Unemployment Compensation Hearings

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Chronology of a claim

- Application
- Filing weekly claims (made throughout the process)
- Initial determination
- Redetermination
- UCRC hearing
- Hearing officer's decision
- Request for Review
- Administrative appeal to Common Pleas – *rare*

Application and weekly claims

- Claimant can file application online at unemployment.ohio.gov or by phone
- Claimant should apply ASAP
  - One week grace period – waiting more than a week will cut into benefits
- Claimant should continue to file weekly claims for benefits (and show that they've applied for at least two jobs per week) throughout appeals process
  - Claimants should maintain complete records of job contacts (who, when, where, result) for possible audit
- Claimants must follow instructions regarding "reemployment activities" or benefits will be suspended until completed. E.g. must upload resume on Ohio Means Jobs by 2nd week; complete career profile assessment by 8th week.

Initial determination

- Unemployment compensation benefits are "**allowed**" or "**disallowed**"

- Possible issues:
  - Insufficient earnings (Need $261 average weekly wage in 2019) or insufficient number of weeks of employment in base period (20)
  - Not able and available for work
  - Not actively seeking work
  - Refused suitable work without good cause
  - Did not work in "qualified employment"
  - **Disqualifying separation**

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES

OFFICE OF UNEMPLOYMENT INSURANCE OPERATIONS

DETERMINATION OF UNEMPLOYMENT COMPENSATION BENEFITS

JFS-83080 11/10/2016

Claimant's Name	Claimant ID	Social Security Number	Determination Identification Number
[redacted]	[redacted]	[redacted]	[redacted]

Benefit Year Beginning Date	Benefit Year Ending Date	Application Date	Date Issued
12/30/2018	12/28/2019	12/30/2018	01/16/2019

[redacted]

ODJFS Office

Reno Processing Center
PO Box 182212
Columbus, OH 43218-2212

Phone: (866) 867-0044
Fax: (614) 466-7449

THIS NOTICE IS A DETERMINATION OF AN INITIAL APPLICATION FOR UNEMPLOYMENT BENEFITS, ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 4141.28(D) & (E), OHIO REVISED CODE

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The Ohio Department of Job and Family Services has DISALLOWED the claimant's application for unemployment compensation benefits dated 12/30/2018. The claimant did not have at least twenty qualifying weeks of employment that was subject to an unemployment compensation law or did not earn an average weekly wage of at least $261 before taxes during the base period 10/01/2017 to 09/30/2018, as required by Section 4141.01(R)(1) of the Ohio Revised Code.This decision is related to qualification for regular UC benefits.

The claimant was discharged by STARBUCKS COFFEE COMPANY (INC.) on 12/29/2018. The claimant was discharged due to dishonesty in connection with the work under Section 4141.29(D)(2)(e), Ohio Revised Code. All base period remuneration earned and qualifying weeks worked with this employer are excluded and cannot be used to determine the total benefits payable, the weekly benefit amount, or total amount chargeable to employer accounts.

APPEAL RIGHTS: If you do not agree with this determination, you may file an appeal by mail or fax to the ODJFS office provided. You may also file an appeal online at https://unemployment.ohio.gov. The appeal should include the determination ID number, name, claimant's social security number, and any additional facts and/or documentation to support the appeal. **TO BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 02/06/2019** (21 calendar days after the 'Date Issued'). If the 21st day falls on a Saturday, Sunday, or legal holiday, your deadline has already been extended to include the next scheduled work day. If you do not file your appeal within the 21-day calendar period, include a statement with the date you received the determination and your reason for filing late. If your appeal is late due to a physical or mental condition, provide certified medical evidence that your condition prevented you from filing within the 21-day period. In order for your appeal to be considered timely, it must be received/postmarked no later than 21 calendar days after the ending date of the physical or mental condition. **If unemployed,** claimants should continue to file weekly claims for benefits while the determination is under appeal by visiting the agency's website at https://unemployment.ohio.gov or call the ODJFS office listed above. For additional information, claimants may review the **Worker's Guide to Unemployment Compensation.**

Appeal from an initial determination

- Claimant must file written appeal to ODJFS within 21 calendar days of the determination
  - Can be done online at unemployment.ohio.gov from 6:00 am to 6:00 pm
- ODJFS will either make its own "redetermination" **or** directly refer to Unemployment Compensation Review Commission (UCRC)

