philadelphia Legal Assistance and Community Legal Services submit this comment based on new information since their original consultation about this regulation.

On June 8, 2021, the Department of Labor & Industry transitioned to a modernized benefit administration system. The new system is intended to provide increased functionality for all of the parties that interact with the Pennsylvania UC system. In the new UC portal claimants can file dynamic initial applications and weekly certifications, review their answers from weekly certifications, view detailed payment history for current and past claims, receive both direct and mass messages, pay overpayments, and file appeals.

However, over the past several months we have learned that claimants are limited in which appeals they can file in the new online UC portal. If a disqualifying determination is issued on a claim that is not the most recent claim filed, the claimant will see a message with the determination but will not be able to view it in the “determinations” section of the portal, and therefore cannot appeal it in the portal.¹ This is causing significant confusion among claimants, who may receive several notices of determination at once, but only see one or two available to appeal in the portal. Claimants are not informed that they cannot appeal these determinations in the portal, even though the determinations tell them the best way to appeal is *through the portal*.

The fact that determinations from prior claims do not appear as appealable determinations in the portal, while determinations issued on the most recent claim are readily appealable provides claimants with the impression that the determinations relating to old claims need not or cannot be appealed. Due to their confusion, many claimants are not appealing or filing late appeals from determinations that are not displayed in the “determinations” section of the portal. This situation is exacerbated by the Department of Labor & Industry’s backlog of claims in need of review: as the Department attempts to work through the onslaught of claims filed during the pandemic, the determinations issued will increasingly be made on prior claims and claimants will not be able to appeal those determinations in the portal.

When we were originally consulted regarding these amendments, we anticipated that UC claimants would be able to submit appeals in the new online system for all determinations. Now that the new system has been implemented, we have seen in practice the harm caused to claimants by the system’s design. Claimants should have the option of appealing all determinations in the UC portal. But in lieu changes to the way the online system operates, we believe the language of this regulation must be modified to prevent this type of harm and provide claimants with appropriate guidance regarding their ability to appeal. We propose that Section 101.82 be amended to require the Department to provide notice when a determination cannot be appealed through the UC portal. Suggested changes are included below in bold and underlined.

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Independent Regulatory
Review Commission

¹ Screenshots showing examples are attached.

§ 101.82. Time for filing appeal from determination of Department.

...

(b) A party may file a written appeal by any of the following methods:

...

(4.1) Pennsylvania UC Claims System.

(I) The date of filing is the receipt date recorded by the Pennsylvania UC Claims System. ~~Filing will be acknowledged by a confirmation from the Pennsylvania UC Claims System.~~ Following submission of the appeal, a notation will appear in the Pennsylvania UC Claims System to show that the department successfully received the party's appeal. Following submission of the appeal, the appeals section of the Pennsylvania UC Claims System will also show that the party's appeal has been filed. If the Pennsylvania UC Claims System does not indicate that the party's appeal has been filed, the party may re-submit the appeal using any method provided in this subsection. Failure to resubmit the appeal prior to the appeal deadline will result in an untimely appeal. **The Department shall provide written notice to the claimant when an appeal of a determination must be submitted by means other than through the Pennsylvania UC Claims System.**

For further discussion of these points, contact Julia Simon-Mishel, Esquire at 215-981-3889 (jsimonmishel@philalegal.org) or Aaron Sommer, Esquire at 215-981-3890 (asommer@philalegal.org).

**Submitted by:
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Submitted, January 18, 2022

Example 1

Monetary Determinations

These determinations are made after gathering all of your wages in the base period. Appeals of these determinations are not necessary until all efforts to find base period wages have been exhausted. You should discuss your situation with a claims specialist before filing an appeal.

Determination Date	WBA	MBA	ReDetermination Date	Action
4/07/2021 0:00:00 AM	\$583.00	\$15,158.00		File Appeal View Determination

Non-Monetary Determinations

These notices have determined your eligibility or ineligibility for benefits. They may be appealed by you or your employer. Before filing the appeal, you should select the "View Determination" link to ensure you are appealing the correct one. Once you have that assurance, select the "File Appeal" link and follow the directions.

Issue Id	Issue Type	View Appeal	Determination Date	Appeal Status	Appeal Filed	Action
Issue 8552221	Sleeping on the Job	247524	9/20/2021	Decision Rendered	9/21/2021	View Appeal Summary View Determination File Appeal View Determination
Issue 8552221	Sleeping on the Job		1/10/2022			File Appeal View Determination

In this example, the most recent claim was filed on April 7, 2021.

Determinations made on this claim appear in the "Determinations" tab and claimants can appeal in the system by clicking "File Appeal". These determinations will remain visible until a new claim is filed.

As long as a new claim has not been opened, determinations also remain visible after an appeal has been filed and adjudicated.

File appeal on a separate appealable determination

Select Appeal

Select Appeal:

Appeal Information

Docket Number: 2021321919-RO **Claimant:** [REDACTED]
Appeal Date: 9/21/2021 **Employer:** BOTTLING GROUP LLC
Current Status: Decision was rendered. This appeal is complete. **Appellant:** Claimant
Appeal Authority: Appeals Referee

Determination Date: 9/20/2021
Determination Mail Date: 9/21/2021
Determination Type: Non-Monetary Determinations

You were discharged because of sleeping on the job

Decision was rendered. This appeal is complete.

A decision was entered that reverses the original determination.

If you do not agree, please follow the instructions provided in the Further Appeal Rights section of your decision.

- ✓ Appeal Filed on 9/21/2021
- ✓ Reviewed as valid on 9/29/2021
[View Appeal File](#)
- ✓ Hearing scheduled for 11/12/2021 11:30:00 AM
- ✓ Request to Continuance

Example 2

Appeals Filed | Appeals Filed Against | Determinations | Associated Appeals

Monetary Determinations

These determinations are made after gathering all of your wages in the base period. Appeals of these determinations are not necessary until all efforts to find base period wages have been exhausted. You should discuss your situation with a claims specialist before filing an appeal.

Determination Date	WBA	MBA	ReDetermination Date	Action
9/28/2020 0:00:00 AM	\$528.00	\$13,200.00		File Appeal View Determination

Non-Monetary Determinations

No records found

Overpayment Determinations

No records found

15% and/or Penalty Week Determinations

No records found

In this example, a new claim was filed on September 28, 2020. As of that date, determinations from prior claims no longer appear in the "Determinations" section of the portal.

Appeal Decisions

Below are the details of your latest appeal.

For help click the information icon.

Appeals Filed | Appeals Filed Against | Determinations | Associated Appeals

[File appeal on a separate appealable determination](#)

Select Appeal

Select Appeal:

Appeal Information

Docket Number:	2021336799-RO	Claimant:	
Appeal Date:	6/8/2021	Employer:	N/A
Current Status:	Waiting for a decision to be written.	Appellant:	Claimant
		Appeal Authority:	Appeals Referee

Determination Date: 5/26/2021
Determination Mail Date: 5/27/2021
Determination Type: Overpayment Determinations

Waiting for a decision to be written.

The information from your hearing is being considered at this time. When a decision is entered you will receive a notification.

- ✓ Appeal Filed on 6/8/2021
- ✓ Reviewed as valid on 11/16/2021

In May of 2021, this determination and several others were issued on the claimant's previous benefit year. Since they were issued after the new claim filed in September of 2020, they did not appear in the "Determinations" tab and could not be appealed in the UC portal.