Director's redetermination

- Initial decision can be affirmed or reversed
- To continue to dispute the determination, an appeal must be filed within 21 days of the date this decision is issued

OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
OFFICE OF UNEMPLOYMENT INSURANCE OPERATIONS
DIRECTOR'S REDETERMINATION

JFS-83100 11/10/2016

Claimant's Name	Claimant ID	Social Security Number	Determination Identification Number
[redacted]	[redacted]	[redacted]	[redacted]

Benefit Year Beginning Date	Benefit Year Ending Date	Application Date	Date Issued
12/30/2018	12/28/2019	12/30/2018	02/26/2019

[redacted]

ODJFS Office

Redetermination Unit

THIS NOTICE IS A DETERMINATION OF AN INITIAL APPLICATION FOR UNEMPLOYMENT BENEFITS, ISSUED IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 4141.28(D) & (E), OHIO REVISED CODE

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APPELLANT A determination with ID # [redacted], issued on 01/16/2019, was appealed as follows:

By: [redacted] on 02/02/2019

DECISION & REASONING AFFIRMED - A review of the original facts plus those submitted in the appeal does not support a change in the initial determination.

The determination with ID # [redacted], issued on 01/16/2019, is hereby affirmed.

This portion of the determination has been affirmed.

The Ohio Department of Job and Family Services has DISALLOWED the claimant's application for unemployment compensation benefits dated 12/30/2018. The claimant did not have at least twenty qualifying weeks of employment that was subject to an unemployment compensation law or did not earn an average weekly wage of at least $261 before taxes during the base period 10/01/2017 to 09/30/2018, as required by Section 4141.01(R)(1) of the Ohio Revised Code.This decision is related to qualification for regular UC benefits.

This portion of the determination has been affirmed.

The claimant was discharged by STARBUCKS COFFEE COMPANY (INC.) on 12/29/2018. The claimant was discharged due to dishonesty in connection with the work under Section 4141.29(D)(2)(e), Ohio Revised Code. All base period remuneration earned and qualifying weeks worked with this employer are excluded and cannot be used to determine the total benefits payable, the weekly benefit amount, or total amount chargeable to employer accounts.

INTERESTED PARTIES **STARBUCKS COFFEE COMPANY (INC.)**

APPEAL RIGHTS: If you do not agree with this redetermination, you may file an appeal by mail to the ODJFS Director, Bureau of UC Benefits, PO Box 182863, Columbus, OH 43218-2863; by fax to 1-614-466-8392, or at the ODJFS website at https://unemployment.ohio.gov. The appeal should include the redetermination ID number, your name, the claimant's social security number, and any additional facts and/or documentation to support the appeal. **TO**

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

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BE TIMELY, YOUR APPEAL MUST BE RECEIVED/POSTMARKED NO LATER THAN 03/19/2019 (21 calendar days after the Date Issued). If the 21st day falls on a Saturday, Sunday, or Legal Holiday, your deadline has already been extended to include the next scheduled work day. If you do not file your appeal within the 21-day calendar period, include a statement with the date you received the redetermination and your reason for filing late. If your appeal is late due to a physical or mental condition, provide certified medical evidence that your condition prevented you from filing within the 21-day period. In order for your appeal to be considered timely, it must be received/ postmarked within 21 calendar days after the ending date of the physical or mental condition. **If unemployed,** claimants should continue to file weekly claims for benefits while the redetermination is under appeal by visiting the agency's website at https://unemployment.ohio.gov or by calling your processing center. For additional information, claimants may review the **Workers' Guide to Unemployment Compensation.**

If you appeal this redetermination and are employed 8:00am - 4:30pm, you may request that your hearing be scheduled during non-working hours. Include the request as part of your appeal, and list your hours of employment. Hearings scheduled after 4:30pm will be conducted by telephone.

Si usted no puede leer esto, llame por favor a 1-877-644-6562 para una traduccion.

Appeal from redetermination

- JFS will transfer case to UCRC and will send claimant a **Transfer Notice**
- Transfer Notice packet will include form to request Director's file and lots of helpful instructions
- You can call UCRC at 1-866-833-8272 to find out if the case has been transferred, request continuance, confirm/get hearing date and time
- All hearings are initially scheduled during regular business hours by telephone. If you want an in-person hearing, you must request this within 10 days of the date the claim is transferred to the UCRC. All in-person hearings are held in Columbus. Hearings can be held after regular business hours if needed.

TRANSFER NOTICE

Docket No.: [redacted]

State of Ohio
Unemployment Compensation Review Commission
P.O. Box 182299
Columbus, Ohio 43218-2299

NOTICE THAT AN APPEAL HAS BEEN TRANSFERRED
BY THE DIRECTOR TO THE REVIEW COMMISSION
Si usted no puede leer esto, llame por favor a 1-866-833-8272 para una traducción

In re claim of: [redacted] - Appellant
*SSN: [redacted]

*If the complete SSN is needed to identify the claimant, please call UCRC Staff at 1-866-833-8272. Due to privacy laws, the Commission can confirm, but not provide the full SSN.

Claimant Representative:

Employer:

Starbucks Coffee Company, Inc.
UCO No.: 1646567004
Issues: DISCH, DISHON, VAL-APP-18

Employer Representative:

DATE THIS NOTICE MAILED: March 11, 2019

The Director has transferred the appeal filed by the appellant(s) from ODJFS determination [redacted] which was sent on March 08, 2019, to the Unemployment Compensation Review Commission.

Issues: (References are to the Revised Code of Ohio, Chapter 4141, unless otherwise noted. Issues pertaining to a specific employer are listed below their names.)

DISCH

Was the claimant discharged by the employer for just cause in connection with work?

An individual is not eligible for benefits if the individual was discharged for just cause in connection with work. The individual will remain ineligible until the individual obtains covered employment, works six weeks, and earns the required requalifying amount. 4141.29 (D)(2)(a), 4141.29 (G) ORC. For applications filed after August 1, 2004, a non-disqualifying separation from employment is a requirement for a valid application. An individual is not disqualified if the individual was discharged without just cause in connection with work. Section 4141.29 (D)(2)(a) ORC.

DISHON

Did the claimant become unemployed from the employer because of dishonesty in connection with work?

An individual is not eligible for benefits if the individual becomes unemployed because of dishonesty in connection with work. Qualifying weeks and wages received in such work shall be excluded from the individual's base period remuneration. No benefits may be paid based upon such wages. Dishonesty is defined as the commission of substantive theft, fraud, or deceitful acts. 4141.29 (D)(2)(f) and 4141.29 (G). For applications filed on and after August 1, 2004, a non-disqualifying separation from employment is a requirement for a valid application.

VAL-APP-18

Did the claimant file a valid application for determination of benefit rights?

An individual is entitled to a valid application if the individual is unemployed when they file and has been employed in covered employment in at least 20 qualifying weeks within the base period, has had an average weekly wage of at least $256.00, and for applications filed on or after August 1, 2004, the reason for separation from the individual's most recent employment is not disqualifying under sections 4141.29 (D)(2) or 4141.291 ORC. The base period is the first four of the last five completed calendar quarters prior to filing. 4141.01 (O)(Q)(R) ORC.

Additional issues may be considered which fall within the purview of Ohio Administrative Code Rule 4146-5-03.

This matter will be scheduled for hearing as early as possible. A notice setting forth the date, hour, and place of hearing will be mailed to the parties. **Important instructions** about your rights and duties will be enclosed. Please read those instructions.

IMPORTANT: Please read the information enclosed with this document.

[RCX Temp : Appeal Notice Hearing Officer]

Copies of this Notice were mailed on March 11, 2019 to the following:

[redacted]
Via Email

Starbucks Coffee Company, Inc. - Interested Party
2401 UTAH AVE S STE 800
MS S-PSS
SEATTLE, WA 98134-1435

Attn: Starbucks Coffee Company, Inc.
UC EXPRESS - Interested Party
PO Box 182366
Columbus, OH 43218-2366

Hearing notice

- Provides date and time of hearing
- Includes telephone number to call 15 minutes before the hearing is scheduled to begin
- Expect resistance from UCRC if you want a continuance – must have demonstrate “exceptional circumstances”

Four-step preparation for hearing

1. **Notice your appearance**
2. **Request Director's File right away!**
   - Contains all of the information considered by JFS in prior determinations
3. Subpoena documents from the employer or witnesses
   - Client may have helpful input on witnesses or documents, or there may be an obvious omission from the Director's File
   - Consider whether a subpoena may compel an employer's attendance who has not otherwise been participating in the process
   - Consider whether a witness who is still employed with that employer will testify truthfully or have a "memory lapse" (Contact witnesses before subpoenaing if you can)
4. **Meet with your client** to practice questions

How to notice appearance

- Send letter or fax to UCRC with client's name, SSN, determination ID number and docket number (both are on transfer notice)
- "Please be advised that [your name] submits this Notice of Appearance on behalf of [client] on all matters before the Ohio Unemployment Compensation Review Commission in the above-referenced matter. Please direct all future correspondence to my attention."

How to request the Director's File

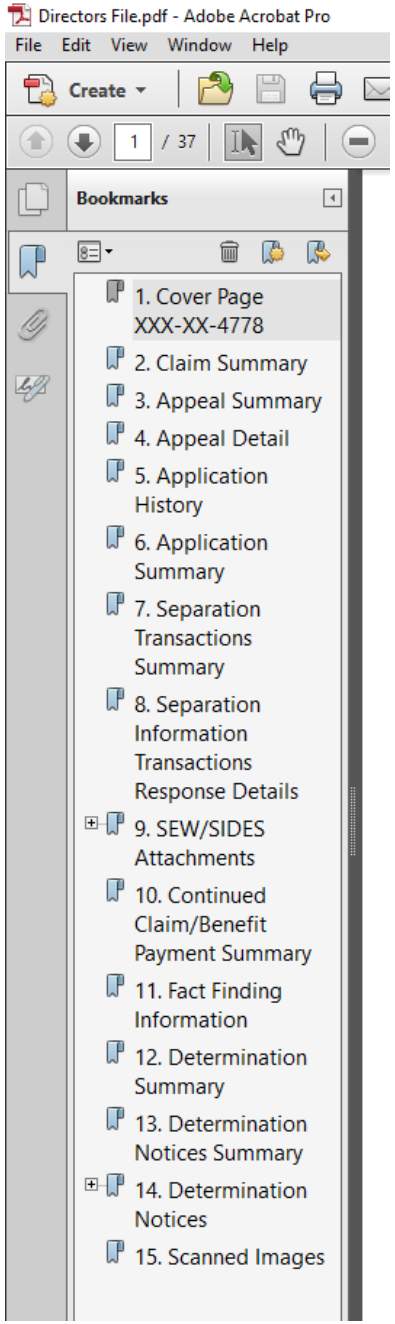
- The last page of the Transfer Notice is a form to request files
- Email filecopy@jfs.ohio.gov with the file request form
- If you don't have the form, include in email to filecopy@jfs.ohio.gov:
  - Request for electronic copy of Director's File
  - Name of claimant
  - Docket number (top right-hand corner of Transfer and Hearing Notices)
  - Name and telephone number of requesting party
  - Your relationship to case (e.g. "claimant's representative")
  - Email addresses of copy recipients (e.g. you, your assistant, your client)

Subpoenas

- Request **subpoenas** of witnesses and documents
  - Each party gets three (You can get more if, at the hearing, you convince the hearing officer additional witnesses are needed for your case.)
  - Submit request to UCRC at least five days before the hearing
    - Email subpoena to UCRC_FAX@jfs.ohio.gov
- Submit **additional documents** to the record
  - Label A, B, C, etc.
  - Email to UCRC_FAX@jfs.ohio.gov within 14 days of Transfer Notice
  - Must be sent to UCRC and other party

Final hearing prep

- Meet with your client a day or two before the hearing and have client answer questions that you expect the hearing officer to ask, that you will ask or that the employer may ask
- Important to be able to explain any variation from what client reported earlier and is in the Director's file
- Similar to prepping a client for a depo
- Make sure the cell phones are charged!



Anatomy of the Director's File

- The .pdf sent by UCRC will be indexed in Adobe
- Important sections:
  - 8. Separation Information Transactions Response Details
    - Employer's narrative response
    - Name and title of the decisionmaker
  - 9. SEW/SIDES Attachments
    - Documents submitted by the parties
  - 11. Fact Finding Information
    - **Standard used**
    - Reasoning of JFS on redetermination
  - 15. Scanned Images

Just cause standard - discharge

- Claimants are entitled to unemployment compensation unless discharged for **just cause**
- "Just cause" = some fault on the employee's part
- Different tests for just cause depending on reason given for termination
  - Refer to test in Director's File **"11. Fact Finding Information"**

Test for performance-based reason

- Benefits are disallowed where ALL of the following conditions exist:
  - 1. The individual **did not perform** the required work;
  - 2. The individual was **aware of the performance expectations** of the position at the time of hire for that position;
  - 3. The expectations were **reasonable**; and
  - 4. The **requirements of the job did not change** between the date of hire for that position and the individual's discharge.

Test for policy-based reason

When a claimant is discharged for a violation of an employers policy, all of the following factors must be present for disqualification.

- 1. The rule must be **reasonable**, **known**, and **uniformly applied**.
  - Reasonable includes:
    - (1) Designed to protect the employer's best interest;
    - (2) Not impossible or beyond the control of the individual;
    - (3) No unreasonable burden and not injurious to the employee's health; and
    - (4) Does not violate the law.
- 2. The violation must have some connection with the work.
- 3. The violation must be **substantial and materially affect the employer's interest.**
- 4. Employee's action indicates **negligence or a willful disregard** of the rule.

Check personnel policy/employee handbook for rules

- If employer failed to follow progressive disciplinary policy, may be able to establish that there was not just cause for discharge
- If specific sanctions are provided that are less severe than discharge, (e.g. warnings, suspension), premature discharge for violations of the rule is not just cause
- Pay special attention to attendance cases. For “no fault” attendance policies, claimant may be able to show that the absences were not avoidable,(e.g. due to illness, need to care for a sick child, etc.)

Just cause standard - quit

- Generally, the harder case because claimant "caused" the unemployment
- Did claimant act as a "reasonable person" under the circumstances
- Examples of "just cause":

  -employer breached employment agreement

  -illness or injury (must still be able to perform other work)

  -work impaired health/safety issues

  - work required violation of law or claimant's morals

The UCRC Hearing

Hearing basics

- Conducted by a Hearing Officer
- Scheduled to be 45 minutes long
- *De novo* review
- No court reporter (but it is being recorded)

Hearing procedure

- Hearing Officer explains process, swears in witnesses
- H.O. asks questions of employer's witnesses
- You get to cross employer's witnesses
- H.O. asks questions of claimant
- You get to direct claimant
- Employer can cross the claimant
- Employer can recall witnesses, you can re-cross
- Closing statements

- H.O. will typically render a decision within a few weeks

Hearing rules

- Hearing Officers are not bound by rules of evidence or procedure
- Hearsay is admissible! BUT hearsay should not be given greater weight than reliable direct testimony from someone with personal knowledge presented at the hearing.
- Most important unofficial rule –
  - Do not annoy the H.O. by duplicative or unnecessary questions

Cross and direct examinations

- You can ask witnesses about exhibits in the Director's File
- **Direct** – develop testimony that preempts the elements employer has to fulfill
- **Cross** – often you have an HR person as a "witness" with no personal knowledge of the circumstances of the termination, making it hard for employer to satisfy elements
- Develop comparator evidence on direct and cross

Closing statement

- Do not waive even if employer doesn't show
- Frame argument around standard set forth in Director's File
- Point out any hearsay that the claimant has disputed

Tips

- Director's File does not have page numbers, so keep it pulled up on laptop in PDF form so you can direct attention to a page efficiently
- Make sure you and your client do not speak over the hearing officer or each other.
- Advise your client that they should be polite and calm and should not comment during the employer's testimony ("that's a lie!") Also, advise client to be respectful when cross examined by the employer – regardless of how aggravating or rude the questions may seem.

What if the employer doesn't show?

- If the employer is the party who appealed, and it fails to call in to the hearing, then UCRC dismisses the appeal
- If the employer was *not* the party who appealed (i.e. if the claimant appealed), then the hearing still takes place without them
  - Not an automatic win for claimant
  - Expect the hearing officer to closely question claimant about employer's position

Bad decision by hearing officer

- Next appeal level is a Request for Further Review
- Must be requested in within 21 days of the date the hearing officer's decision is issued
- The three member Commission reviews the hearing tape and decision and can "allow" or "disallow" further review
- High standard of review – Hearing officer's decision must be "unlawful, unreasonable or against the manifest weight of the evidence"
- If Request for Review is allowed, Commission can schedule further hearing, rewrite the decision based on the evidence presented at the hearing OR affirm the hearing officer's decision
- If the Employer requests further review, you can ask for a copy of the request and respond
- Next step – Common Pleas Court for Administrative Review (30 days)

Resources -- Ohio Revised Code 4141

- web.ucrc.state.oh.us
  - The "UC Law Abstract" is really helpful and includes specific examples with cites
- unemployment.ohio.gov/
  - Skim through "Worker's Guide to Unemployment Compensation" for background